



SCOPE

Mount Surprise Town Maintenance

CONTRACT NO: ESC 2025 - 23

1. INTERPRETATION AND DEFINITIONS

- 1.1 **(Documents comprising this Scope)** The Scope comprises the following documents:
- (a) ESC2025-23 Tender Response for Goods and Services;
 - (b) ESC2025-23 Request for Tender
 - (c) ESC2025-23 Appendix A.
- 1.2 **(Precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1, then the document which contains the higher standard or more onerous obligation will prevail. If that does not resolve the ambiguity, inconsistency, conflict or discrepancy then the documents will take precedence in the order set out in clause 1.1 with the document listed at 1.1(a) being the highest in the order.

2. REQUIREMENTS

- 2.1 **(Purpose)** To maintain the Council infrastructure in the town of Mount Surprise.
- 2.2 **(Scope)** covered in ESC2025-23 Request for Tender.

3. APPROVALS AND OTHER LAW

- 3.1 **(Identifying, obtaining and maintaining Approvals)** The Supplier must identify and notify the Principal of all Approvals which are necessary for the proper performance of the Services (other than Approvals which the Principal has advised the Supplier it has already obtained). The Supplier must obtain and maintain all such Approvals until all of the Supplier's other obligations under the Contract are complete. The cost of obtaining and maintaining all such Approvals shall be borne by the Supplier.
- 3.2 **(Compliance)** The Supplier must and must ensure that its Personnel comply with all Approvals and other law which are in anyway applicable to the Services, including, unless the Contract expressly provides otherwise, by paying all fees, royalties, levies, charges, costs, expenses, taxes or duties.
- 3.3 **(Obtaining or granting of Approvals by Principal)** The Principal gives no warranty and makes no representation that:
- (a) it will be able to obtain, or obtain within any particular time; or
 - (b) where the Principal is the relevant Authority, that it will grant,
- any Approval required for the Supplier to perform the Services.
- 3.4 **(No fetter)** Nothing in the Contract shall be taken to fetter the power, rights or authority of the Principal as the sublessor under the *Land Act 1994* (Qld) or an Authority under the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) or any other law.
- 3.5 **(Provision of the Services)** The Supplier must, and warrants and represents that it will, perform the Services so that the Site, at all times during the Term, complies with all Approvals and other applicable law.
- 3.6 **(Obligation to report breach)** The Supplier must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Supplier has breached an obligation under clauses 3.1, 3.2 or 3.3. Unless otherwise

directed by the Principal, the Supplier must take immediate steps to remedy such a breach at its expense.

4. SERVICE LEVELS

4.1 In this clause:

- (a) **Review Period** means the period stated in clause 4.9 below in which the performance of the Supplier against a Service Level is to be reviewed;
- (b) **Service Levels** means the service level(s) or key performance indicator(s) (if any) described as such in clause 4.9 below.

4.2 **(Guarantee)** The Supplier must, and guarantees that it will, in providing the Services and carrying out its other obligations under the Contract, achieve or exceed all Service Levels in every Review Period.

4.3 **(Measuring performance)** The Principal will review the performance of the Supplier against the Service Levels at the times in clause 4.9 below, and otherwise on the giving of reasonable notice. The Principal may direct the Supplier to provide a written explanation for its performance against any Service Level.

4.4 **(Performance liquidated damages)** If the Supplier has failed to meet any Service Level, the Supplier shall be indebted to the Principal for performance liquidated damages calculated in accordance with clause 4.9.

4.5 **(Recovery of liquidated damages)** The Principal may deduct such performance liquidated damages from moneys otherwise owing to the Supplier to recover the performance liquidated damages. The Parties agree that the performance liquidated damages are an agreed genuine pre-estimate of the Principal's loss if the Supplier breaches its obligations under the Contract.

4.6 **(General damages)** If, for any reason, the Principal's entitlement to performance liquidated damages is found to be void, voidable or otherwise unenforceable (in whole or part), or the Principal is otherwise unable to recover the whole of the performance liquidated damages from the Supplier, the Supplier shall be liable to the Principal for any loss, damage, cost or expense suffered or incurred by the Principal as a result of the Supplier failing to achieve the Service Levels.

4.7 **(Review of Service Levels)** The representatives of the Parties may review the Service Levels from time to time and amend them in any way including by adding additional Service Levels, removing or amending Service Levels, amending the method of measuring performance or the consequence of achieving or failing to achieve a Service Level.

4.8 **(Substantial breach)** Failing to achieve or exceed:

- (a) the same Service Level for three consecutive Review Periods, even though the Supplier may have achieved or exceeded some or all of the other Service Levels for those same Review Periods; or
- (b) any two Service Levels for two consecutive Review Periods,

shall constitute a substantial breach of the Contract.

