

EXPRESSION OF INTEREST

EOI Name	Landscape Master Plan Jubilee Park Cootamundra
EOI Number	EOI2019/22
Closing Date and Time	16 th December 2019 at 2:00 pm
Address for Lodgement of Quotation	mail@cgrc.nsw.gov.au
Respondents should refer requests for information or advice regarding this Eoi to:	Name - Wayne Bennett Position – Manager Waste, Parks & Recreation Services e: wayne.bennett@cgrc.nsw.gov.au p: 1300 459 689

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EOI Overview

1. Introduction

Cootamundra-Gundagai Regional Council is seeking suitably qualified Landscape Designers/Architects to quote on the design of a Landscape Concept Plan for Cootamundra's main Ornamental Park known as Jubilee Park.

Once the Concept Plan phase (Phase 1) has been completed and adopted by all stakeholders, Council would progress onto Phase (2) the development of the Jubilee Park Master Plan, then Phase (3) detailed construction plans, specifications, financial and timeline estimates.

This Expression of Interest (EOI) is only for Phase (1) Concept Plan.

2. Contract and Duration

The Contract will commence on the acceptance of a Quotation and, unless extended or terminated earlier in the manner set out in the General Conditions of Contract, will continue until the expiration of the warranty period.

Conditions of Quotation

3. EOI Preparation

3.1. Acknowledgment

In submitting a Quotation the Respondent acknowledges that it:

- (1) has examined the EOI, any other information issued and any information relevant to the risks, contingencies, and other circumstances having an effect on the Quotation;
- (2) has made and relied upon its own enquiries to address the Assessment Criteria;
- (3) is satisfied as to the correctness and sufficiency of the Quotation; and
- (4) agrees its Quotation must remain open for at least 90 days from the date and time of closing.

3.2. Site Visit

Should the quoting party wish to view the site arrangements can be made by contacting Council's nominated contact. See front page for details.



4. EOI Process

4.1. Quotation Lodgement

Quotations (including all supporting information, if any) must be submitted electronically in accordance with this EOI and fully received by the Closing Date and Closing Time. Respondents must complete the entire Response document and must not amend any of the questions provided. Prices, Responses and other information provided in the quotation must be in writing and in English. The quoted price must be in Australian dollars.

The Quotation must be submitted electronically via email to mail@cgrc.nsw.gov.au. Refer front page for details.

Any other quotes received by Council after the closing date will not, unless the *Local Government (General) Regulation* provides otherwise, be considered by Council.

All Quotations lodged will become the property of Council and on no account will they be returned to the Respondent.

Respondents should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this EOI.

4.2. Evaluation Process

Respondents are advised to respond clearly to all the Assessment Criteria listed in this EOI. Quotations that do not include a fully completed Response, in particular those Quotations which do not contain sufficient information to permit a proper evaluation to be conducted, or electronic Quotations that cannot be effectively evaluated because the file has become corrupt, may be excluded from the quotation process without further consideration at Council's discretion.

4.3. Assessment Criteria

Respondent will be assessed against the following Assessment Criteria, which are not indicated in order of significance or equal weight:

- (a) Appreciation and understanding of the project requirements and tasks;
- (b) Relevant experience, skills and past performance and proposed sub-consultants, on similar projects;
- (c) Technical, Managerial Skills and Resources to complete the project;
- (d) Fee for Service;
- (e) Guarantee and warranty of service.

4.4. Additional Information

Without in any way limiting the *Local Government (General) Regulations 2005*, Council may require further information from Respondent for the purposes of clarification or explanation of their Quotation. This includes holding interviews with some or all Respondents, including any personnel nominated by the Respondent in the Quotation.



4.5. Selection of Preferred Quotation

Council is under no obligation to select any Quotation and may vary or discontinue the Quotation process upon giving written notice to Respondents.

