

# **REQUEST FOR QUOTATION**

**CD:040/2017**

## **VEGETATION MANAGEMENT FOR CITY OF LAUNCESTON DAMS**

**AUGUST 2017**

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## **SECTION A - GENERAL CONDITIONS**

### **1.1. TYPE OF CONTRACT**

This is a Schedule of rates contract, with provision for additional payment for services as requested by the City of Launceston and undertaken by the Contractor. It is envisaged to have a panel of contractors selected to supply the Request for Quotation (RFQ) requirements with fixed pricing for a contract term of two years. The contract will allow for renewal option of up to the same period, as determined by the City of Launceston.

### **1.2. WORK TO BE PERFORMED**

The services to be provided are described in Section B, Specifications. Contractors are required to supply all plant, equipment, materials and consumables required to undertake works as specified.

### **1.3. CONTRACTOR TO BE INFORMED**

All contractors, prior to submitting their Request for Quotation, are expected to become acquainted with the nature and extent of the RFQ and the services to be undertaken, and make all necessary examinations, investigations, and inspection.

### **1.4. ENQUIRIES**

Any enquiries regarding the services specified in the Request for Quotation should be directed to the nominated contact person/representative(s) as listed in Section D of this document.

No statement made by the nominated contact person(s) should be construed as modifying these Conditions, unless confirmed in writing by the nominated contact person(s) and attached to Section D Appendix 2.

### **1.5. CONTRACT**

The successful Supplier/s will be invited to enter into a Contract with the City of Launceston, in accord with the City of Launceston procurement policies and procedures. It is proposed that the contract terms attached in Section D will form the general terms of a future agreement, which will also include the requirements as outlined throughout the Request for Quotation. Although the City of Launceston may propose further changes, a future agreement will also incorporate the specifications and related documents which form part of the contract.

### **1.6. USE OF SUB CONTRACTORS**

Where a Supplier proposes to provide any part of the Services using resources from organisations other than the Supplier itself, substantial information relating to the contractual arrangements for such resources must be detailed in the RFQ, together with information on the relevant experience of such other organisation.

Failure to provide such information may result in the returned RFQ being excluded from further consideration. Suppliers will be required to ensure that any subcontractors engaged;

- (a) satisfy the terms and conditions of the issued RFQ, and adhere to all relevant conditions as outlined to the principal contractor
- (b) have stringent safety standards and procedures in place and observe them
- (c) conduct their business operations in a legal, and ethical manner, including paying their respective employees and creditors correctly as per industry award standards

## 1.7. INFORMATION PROVIDED BY COUNCIL

Information provided in this Request for Quotation or imparted to any Supplier as part of the Request for Quotation process is confidential and shall not be used by the Supplier for any other purpose, or distributed to, or shared with any other person or organisation.

## 1.8. ACKNOWLEDGEMENT BY CONTRACTOR

## 1.9. DISPUTE RESOLUTION

The Contractor acknowledges that:

- (a) The City of Launceston makes no representations and offers no undertakings in issuing this RFQ
- (b) The City of Launceston is not bound to accept any particular RFQ
- (c) The City of Launceston with notice, may suspend, vary, postpone, terminate or abandon the RFQ process without notice at any time
- (d) The City of Launceston may invite one or more Contractors to supply further information and/or attend a conference or interview and/or make a presentation
- (e) The City of Launceston reserves the right to negotiate further with any RFQ providers
- (f) The Contractor Evaluation Panel and the City of Launceston may undertake 'due diligence' checks, including, but not limited to, verifying references and/or referees, and undertaking company searches and credit checks
- (g) The City of Launceston will not be responsible for any costs or expenses incurred by a contractor arising in any way from the preparation and submission of RFQ
- (h) The City of Launceston accepts no responsibility for a contractor misunderstanding or failing to respond correctly to this RFQ
- (i) The City of Launceston may appoint a number of contractors to undertake the work

## 1.10. PAYMENT TERMS

Please refer to Section D 3.2 Part Two: City of Launceston Standard terms

## 1.11. RETURN SCHEDULES AND EVALUATION

The evaluation of this Request for quotation will be based on the information returned in the Section C the Return Schedules and Evaluation criteria set below The RFQ which is considered the most advantageous to Council will be accepted.