4.9 **(Service Levels)** The Service Levels are defined in ESC2025-23 Appendix A:

5. PROCUREMENT SERVICES

5.1 Where the Services require the Supplier to manage, conduct or otherwise participate in a Procurement Process for the engagement of a contractor or other supplier by the Principal, then the Supplier must, and must ensure that its Personnel, to the extent that it is within the control of the Supplier or its Personnel ensure that the procurement process is conducted consistently with:

- (a) the Principal's procurement policy;
- (b) the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld);
- (c) the requirements of the request for tender or request for quotation documentation issued to tenderers;
- (d) any probity plan or evaluation plan implemented for the Procurement Process;
- (e) principles of probity; and
- (f) Good Industry Practice,

with a view to ensuring that the selected contractor or supplier is the most advantageous to the Principal having regard to the sound contracting principles in section 104 of the *Local Government Act 2009* (Qld).

6. SUPERINTENDENT SERVICES

6.1 **(Primary obligations)** Where the Services require the Supplier or any of its Personnel to fulfil the role and functions of the Superintendent or similar under a Construction Contract, the Supplier must, and must ensure that its Personnel, in doing so:

- (a) comply with and act consistently with any requirements of the Construction Contract as to the manner in which those roles and functions are to be fulfilled including (where applicable) by:
 - (i) giving any directions, documents or notices required or permitted to be given by the superintendent under the Construction Contract; and
 - (ii) assessing all claims made under the Construction Contract,

in accordance with the requirements of the Construction Contract for the giving of such directions, documents and notices and the making of such assessments;
- (b) use its or their reasonable endeavours to ensure that the Construction Contractor complies with the Construction Contract, including by exercising the available rights and powers of the superintendent under the Contract;
- (c) keep the Principal fully informed of all relevant matters under the Construction Contract;
- (d) unless and then only to the extent (if any) that to do so would be inconsistent with the Construction Contract:
 - (i) act as the Principal's agent;
 - (ii) act in the best interests of the Principal;
 - (iii) seek and act in accordance with the instructions of the Principal; and
 - (iv) do all other things necessary to protect the Principal's rights and interests under the Construction Contract.

6.2 **(No waiver or limitation)** The Supplier must not, and must ensure that its Personnel do not, do or omit to do anything where that act or omission could operate so as to waive or limit the rights of the Principal under or in connection with the Construction Contract or otherwise prevent the Principal from exercising any right under or in connection with the Construction Contract.

6.3 **(Security of payments)** The Supplier:

- (a) is authorised to prepare and issue payment schedules in response to any payment claims made by the Construction Contractor pursuant to the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) in relation to the Construction Contract;
- (b) must take all reasonable steps to identify all documents which may constitute such payment claims and immediately provide a copy of such documents to the Principal;
- (c) if requested by the Principal, promptly give to the Principal a copy of the payment claim and any other information or documentation required by the Principal in connection with the payment claim;
- (d) must provide such other assistance as the Principal may reasonably require in connection with the payment claim and any related proceedings whether under the Act or otherwise.

6.4 **(Definitions)** In this clause:

- (a) **Construction Contract** means a construction contract between the Principal and the Construction Contractor for the construction of any works the subject of the Services, and includes any construction contract specifically identified in the Contract;
- (b) **Construction Contractor** means the contractor engaged by the Principal under the Construction Contract;
- (c) **Superintendent** means the person appointed to fulfil the role and functions of the superintendent pursuant to a Construction Contract, and includes a superintendent's representative.

7. BIOSECURITY MANAGEMENT

7.1 **(Definitions)** In this clause:

- (a) a **biosecurity risk** is the risk that exists when dealing with:
 - (i) any pest, disease, or contaminant (including plants, seeds, spores, eggs, vertebrate and invertebrate pest); or
 - (ii) something that could carry a pest, disease or contaminant (e.g. animals, plants, soil, equipment and water—known as 'carriers').
- (b) **Fire Ant Biosecurity Zones** has the meaning given in the *Biosecurity Act 2014* (Qld); and
- (c) **General Biosecurity Obligation** has the meaning given in the *Biosecurity Act 2014* (Qld).
- (d) a **potential biosecurity risk** is a biosecurity risk that does not currently occur at the Site but which has the capacity to occur at the Site. It may be present but not visible or may be introduced during the performance of the Supplier's obligations. It includes risks associated with carriers and the movement and sourcing of materials, vehicles, and machinery; and the disturbance, import or export of soils.
- (e) a **known biosecurity risk** is a biosecurity risk that is currently recorded within the footprint or proximity of the Site which is:
 - (i) identified within biosecurity plans or programs active for the area;
 - (ii) identified during the performance of the Supplier's obligations; or
 - (iii) otherwise identified by the Principal.