Upon conclusion of the Quotation assessment process, Council may select a preferred Respondent and then:

- (a) commence contract negotiations with the preferred Respondent with a view to concluding those negotiations within a prescribed period of time;
- (b) negotiate with another Respondent if contract negotiations with the preferred Respondent are not concluded within the time specified to the preferred Respondent; or
- (c) cease negotiations with any Respondent.

No legal obligations arise until Council has executed a Contract substantially in the form of the General Conditions of Contract.

Council is not bound to accept the lowest or any Quotation.

Council will offer unsuccessful Respondents the opportunity of a debriefing.

4.6. Costs of Submitting a Quotation

Council will make no payment to a Respondent for any costs incurred by a Respondent in preparing a Quotation, in respect of any discussions, negotiations, enquiries or requests for details or information made by or on behalf of Council after the submission of Quotations or for any work undertaken by any Respondent after its Quotation is submitted including work requested by Council in accordance with any provision of the EoI.

4.7. Confidentiality

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

Information supplied by a bidder will not be treated as commercially sensitive or confidential unless specifically requested by the bidder. Information received by Council may be subject to disclosure to the public under the *Government Information (Public Access) Act 2009* unless it has been provided in confidence, relates to commercially sensitive information and falls within an exemption from disclosure under that Act.



Statement of Requirements

5. Background Information

Cootamundra-Gundagai Region

The Cootamundra-Gundagai Regional Council area covers an area of 3,981 square kilometres of the Riverina region incorporating the towns of Cootamundra and Gundagai, as well as the villages of Coolac, Adjungbilly, Muttama, Wallendbeen, Stockinbingal, Nangus and Tumblong.

The Wiradjuri people are the Traditional Custodians of the ancestral lands of the region. The first white settlers moved to the area for gold mining and agriculture. Inevitably gold attracted bushrangers to the district, resulting in Gundagai becoming iconic in Australian folklore.

The region has a special interest, strong connections and a proud history of sport and recreation achievements. There are several internationally recognised attractions.

Cootamundra has strong connections with cricket as it is Bradman's birthplace and has the Captain's Walk that features 42 bronze statues of Australian Test Captains, along with Unaarrimim, the leading Aboriginal player in the first Australian cricket team.

The 'Dog on the Tuckerbox' sits 5 kilometres north of Gundagai with a trail connecting the monument with the town.

From a recreation perspective, the region offers a diversity of outdoor sport and recreation pursuits including bushwalking, mountain biking, cycling & camping. The majority of the formalised facilities, programs and services are located within the two major townships. Villages complement these towns with smaller sports hubs that often include an oval, tennis court, cricket net, hall & playground.

Historically, the Cootamundra-Gundagai region has had a strong sporting culture, however many of the villages are being impacted on by a declining population as the size of rural landholdings is increasing, with fewer landholders managing larger properties and an aging population with more people aged 65 and over.

Location

Located 160 kilometres (approximately 2 hours) north-west of Canberra and 380 kilometres (approximately 4 hours) southwest of Sydney, the Council area is surrounded by rich agricultural lands and incorporates the tranquil Murrumbidgee River.

Many of the towns and villages are accessible via three main roads; the Hume Highway M31, Olympic Highway A41 and the Burley Griffin Way B94. The link to these transport corridors presents benefits, such as a high standard of driving conditions, accessibility to facilities and services, tourism opportunities as well as challenges, such as movement constraints (pedestrians, cyclists).

The Cootamundra-Gundagai Regional Council Community Strategic Plan 2018-28 was created in consultation with the community to provide a document that identified the



community's priorities and aspirations for the 10 years (2018-28) and how they aim to reach those objectives. Our Vision, "A vibrant region attracting people, investment and business through innovation, diversity and community spirit". Four Key Direction - The plan is structured around four key directions that identify where Council wants to be:

- A vibrant and supportive community: all members of our community are valued and connected;
- A prosperous and resilient economy: we are innovative and 'open for business';
- Sustainable natural and built environments: we connect with the places and spaces around us;
- Good governance: an actively engaged community and strong leadership team.

Councils Project Focus

Cootamundra-Gundagai Regional Council is seeking to develop one of its primary parks into a prime local and regional recreation destination.