- Completeness of RFQ
- Conformity;
- Methodology;
- Understanding of the task;
- Financial and operational capacity;
- Validity of any qualifications and exclusions submitted with the tender;
- Ability to provide insurance;
- Previous experience in similar Service Provision;
- Safety records; and
- Price

The submissions are to be returned electronically to [felix.chigma@launceston.tas.gov.au](mailto:felix.chigma@launceston.tas.gov.au) by **Friday 18<sup>th</sup> August 2017 2.00pm AEST**. All submissions must include the return schedules in Section C of this document.

## **SECTION B - SERVICE SPECIFICATIONS**

### **2.1 SCOPE OF REQUIRED SERVICES**

This Specification covers vegetation management on City of Launceston dams.

Council currently manage vegetation on dams sited on their land. Council seeks services to manage vegetation on dams they operate under their urban drainage powers, albeit owned by Third Parties. The activities will be mainly:

- (a) grass slashing
- (b) weed Spraying
- (c) tree and brush cutting

The Contractor shall be only required to remove any of the cuttings offsite under the direction of the Superintendent.

The scope of work involved providing all labour, plant, equipment, protective clothing, etc to carry out the above activities.

### **2.2 GENERAL REQUIREMENTS**

The Contractor shall limit its activities and movements within the dam sites or to those areas approved by the Superintendent and shall comply with any procedures, practices and signage in place.

The Contractor must provide, and maintain in good and safe condition, all plant and equipment (including vehicles) necessary for the proper performance of its obligations and discharge of its liabilities under the Contract and in compliance with the Workplace Standards Tasmania's requirements.

The Contractor must provide appropriately licensed, skilled and experienced operators for all the plant and equipment (including vehicles) used under the Contract.

The Contractor does not cause or contribute to any potential environmental risk or hazard.

The Contractor is to detail the management, within the Request for Quotation submission.

### **2.3 HOURS OF OPERATION**

The normal hours for Council are 8.00 am to 5 pm Monday to Friday. No work shall proceed outside these hours without prior approval by Superintendent. Any additional costs incurred by Principal for work outside these hours of operation shall be borne by the Contractor. In any case work shall not be performed on Good Friday and Christmas day without the prior approval of the Superintendent.

### **2.4 MANAGEMENT**

The contractor and all employees are required to liaise with the Council Representative (specified in Section D of this Document). All Council work requirements will be issued and managed by the Council representative.

### **2.5 TRAFFIC MANAGEMENT**

A traffic management plan is required to be supplied and approved by the Council representative. All Traffic Management is to be performed in accordance with all relevant Australian Standards.

### **2.6 DAMAGE TO PROPERTY**

Any damage to public or private assets created by but not limited to flying stones or a result of damage caused by Vegetation management operations, shall be made good at the contractors expense.

## **2.7 SAFETY**

The contractor is required to provide council with appropriate SWMS (Safe work method statement) that includes all identified and known risks, hazards and controls prior to the commencement of all works.

The Contractor shall at all times conduct the work in compliance with the provisions of the Workplace Health and Safety Act 1995 and Regulations 1998. The Contractor also is to inform itself the principles of AS1470-1996 - Health and Safety at Work - Principles and Practices and the Risk Management Standard AS4360- 1999.

The Contractor shall promptly notify to the Principal any accident that may occurs and furnish a written report giving details of the accident, the cause of the accident, loss time, and proposed preventive measures that will be put in place within 5 days of the incident.

## **2.8 WORK IN CONFINED AREA (IF REQUIRED)**

The Contractor must comply with the provisions of AS 2865 and the City of Launceston's Confined Space Policy No. 21-HLPr-013, when it is necessary to carry out work in a confined area, A copy of the Policy can be obtained from the Principal's office by contacting the Customer Services Centre on (03) 6323 3000.

If the Contractor detects the presence of any dangerous material or gas at the work site he shall inform the Superintendent and take necessary precautions to safe guard the personnel and public on site.

## **2.9 ENVIRONMENTAL PROTECTION**

The contractor will comply with all statutory requirements for protection of the environment both built and natural. The contractor is responsible for any damage to the environment caused by the execution of works.

The contractor is to ensure weeds are not spread to another area by cleaning plant in accordance with the Tasmanian Guidelines for Weed and Disease Control.