7.2 **(Compliance)** The Supplier must, on request by the Principal, provide documentary evidence of its compliance with this clause.

8. PRINCIPAL SUPPLIED INFORMATION AND OTHER INVESTIGATIONS

8.1 **(Definitions)** In this clause “**Principal Supplied Information**” means any information relating to the Contract which does not form part of the Contract but which is or has been provided or made available by or on behalf of the Principal to the Supplier in any form, whether such information is made available before or after the date of the Contract.

8.2 **(Acknowledgement and agreement by Supplier)** The Supplier acknowledges and agrees that:

(a) the Principal gives no warranty and makes no representation in respect of this Contract. Without limiting this, the Principal gives no warranty and makes no representation:

(i) that the Principal Supplied Information is accurate, adequate or complete; and

(ii) as to the physical condition, suitability or other characteristics of the Site;

(b) the Supplier has not relied and will not rely on the Principal Supplied Information unless and until the Supplier has independently verified the adequacy, accuracy and completeness of that information;

(c) the Supplier:

(i) has carefully, thoroughly and critically reviewed, examined, investigated, inspected and checked the Principal Supplied Information and the Site and undertaken all other necessary enquiries and investigations to satisfy itself of the suitability of the Site to enable the Supplier to comply with its obligations under this Contract and of any other logistical considerations, risks, contingencies and other circumstances which could have an effect on the cost of carrying out and completing Services or compliance with the Supplier's other obligations under the Contract;

(ii) the Supplier has made its own interpretations, deductions and conclusions from such enquiries and investigations and accepts full responsibility for those interpretations, deductions and conclusions; and

(iii) the Supplier, having undertaken those enquiries and investigations, accepts the risk of any inadequacy, inefficiency, deficiency or fault in the Site and that it can and will carry out and complete the Services in accordance with the Contract and comply with its other obligations under the Contract for the Price (as adjusted pursuant to the Contract); and

8.3 **(No liability)** The Principal shall not be liable upon any Claim by the Supplier in connection with the Principal Supplied Information or the physical condition, suitability or other characteristics of the Site.

9. SUPPLIER'S PERSONNEL

9.1 **(Police checks)** If the Principal directs the Supplier to obtain police checks on particular Personnel of the Supplier (“Nominated Persons”) then the Supplier must not permit a Nominated Person to perform any part of the Services or to have access to any part of the Site unless and until 5 Business Days after the Supplier has given the Principal a written copy of a criminal history check produced by the Queensland Police Service for that Nominated Person. If the criminal history check contains any entries, the Principal may, in its absolute discretion, notify the Supplier that the Nominated Person is not permitted to perform the Services or may otherwise place conditions upon that person's role in performing the Services.

10. MEETINGS

- 10.1 **(Meetings)** The Supplier must, when otherwise reasonably required by the Principal, meet and in good faith discuss the performance of the Supplier and/or any other matter concerning the Principal in connection with the Contract including:
- (a) the Supplier's performance of its obligations under this Contract, including the Service Level(s) (if any) identified in the Contract;
 - (b) to promote safer and quieter work practices; and
 - (c) improvements to efficiency of the Supplier's obligations under the Contract.
- 10.2 **(Recommendations or directions)** The Supplier must comply with any reasonable recommendations or directions given by the Principal in relation to the performance of the Supplier's obligations under the Contract. Such compliance will not release or discharge the Supplier from any liability or obligation under the Contract.

11. SERVICE RECORDS AND AUDITING

- 11.1 **(Creation)** The Supplier must:
- (a) create and maintain the following:
 - (i) record hours spent on completing the various tasks under the contract. An invoice template will be provided to the contractor that they may use for their claims;
 - (ii) complete landfill and aerodrome inspection forms and forward them to Council;
 - (b) create and maintain the records, reports and other documents required by the Contract and any other records, reports or documents reasonably required by the Principal in connection with the Contract; and
 - (c) create any document required to be prepared under the Supplier's management plan prepared under the Contract,

(‘Service Records’).

- 11.2 **(Audit)** The Principal may at any time during the Term, on the giving of reasonable notice, audit the Supplier's compliance with the Contract or any obligation under it. The Supplier shall facilitate the audit by:
- (a) allowing the auditors to undertake any inspections or tests;
 - (b) providing such assistance, information and access to the Site, systems and equipment and other cooperation;
 - (c) providing to the auditor with copies of, facilitating the copying by the auditor of, the Services Records and all other records, information and documentation,

reasonably required by the auditor.

If the audit reveals any non-compliance by the Supplier with its obligations under the Contract, then the costs reasonably and necessarily incurred by the Principal in conducting the audit shall be a debt due and payable by the Supplier. Otherwise, the Principal shall bear the cost of the audit.