Jubilee Park is approximately 3.7 hectares in size and is central to the main central business district.

Jubilee Park has a major and substantial regional playground, the home of the "Captains Walk", a sculpture walk depicting the history of Australian Cricket Captains on a national level. Cootamundra is the birth place of Australia's most famous cricketer, Sir Donald Bradman.

The park has many large mature Eucalyptus camaldulensis (River Red Gums) and adjoins the Cootamundra Caravan Park.

6. Scope of Works

General Requirements

This Landscape concept plan is to assist Council in determining whether further open space development within this precinct will contribute positively to an already developed parkland consisting of well-established infrastructure and soft landscape.

The landscape concept plan is to be documented well enough to give Council and the community the confidence that if the project was to proceed, a good quality outcome is likely.

One of the main focus points for the concept design is the determination on the feasibility of constructing a large walk through BIRD PARK (Aviary). The purpose is to have a bird aviary that displays local and other Australian native birds in an environment that offers the most natural environment for visitors to experience.

The design is to address all aspects of design principals that maximises the experience by both the birds and visitors alike. The design needs to address all state legislative/regulation requirements and outline the minimal management required to operate the facility within State Government guidelines.



1 Project Inception & Initiation

1A Initial Consultation

During the initial consultation (phone call or meeting), the landscape designer/architect will have their first conversations with Council about their project including location, size, initial ideas, uses, budget, timeline.

1B Return Brief/Proposal

After Council has provided the information the landscape architect/designer then is to provide a return brief or Proposal. This can be one-two pages or it can be 100 pages, depending on the type of project and the budget involved.

The return brief/proposal sets out what the landscape architect/designer understands what the project entails (ideas, use requirements, etc.), what the landscape architect/designer will provide (scope and deliverables), who will assist in the design of the project (team/people), who else maybe involve consultant services (architecture, surveying, arborist, horticulturalist, engineers, water feature consultant, lighting designer, etc.), the fee (how much the services will cost) and the possible program (the time it will take).

1C Project Understanding and Research

After Council has accepted the Proposal and there is a signed Contract or understanding made (such as **M.O.U.** or **L.O.I.**) and prior to going to the site, the landscape architect/designer will review the project. This includes the initial consultation notes, return brief/proposal and also have conversations with allied professionals including architects and engineers to gain an understanding of their ideas and scope. The landscape architect will also undertake some research including government requirements, local flora, adjacent area (uses, streets, etc.).

1D Site Inventory and Analysis

The landscape architect/designer will undertake a site inventory and analysis usually using a survey plan (provided by the Council or surveyor). This stage involves locating site and the vegetation, reviewing the terrain, building/s, evaluating the current uses, environmental factors (site orientation, sun, shade, noise, wind, water, soil, etc.). The landscape architect/designer will also walk around the surrounding area to get some understanding of the local area (uses, architecture, vegetation, culture, etc.).

2 Concept Design

The Concept Design stage is the development of the initial ideas for the project.

The main objective of this stage is to develop documents (plan or report) that provide Council with an understanding of the proposed spatial arrangement, programs, functions, constraints, opportunities and overall aesthetic. These documents should include plans, analysis studies (topographic, climatic, land use, vegetation, access, etc.), precedent project images, renders (perspective, aerial, etc.), and typical material palettes, depending on the final Council requirements.



During Concept development the landscape architect/designer will include details of any documents required by Council for planning approval (sometimes called town planning, developmental approval, planning approval, or government approval) where applicable.

7. Invoicing

The Contractor shall provide a monthly invoice to Council's Contract Manager as per the detail within the contract.

A purchase order number will be provided to the Contractor and this must be displayed on all invoices.

8. Schedule of Rates

The Contractor shall submit a schedule of rates detailing the cost (excluding GST) of all works outlined within this EoI.

Hourly rates for key personnel should be provided for the future valuation of any variations, should they arise.

9. Environmental Management

The Contractor is to ensure that all measures and compliance with all associated Environmental Regulations are in place prior to and during construction.