## **2.10 EQUIPMENT SUPPLIED**

All materials and equipment supplied by the contractor must be approved, licensed, registered, and certified, in good working condition, of legal possession and appropriate for purpose respective to each equipment item. All vehicles must be able to be contacted.

## **2.11 CONTRACT PERFORMANCE**

All works are to be of the highest standards and will be rated as per the Key performance indicators outlined in 2.12 of this document.

## 2.12 KEY PERFORMANCE INDICATORS

Service Provided	Service outcome	Intervention Level	Performance Measures	Performance Target	Comments
Hours of Operation	Usual work hours for an outdoors trades related work.  Must be daylight hours between 6.00am and 6.00pm Mon to Saturday	Equipment noise and disturbance to neighbors.  Interruption to businesses and/or public areas.	No public complaints	No valid business or public complaints	Sunday work, only on request and approval by City of Launceston.
Timeliness of Completing work	Completing the Work in a timely manner	Work not being completed by required due date.	Fully completing Work by the required due date	100%	
Timely record of work done at each site	Attach dated Before-After photographic evidence of work completed at each site, within 7 days of work completion	No Before-After photographic evidence submitted within specified time, and/or interim invoices submitted with no photographic proof.	Timely evidence to Superintendent, and/or to support invoices.	100%	The requested photographs are not only required as evidence of work done, but to inform optimum timing of future vegetation management interventions.
Safe Work Practices	Safe works, with nil injuries, and nil unwanted damage to property	A Prevalence of injuries and or unwanted damage to property	Completed job checking by relevant Council representative And no public complaints	100%	

**Section B Specifications CD040/2017**

<b>Service Provided</b>	<b>Service outcome</b>	<b>Intervention Level</b>	<b>Performance Measures</b>	<b>Performance Target</b>	<b>Comments</b>
Provide a safe working environment for employees and public	Maintain a safe environment	Any unsafe conditions affecting the contractors employees or the general public.	No unsafe site conditions	100%	
Price	Adherence to submitted pricing structure	Extra Charges, not identified during site visits with Council	Compliance to submission	100%	Contractor should flag up any potential variances to the approved schedules in 'Appendix B - Dam Vegetation Management Service Plan', and get agreement from Council before proceeding.
Protection of natural and cultural significance.	No Damage to items of Aboriginal and heritage significance and non-targeted Flora including threatened species.	Accurate targeted application.	No clearing of non-targeted Flora or within exclusion areas.	100%	Contractor must not disturb or remove known items of Aboriginal or heritage significance or clear or remove any non-targeted Flora
Due Care	No Damage to non-targeted Flora	Accurate targeted application	No clearing of non-targeted Flora	100%	Contractor must not clear or remove any non-targeted Flora
Adherence to Invasive Species Management	Avoidance of spreading invasive weeds to adjacent land or other sites	Weed control and wash down procedures are followed	Awareness of Tasmanian Weed Management Act 1999. Also, prior to commencement, Contractor should deliver weed management inductions to their staff.	100%	Contractor must agree with Council contract administrator on the type of chemicals to be used. Contractor should provide feedback on effectiveness of chemicals used during quarterly reviews.
Performance Reviews	Periodic (quarterly) progress reviews	No attendance at quarterly reviews	A brief and proactive commentary covering each site attended, including any challenges and opportunities encountered.	100%	Contractor must present a draft summary report (electronic) for review at each quarterly meeting. Report should be laid out in similar format as 'Appendix A- Dam Vegetation Management Pack'.



**2.13 APPENDIX A - CITY OF LAUNCESTON DAM VEGETATION MANAGEMENT PACK**

(Attached)

**2.14 APPENDIX B - CITY OF LAUNCESTON DAM VEGETATION MANAGEMENT SERVICE PLAN**

**2017/2018**

(Attached)

## SECTION C - RETURN SCHEDULES

## SCHEDULE 1 - FORMAL OFFER

<b>Contract No:</b>	
<b>Project:</b>	
<b>Contractor:</b>	

<b>Registered Office Address:</b>	<b>Business Address:</b>
<b>Telephone:</b>	
<b>Email:</b>	

<b>Legal Status</b>			
All Contractors are required to complete the following table:			
Legal Structure	Name	Australian Company No (ACN)	Australian Business No (ABN)
Company			
Trust*			
Individual			
Partnership			

\*include details of both trust and trustee

The Contractor named above, hereby to provide Goods, Works and/or Services in accordance with:

- a) The RFQ ;
- b) Any attachments, addenda or schedules submitted with the Request for Quotation documents.