All relevant documentation and operational procedures are to be sighted by Council prior to construction.

10. Work, Health and Safety

Any licenses or certifications required for the works outlined in this specification shall be obtained by the Contractor and remain current for the term of the contract.

11. Project Programme

This timetable below provides details of key events and anticipated dates.

Milestone/Task	Details	Commencement Date	Completion Date
1A Initial Consultation	Discussions with Council and relevant Stakeholders	February 2020	February 2020
1B Return Brief/Proposal	Development of design brief and discussions with Council.	March 2020	March 2020
1C Project Understanding and Research	Finalisation of research and investigation	April 2020	April 2020



1D Site Inventory and Analysis	Site Inspection, survey, correlation of all technical information	April 2020	April-May 2020
2 Concept Design	Prepare concept design and present final documentation	June 2020	June 2020

12. Reporting Requirements

The Contractor shall provide weekly updates of works, containing:

- (a) General summary of tasks completed;
- (b) Any upcoming items of note.

These reports shall be in writing (email acceptable).

13. Contract Management

The works shall be undertaken under Council's Standard Terms & Conditions for Services, a draft copy of which is attached for reference.

The Contract shall be finalised upon award of works to a preferred Contractor.



Schedule 1. – EOI Response Schedule

1. Insurance Details

The Contractor must effect and maintain, for the term of the contract, all insurances required to be effected by it by law and the following insurances:

- (a) Workers Compensation Insurance;
- (b) Public liability insurance in the amount of \$10 million in the aggregate.

2. Assessment Criteria

The weighted Assessment Criteria includes the following (in no particular order of priority):

A. Appreciation and understanding of the project requirements and tasks

- a) Respondents understanding of the key goals and objectives and how they can be best achieved within the parameters of the EOI;
- b) Key project tasks and methodology for achieving them;
- c) Key project risks and proposed methodology to manage these risks; and
- d) Demonstrated understanding of the importance of work health and safety and how this will be achieved.

[Provide response]

B. Relevant experience, skills and past performance and proposed sub-consultants, on similar projects completed in the last five years

- a) Project scope, value, date and duration;
- b) Relevance of the nominated projects to the proposed project;
- c) Innovations and enhancements to a nominated project(s) that provided an improved project outcome;
- d) Timely completion and performance against project programme;
- e) Contact details of referees (provide at least two referees);



- f) Awards and commendations; and
- g) Role of personnel, nominated in Assessment Criteria 3, on these projects.

[Provide response]

C. Technical, Managerial Skills and Resources to complete the project

Provide and describe the following:

- a) Nominated personnel including sub consultants. Provide CVs of key personnel nominated for this project, including backup personnel;
- b) Professional / technical capability of key personnel to meet the requirements of this project including details of relevant qualifications and experience;
- c) Response as to how the Respondent will meet the program for the delivery of the project.

[Provide response]

D. Fee for Service

Provide the following:

- a) The completed EoI Pricing Schedule;
- b) The fee proposal is to be a fixed lump sum;
- c) The fee proposal is to include all costs, disbursements, travel and attendance at meetings;
- d) The fee proposal is to itemise the GST cost of each item separately.

[Provide response]



Item	Description	Cost (Ex GST)	GST
1A Initial Consultation	Discussions with Council and relevant Stakeholders		
1B Return Brief/Proposal	Development of design brief and discussions with Council.		
1C Project Understanding and Research	Finalisation of research and investigation		
1D Site Inventory and Analysis	Site Inspection, survey, correlation of all technical information		

3. Qualifications, Accreditations and Licences

Provide copies, of any qualifications, licenses or certifications required to perform the Services outlined in this EoI.