The Contractor also acknowledges that if it is the successful supplier, this will be confirmed in a letter of acceptance which will invite the Contractor to enter in to a formal contract with the City of Launceston.

The documents listed above will form part of the contract between the parties, although the City of Launceston reserves the right to negotiate further terms and conditions.

The Contractor warrants and represents that:

- a) It has fully acquainted itself with all of the documents referred to in the Request for quotation and all matters relating there to;
- b) Agrees to be bound by the Conditions in Section A
- c) All of the information provided in the RFQ return schedules is true and correct;

**SECTION C - Return Schedules CD040/2017**

- d) It has made its own enquiries and investigations and has obtained professional advice and all other relevant information so as to inform itself of all of the risks and contingencies which may affect its quoted price;
- e) It has allowed for all such risks and contingencies in its quoted price.

The Contractor confirms that they offer to provide the Goods, Works and/or Services described in the RFQ.

**Executed by Authorised Officer of Contractor who has delegated authority to enter into a contract:**

Signature: \_\_\_\_\_

Name and title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Name of Witness: \_\_\_\_\_

Date: \_\_\_\_\_

**Contact Person for enquiries about this Request for Quotation**

Name: \_\_\_\_\_

—

Position: \_\_\_\_\_

—

Address: \_\_\_\_\_

—

Telephone: \_\_\_\_\_

—

Mobile: \_\_\_\_\_

—

Email: \_\_\_\_\_

—

**SCHEDULE 2 - SCHEDULE OF RATES AND SITE OPERATING TIMES**

The Schedule of rates shall include supply of all material, plant and labour necessary for the proper execution of the works, unless otherwise specified.

No.	Site Name	Asset ID	Work By	Activity Description	\$ per site
1	Mt Pleasant	701695	Contractor	1. Grass Slashing approx. 2000 sq.m	
				2. Weed Spraying on dam crest and batters (Paterson's curse spraying), approx. 2000 sq.m	
				3. Weed Spraying on roadway to dam, approx. 200 sq.m	
				4. Topsoil bare area of dam and hydroseed (one-off activity)	
2	Streamside Court	451258	Contractor		
				1. Tree & bush trimming on northern side of embankment to expose top of batter, approx. 50m length	
3	Connector Park	701696	Contractor	1. Weed Spraying blackberry & gorse), approx. 900 sq.m	
				2. Spray self-setting trees on dam embankment, approx. 10 No.	
4	Queechy Lake	442853			
			Contractor	1. Tree management, approx.150m section (specific instructions on site)	
5	Waverley Lake	454358			
			Contractor	1. Tree management, approx. 100m section (removal sequence as directed by Superintendent at start)	
<b>TOTAL</b>					
<b>Additional information</b>					



**SCHEDULE 3 - INSURANCES**

Insurance Type	Insurance Company
Public Liability (minimum \$10m)	
Motor Vehicle Third Party (minimum \$10m)	
Workers Compensation	
Other	

The successful contractor/s will be asked to produce a Certificate of Currency for each insurance category.

**SCHEDULE 4- KEY PERSONNEL**

Contractors shall detail below the key personnel proposed for this work. The key personnel are defined as the following position. Please list all operators and relevant experience	Name	Years of Experience	Task Responsible for.

**SCHEDULE 5- LICENSES / QUALIFICATIONS**

Contractors shall detail any relevant current licenses, or Qualifications. Licenses will need to be presented upon request.	License/Qualification/Experience	Expiry Date

**SCHEDULE 6 - SUBCONTRACTORS**

The names of Subcontractors proposed to be engaged for the contract

- 1) Written approval of all subcontractors is required before commencement of the contract
- 2) The nomination of alternatives is acceptable.
- 3) The Contractor shall be required to provide evidence that the subcontractors are registered and/or licensed (as required by law) in the work which is to be subcontracted and have the relevant policies of insurance.

Name & Address of Subcontractor	Description of Proposed Works to be Subcontracted	Est Work Value





**SCHEDULE 9 - REFEREES**

Please provide here details of relevant or previous experience of the company and major sub-contractors. (Please copy this sheet for sub-contractors)

Project Type	
Clients Name	
Clients Contact Person	
Clients Address	
Client's Phone Number	
Year Completed	
Project Type	
Clients Name	
Clients Contact Person	
Clients Address	
Clients Phone No	
Year Completed	



**SCHEDULE 11 - WORKPLACE HEALTH AND SAFETY**

By signing the Return Schedule, Section C Schedule 1, the Contractor guarantees that all work under this agreement shall be executed in compliance with Workplace Health and Safety legislation, and the City of Launceston workplace health and safety requirements set out in Section D Appendix 1,

**SCHEDULE 12 - INDUSTRIAL RELATIONS**

The City of Launceston shall seek to use Contractors who can demonstrate a commitment to maintaining sound industrial relations principles and practices.

	<b>Subject</b>	<b>Yes</b>	<b>No</b>
1	Are employees paid under an industrial instrument? (if yes, which industrial instrument)		
2	Does the organisation have a workplace/industrial relations policy and procedure as part of its overall management system? (if yes give details)		
3	Does the organisation have workplace contracts or other arrangements to be used in the performance of this contract? (if yes, give details)		
4	Does the organisation have contingency plans for maintaining the continuity of the contract in the event of industrial disruption or industrial action?		
5	Does the organisation have procedures for assessing subcontractor's compliance with workplace/industrial relations and employment obligations? (if yes, give details)		
6	Does the organisation have effective measures to co-ordinate relationships between subcontractors, other contractors and unions or employee representatives? (if yes, give details)		
7	Have you had a workplace or industrial dispute that has resulted in lost time in the last 12 months? (if yes, give details)		
8	Do you have a current workplace or industrial dispute that may affect this contract? (if yes, give details)		

**SECTION D - CONTRACT DOCUMENT**

THIS AGREEMENT is made BETWEEN

**3.1 PART ONE: PARTIES AND SERVICES PARTICULARS**

<b>THE PARTIES AND THEIR ADDRESS FOR NOTICES:</b>	
<b>ITEM 1 - CITY OF LAUNCESTON</b>	
Address for notices:	PO Box 396 Launceston TAS 7250 kellie.graham@launceston.tas.gov.au
ABN	A.B.N. 73 149 070 625
Contact Person Name and/or Title:	Felix Chigama Hydraulics Advisor
Telephone:	6323 3337
Email:	felix.chigama@launceston.tas.gov.au
<b>ITEM 2 - CONTRACTOR DETAILS</b>	
See Section C Schedule 2	
<b>ITEM 3 - SERVICE SPECIFICATIONS</b>	
See Section B	
<b>WHEN THE CONTRACT STARTS AND FINISHES</b>	
<b>ITEM 4 - DATE OF COMMENCEMENT</b>	1 <sup>st</sup> October 2017
<b>ITEM 5 - DATE OF COMPLETION OR TERM</b>	1 year Contract with the option of a further 2 years at the sole discretion of the City of Launceston
<b>PAYMENT</b>	
<b>ITEM 6 – CONTRACT SUM</b>	The amounts in Section C Schedule 2
<b>ITEM 7 –PAYMENT METHOD</b>	Refer to Clause 5
<b>ITEM 8 - RATE REVIEW DATE AND METHODOLOGY</b>	NA
<b>RISK AND INSURANCE</b>	
<b>ITEM 9 - CONTRACTOR'S SECURITY</b>	NA
<b>ITEM 10 - DEFECT LIABILITY PERIOD</b>	If unstated, a period of 6 months.
<b>ITEM 11 – INSURANCE REQUIREMENTS</b>	See Section C Schedule 3
<b>ITEM 12 – LIABILITY CAP AMOUNT</b>	NA
<b>ITEM 13 - RELEVANT COUNCIL POLICIES</b>	The contractor will adhere to the advised policies and core values of the City of Launceston..

**3.2 PART TWO: CITY OF LAUNCESTON SERVICE AGREEMENT STANDARD TERMS  
DEFINITIONS**

In this Section D:

"City of Launceston" means the Launceston City Council (trading as the "City of Launceston")

"Contract" means this agreement and includes the following parts, which will take precedence in the following order:

- (a) Special Conditions
- (b) Part One - Reference Schedule
- (c) Amendments to the RFQ
- (d) This RFQ inclusive of Sections A, B, C, & D.
- (e) Part Two - City of Launceston Standard Contract Terms and any other schedules and attachments.