4. Respondent's Details

<i>Name: (in block letters)</i>	[Enter Company Name] ABN [Enter ABN]
<i>Legal Entity:</i>	[Insert your full legal company Name]
<i>Address:</i>	[Enter Street No. and Street] [Enter Suburb State P Code]
<i>Telephone number:</i>	[Enter Phone No.]
<i>e-mail address:</i>	[Enter Email Address]



5. Respondent Declaration

1. Ethical Standards

Council's Statement of Business Ethics sets out the ethical standards which govern the relationships between Council and its business partners (including prospective partners). As a prospective business partner, it is a requirement that you have reviewed Council's Statement of Business Ethics available at <https://www.cgrc.nsw.gov.au/news-and-media/tenders-and-quotations/> and understand the need to abide by it when conducting business with, or on behalf of, Council.

- ☐ I have read and understand Council's Statement of Business Ethics.
- ☐ I acknowledge the failure to declare conflicts of interest, affiliations and associations or abide by Council's standards, may result in termination of business arrangements with Council and/or reporting to oversight agencies such as ICAC.
- ☐ I will disclose any and all information with regards to any real or perceived Conflicts of Interests or barrier to Fair Dealing where these exist.

2. Declaration

I/We:

- (a) certify that this Quotation is made without prior understanding, agreement or connection with any corporation, firm or person submitting a Quotation for the same services and is in all respects fair and without collusion or fraud.
- (b) certify that I am authorised to sign this quote for the Respondent.
- (c) provide the Services described in the EoI at the GST exclusive prices specified in the Quotation.
- (d) undertake to provide evidence of insurance policies if selected as the preferred Respondent prior to entering into a contract with Council.
- (e) declare I/We have sighted and agree to the Draft Conditions of Contract in Appendix 1 and any Special Conditions of the EoI.
- (f) declare that all information required by the EoI has been included in our Quotation.

<i>Respondent's Representative name</i>	[Enter Name]
<i>Position held</i>	[Enter Position Held]
<i>Respondent's Representative Signature</i>	
<i>Date</i>	[Enter Date]



Appendix 1. – Draft Conditions of Contract

1. Provision of Services

The Contractor must provide the work or services ('Services') referred to in the Contract or Order to Council in accordance with the Contract, and must:

- a) Commence and complete the Services by the dates referred to in the Contract or Order and in accordance with any program specified or agreed in writing by Council;
- b) If the Services are to be completed in stages or milestones, complete each stage or milestone within the periods or dates referred to in the Contract or Order;
- c) Perform the Services in a proper, timely and efficient manner using that standard of skill, care and diligence that would reasonably be expected of a skilled, competent and experienced professional or service provider in the field relevant to the Services;
- d) Comply with any contract brief or technical specification applicable to the Services;
- e) Ensure that the Services are carried out by the Key Personnel referred to in the Contract or Order, and that the Key Personnel do not delegate the performance of the Services to any other person without the prior written agreement of Council;
- f) Act in good faith;
- g) Comply with the reasonable instructions and directions of Council's Representative;
- h) Effect adequate controls in accordance with statutory requirements to ensure protection of the environment;
- i) Ensure the health and safety of its employees and other personnel and comply with all relevant obligations under the *Work Health and Safety Act 2011* and Council's policies, procedures and requirements relating to work health and safety (as notified to the Contractor);
- j) Use best endeavours to protect people and property and to prevent nuisance, unreasonable noise and disturbance;
- k) Use best endeavours to avoid unnecessary interference with the passage of people and vehicles;
- l) Provide all equipment and materials necessary for the performance of the Services (other than anything referred to in the Contract or Order to be provided by Council);
- m) Comply with all Laws and with the lawful requirements or policy of any governmental agency affecting or applicable to the provision of the Services;
- n) Obtain all statutory licences, consents, permits and approvals necessary for carrying out the Services (other than any referred to in the Contract or Order to be obtained by Council);
- o) Use reasonable endeavours to work, liaise and cooperate with others whose work or services are relevant to the Services or the deliverables that the Services form part of;



- p) Advise Council as soon as practical after becoming aware of any event that may adversely affect the performance of the Services.