"Contractor" means the party who submitted the Request for Quotation

"Contract Sum" means the amount shown in Item 6 of the Reference Schedule.

"Defect Liability Period" as stated in Item 10.

"GST" means the tax provided for under A New Tax System (Goods and Services Tax) Act 1999.

"Insurance Requirements" mean the minimum insurances described at Item 11 of the Reference Schedule

"IP" means the intellectual property rights attached to data, documents, trade secrets, trademarks, designs, patents and other such rights.

"Laws and Policies" means any statute, regulation, ordinance, permit, Australian Standard, licensing requirement, or other lawful requirement imposed by any competent authority. It also includes any notified City of Launceston internal policy.

"Payment Method" means the process described in Item 7 of the Reference Schedule.

"Request for Quotation" (RFQ) means the whole of document, sections A, B, C, & D.

"Services" means the goods and services ordered by the City of Launceston from the Contractor as described in the Request for Quotation.

"WHS Incident" means a death, serious injury, illness, dangerous incident, or near miss that arises out of the conduct of the Services whether or not it is reportable to the relevant workplace health and safety regulator.

"Workplace Health and Safety Management System", means a system for the management of workplace health and safety that complies with relevant Laws and Policies and the documents attached at Appendix 1.

**1. PROVISION OF SERVICES**

The Contractor agrees to provide the Services for and within any time limit specified in the Contract.

**2. PAYMENT**

- (a) In consideration for the Contractor providing the Services and the Deliverables in accordance with this Contract, the City of Launceston agrees to pay the Contract Sum in accordance with the Payment Method.
- (b) All costs included within this Contract are fixed and variations to pricing are not permitted.
- (c) No separate claims are to be made for travel, accommodation expenses, meals, or similar incidentals.

**3. TERMS OF PAYMENT**

The standard terms of payment of the Contractor's invoice will be

## **SECTION D - Contract Document CD040/2017**

- (a) Within 30 days from the date of receipt of a fully compliant invoice from Contractor, which shall include a reference to the specific City of Launceston purchase Order and/or contract number;
- (b) acceptance of the Services by the City of Launceston in accordance with this Contract.
- (c) Payment may be made by:
  - (i) transfer of funds into the Contractor's nominated bank account, or
- (d) Without prejudice to any other remedy, the City of Launceston may reduce any payments by the amount of the Contractor liability to the City of Launceston for any costs, charges, damages or expenses arising under this Contract.
- (e) The Contractor must be registered for GST.
- (f) Unless stated otherwise, all prices stated in the Contract are inclusive of GST.

### **4. SECURITY**

If Contractor's Security is required by the City of Launceston

- (a) It is a condition precedent to this contract that the Security Deposit equal to the amount specified in Item 9 is provided to the City of Launceston prior to Date of Commencement.
- (b) The Contractor's Security provided by the Tenant must be provided in the form of a bank guarantee with an institution and on terms that are acceptable to the City of Launceston. The term of the bank guarantee must be for at least the Term of the Contract plus the Defect Liability Period.
- (c) The City of Launceston may use the Contractors Security to pay any sums due under the Contract, or to recover any cost, damages or liability arising from the Contractor's breach of the Contract.

### **5. CONTRACTOR'S WARRANTIES.**

- (a) The Contractor warrants that the Services will:
  - (i) be provided to a standard that is in accordance with this Contract;
  - (ii) represent good industry practice when compared to services of a similar kind.
  - (iii) employ properly maintained and managed plant and equipment that is suitable for the Services.
  - (iv) at all times be performed by personnel that are,
- (b) suitably skilled, qualified, licensed, supervised and equipped, services to the extent needed to remedy any breach.

### **6. ASSIGNMENT**

This Contract is not to be assigned, or the Services subcontracted, without the approval of the City of Launceston.