2. Panel of Contractors

Council reserves the right to obtain services from any contractor it chooses during the term of this Contract, regardless of whether that contractor has been appointed to a panel, for any reason at any time. Nothing in this contract obliges Council to use the services of its panel of contractors.

3. Price, Fees and Expenses

- a) The price, rates or fees payable by Council for the Services is the lump sum set out or calculated in accordance with unit prices or service rates stated in the Contract or Order. Unless otherwise specified in the Contract or Order, the price, rates or fees are fixed for the duration of the Contract and are not subject to escalation or review.
- b) Any additional costs, expenses or disbursements including, without limitation, consumables, travel, accommodation and subsistence expenses, may only be charged if provided for in the Contract or Order or in a written variation issued by Council, or if the expense is agreed in writing prior to the expenditure and proof of expenditure has been provided.
- c) If at the written request of Council the Contractor performs work additional to the Services, the rate or fee for the additional work is the rate referred to in the Contract or Order or if no such rate is specified then at the rate agreed between Council and the Contractor.

4. Invoicing and Payment

- a) The Contractor must submit to Council a tax invoice for Services performed and accepted at the end of each month or at such other times referred to in the Contract or Order. Each invoice must be a consolidated invoice for all Services provided to Council under the Contract in the relevant month, and in the format requested by Council. Each invoice must contain the information necessary to be a tax invoice for the purposes of the GST Act and include any other information which Council may require including Council's 'Subcontractors Statement'. Invoices are to be sent to the address and contact person specified in the Contract or Order.
- b) Council must pay the invoiced amount within 30 days from receipt of an accurate invoice, as certified by Council's Representative. If, however, Council disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Contractor of the amount Council believes is due for payment. The parties will endeavour to resolve any dispute by negotiation in good faith.
- c) Payment of an invoice is not evidence that the Services have been supplied in conformance with the Contract but is payment on account.

5. GST

- a) Unless otherwise expressly stated, all amounts payable under the Contract are exclusive of GST.
- b) The Contractor is entitled to recover from Council the amount of any GST payable on taxable supplies provided under this Contract, within the meaning of the GST Act.

6. Variations

- a) Any variation to the Contract must be directed or approved by Council in writing.



- b) Any fee adjustment payable for the variation is to be based on the applicable rates for fees in this Contract, or if none, then reasonable rates or fees.

7. Contract Term and Option

- a) This Contract is for the term specified in the Contract and commences on the date specified in the Contract.
- b) If this Contract specifies an option period or periods, that option period or periods is for the benefit of the Council and may be exercised only by the Council in its sole discretion in accordance with this clause.
- c) The Council may exercise the option(s) to extend the term of this Contract by the option period or periods by written notice to the Contractor which must be given no later than 3 months before the end of the term (or extended term, as the case may be) of the Contract.
- d) Council may extend the time for performance of any part of the Services to be provided pursuant to this Contract under any Order issued or services commenced during the term of this Contract for any reason.
- e) If a party is unable, wholly or in part, by reason of an act of God or any other event beyond the reasonable control of the affected party ('**Force Majeure**'), to carry out an obligation under this Contract, that obligation is suspended so far as it is affected by that Force Majeure and the affected party is prevented from performing its obligations by that Force Majeure. The affected party must take all reasonable steps to overcome or minimise the effect of the Force Majeure.
- f) Unless otherwise agreed in writing, and except to the extent referred to in clause 6(d), the Contractor will not be entitled to recover from Council any additional fee or any loss expense or damages which it may incur as a consequence of Council extending the time or suspending the performance of the Services.

8. Access to Premises

Where applicable, Council must give the Contractor reasonable and sufficient access to the premises to enable the Contractor to perform the Services.