### **7. WORKPLACE HEALTH AND SAFETY**

The Contractor is to create and implement a Workplace Health and Safety Management System that is suitable for the Services in the opinion of City of Launceston

### **8. LIABILITY**

To the maximum extent permissible by law,

- (a) the liability of the City of Launceston, in addition to any other remedy that the City of Launceston may have against the Contractor, the Contractor must indemnify and keep indemnified the City of Launceston from and against any cost, liability, loss or damage of any kind arising directly or indirectly from any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by the Services;

## **SECTION D - Contract Document CD040/2017**

- (b) The Contractor's liability will be reduced proportionally by the extent that a negligent act or omission of the City of Launceston, its employees or agents has contributed to the loss, damage, expense, injury, illness, death or other liability.
- (c) in any event the liability of the City of Launceston is capped at the amount shown in Item 12.

### **9. INSURANCE**

- (a) Unless otherwise agreed in writing, the Contractor must effect and maintain the insurances in accordance with the Insurance Requirements, from the commencement of the Contract until the expiry of the Contract or any Defect Liability Period.
- (b) When required to do so, the Contractor must provide the City of Launceston with a copy of any insurance documentation
- (c) The Contractor must notify the City of Launceston immediately of any expiry of, or change to, any of the Contractor's insurance policies.
- (d) If the Contractor does not effect and adequately prove their compliance with the Insurance Requirements, in addition to any other remedy which the City of Launceston may have, City of Launceston may effect insurance policies that meet the Insurance Requirements at the cost of the Contractor.

### **10. IP RIGHTS AND PRODUCT WARRANTIES**

- (a) Where IP is created under this Contract, or the City of Launceston provides the Contractor with access to City of Launceston IP, all such rights to this IP become or remain the property of the City of Launceston.
- (b) The Contractor must do anything reasonably necessary to preserve and secure the City of Launceston's right, title and interest in the IP;
- (c) Where the Contractor obtains from a third party a warranty in relation to any of the Deliverables, the Contractor must ensure that the City of Launceston benefits from that warranty held by the Contractor or its subcontractors.

### **11. DEFAULT**

- (a) If the Contractor breaches the Contract, then City of Launceston may give the Contractor a written notice setting out the nature of the breach ("Notice of Breach"). The Contractor shall have 21 days after the date of the Notice of the Breach to rectify the breach.
- (b) It is a fundamental breach of this Contract by the Contractor, giving the City of Launceston the right to terminate the Contract if, the breach has arisen from,
  - (i) a serious WHS Incident that is most likely to have been caused by the Contractor's negligence;
  - (ii) failure to prepare or manage an adequate Workplace Health and Safety Management System;
  - (iii) failure to fully participate in a WHS incident investigation, or a City of Launceston audit;
  - (iv) conduct that is illegal;
  - (v) likely financial mismanagement or fraud;
  - (vi) failure to remedy a breach within 7 days of a Notice of Breach.
  - (vii) consistently (2 months or more) failing to meet the service specifications in Section B.

### **12. DEFECT LIABILITY**

- (a) Without prejudice to any other remedies that City of Launceston may hold, the Contractor shall be responsible to the City of Launceston, at the Contractor's cost, for the repair and replacement of any defect in the Services for the Defect Liability Period.

## **SECTION D - Contract Document CD040/2017**

- (b) During the Defect Liability Period, the Contractor must, at the City of Launceston`s direction and within the time reasonably directed by the City of Launceston:
  - (i) repair or, at the City of Launceston`s option replace any defective Services.
  - (ii) re-supply or make good any defective Services; or
  - (iii) reimburse the City of Launceston for any expenses the City of Launceston incurs in making good any defects in Services.
- (c) The City of Launceston may exercise its rights under this clause even if the City of Launceston has accepted or paid for any Services,
- (d) Any repaired or replacement Services will be subject to the same warranty and Defect Liability Period as the original Services, from the date of repair or replacement.

### **13. DISPUTE RESOLUTION**

- (a) If any dispute arises in relation to this Contract ("Dispute"), then either party may give the other party a written notice setting out the nature of the dispute ("Notice of Dispute").
- (b) Each party`s representative(s) must meet within 14 days after the date of receipt of the Notice of the Dispute to seek to resolve the dispute in good faith.
- (c) Where the Dispute is not resolved within 14 days of it being referred for resolution, the Dispute may be referred for arbitration or mediation with the agreement of both parties.
- (d) The parties are not to commence litigation while a Dispute is being dealt with in accordance with this clause.

### **14. CONFIDENTIALITY**

The Contractor must keep confidential any information obtained during the performance of this Contract except for disclosure that is:

- (a) essential for the performance of the Contract obligations;
- (b) with the written approval of the City of Launceston;
- (c) required by law; or
- (d) to a professional adviser in the ordinary course of business, if the adviser agrees to comply with the obligations of this clause.

### **15. GENERAL CONDITIONS**

- (a) Unless agreed otherwise in writing, the Contract is a record of the entire agreement between the parties.
- (b) A reference to '\$' or an amount of money shall be a reference to that amount in Australian dollars.
- (c) Any notice or other communication to be given by a party to another party under this Contract must:
  - (i) be in writing; and
  - (ii) be left at or sent by post to the address set out in this Contract; or
  - (iii) be sent by email; and
  - (iv) is deemed to be served:
    - (1) on the day of delivery; or
    - (2) after 3 days (if sent within Australia) or 7 days (if sent outside Australia) after the date of posting; or
    - (3) on the date recorded as the transmission date if sent by email during business hours; or the next business day if otherwise.
- (d) The Contractor shall comply with any of the City of Launceston's reasonable instructions including supplying necessary documents, obeying signs, conducting site inductions and



**SECTION D - Contract Document CD040/2017**

safety assessments, reporting WHS Incidents, and cooperating with the City of Launceston safety or fraud investigations.

- (e) Nothing in this agreement shall be construed as creating a relationship in the nature of employment, partnership or joint venture.
- (f) If any clause or part of a clause is rendered void or voidable or unenforceable, then that clause or part of the clause shall be severed from the balance of this Contract without affecting the validity of the remaining provisions.
- (g) This Contract is subject to the laws of Tasmania.
- (h) Any variations to the agreed contract must be in writing and signed by duly authorised representatives of both parties

**DEED OF EXECUTION**

Note: Not to be completed until the Supplier is notified that they have been successful and are invited to contract, see Section A.

Executed as an AGREEMENT is made this day of 2017

Signed by an authorised representative of )

CITY of LAUNCESTON )

)

Name:

Position:

SIGNED by the Contractor )

or their authorised representative )

)

## Appendix 1

### Workplace Health and Safety Requirements

(a) Contractors Safety Policy including,

The Contractor will provide a Contractor's Safety Policy document, which must include,

- (i) the duties of any person holding a responsibility under workplace health and safety legislation or standards.
- (ii) Safety procedures
- (iii) Safe Work Method Statements
- (iv) Risk Assessment Policy
- (v) Summary of any past breaches of workplace legislation that resulted in official warnings, fines or prosecution

(b) Induction

Where contractor is in control and management of a worksite they are to take adequate steps to familiarise themselves with the site and undertake any City of Launceston induction and site orientation exercise that might be required.

(c) Site Safety

Worksite safety documentation including, safety procedures, permits for work, but not limited to, Safe Works Methods Statements and similar legislative requirements are to be completed and maintained in accordance with all the relevant acts and Australian codes of practice.

All reasonable precautions such as suitable site supervision and management arrangements, suitability and compliance of plant and equipment, signage, barriers and the like to be provided to safeguard the public and employees.

(d) Plant Equipment and Other Items

The Contractor shall ensure that its plant equipment and other items are properly maintained and/or repaired such that they are available to operate or use in an efficient, effective and safe manner at all times through the duration of the Works/Services.

For the Works and/or Services to be performed at the site, the Contractor shall ensure that its plant, equipment and other items

Unless agreed otherwise, are loaded and unloaded as necessary and otherwise transported to the required work site.

Are registered and insured against loss or damage to third parties;

"Tools of Trade" are noted on appropriate insurance Certificate of Currency

(e) Traffic Control at Worksite

Where a Contractor may be required to work in or alongside a road, suitable plans must be implemented to conform to applicable legislative standards and codes of practice, and appropriately supervise and manage the implementation of those plans.

(f) Protective Clothing suitable for the Services

The Contractor shall ensure that protective clothing is worn and meets all of the relevant legislation and standards considering the nature of the Services. All such costs will be borne by the Contractor.

(g) Notification of an Incident and Audits

The Contractor shall manage and report any workplace incidents in accordance with the Contractors Workplace health and Safety Management System. In addition the contractor is required to promptly notify the City of Launceston of any incidents.

The Contractor will fully participate in a WHS Incident investigation, or a City of Launceston safety audit.