9. Goods

Where the Services involve the installation, replacement or incorporation of equipment, parts or consumables ('**Goods**'), the Goods must:

- be new, unless otherwise specified in the Order;
- be fit for the purpose for which the Goods are intended to be used by Council;
- otherwise be fit for the purpose for which goods of the same kind are commonly supplied
- be of merchantable quality and free from defects;
- conform to any specifications, drawings, samples or other descriptions provided by Council to the Contractor;
- carry and be subject to any applicable manufacturers' warranties, the benefits of which are deemed to be assigned to Council, without further liability to or the necessity for any further action on the part of Council, on the supply of the Goods. The Contractor must do anything necessary to ensure that Council has the benefit of the manufacturers' warranties;



- otherwise carry and are subject to any implied conditions and warranties under any Laws including, without limitation, the Sale of Goods Act No. 1 1923 (NSW) and the Australian Consumer Law, as if Council were a consumer under the relevant Laws;
- be free of encumbrances and all other adverse interests at the time they are delivered to Council;
- Title to the Goods, free of encumbrances and all other adverse interests, will pass to the Principal on payment in full by the Principal. The Goods are at the risk of the Supplier until the Goods are received and signed for by an authorised representative of the Principal.

10. Warranties

The Contractor warrants to Council:

- a) (**Purpose**) that where Council has, either expressly or by implication, made known to the Contractor any particular purpose for which the Services are required, the Services will be performed in such a way as to be fit for that purpose.
- b) (**Conflict**) that it and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Contract.
- c) (**IP**) that it is entitled to use and deal with any intellectual property rights which may be used by it in connection with the Services and that the performance of the Services will not infringe the Intellectual Property Rights of any third party.

11. Ethics and Fair Dealings

The Contractor agrees to be bound by Council's Statement of Business Ethics for Tenderers and Contractors, which can be viewed and downloaded from Council's website.

12. Assignment and Sub-contracting

- a) The Contractor must not assign or sub-contract to any third party the Contract or any of its interests or obligations in the Contract without the prior written consent of Council (which may be given or withheld by Council in its absolute discretion).
- b) The Contractor will not, as a result of any assignment or subcontracting arrangement, be relieved from the performance of any obligation under the Contract and will be liable to Council for all acts and omissions of an assignee or sub-contractor as though they were the actions of the Contractor itself.

13. Novation

Neither party will assign the whole or part of the agreement without the prior written consent of the other party. Council is not obliged to consent to any proposed novation of the agreement.

14. Ownership of Contract Material and Intellectual Property

- a) Vesting
 - i. Subject to Clause 15.1 a), title to and Intellectual Property in or in relation to Contract Material vests upon its creation in the Principal. The Contractor must, upon request by the Principal, do all things necessary to vest that title or that Intellectual Property in the Principal.



- ii. If title to Intellectual Property in or in relation to Contract Material is not capable of being vested in the Principal under Clause 15.1 a) because the Contractor itself does not own that Intellectual Property, the Contractor must ensure that the Principal is irrevocably licensed (whether by sub-licence from the Contractor or direct licence from the owner) to use that Contract Material or Intellectual Property.
 - iii. The Principal indemnifies the Contractor against any costs, claims, actions or expenses incurred by the Contractor as a result of any reproduction, adaptation or commercialisation by the Principal of any Intellectual Property or Contract Material vested in the Principal under Clause 15.
 - iv. The Contractor indemnifies the Principal against any claims, actions, and loss or damage arising out of any infringement of Intellectual Property rights by the Contractor, its officers, employees, agents or subcontractors in connection with the performance of the Services or the use by the Principal of the Contract Material for any purpose reasonably contemplated under the agreement.
- b) Delivery
On, or as soon as practicable after, the expiration or earlier termination of this Contract, the Consultant must deliver to the Principal all Contract Material.
- c) Limitations
The Consultant must ensure the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract unless it has obtained the prior written approval of the Principal to do otherwise. While the Principal will not unreasonably withhold approval, it may attach any terms and conditions it considers appropriate.

15. Confidentiality, Media and Privacy

The Contractor and its employees, agents and sub-contractors must not disclose to any third party, any information including by way of media interviews or releases relating to Council or the affairs of others which may have come to their knowledge as a result of this Contract.

16. Defective Services

- a) Without limiting any other available remedy, if the Contractor fails to provide any of the Services in accordance with the Contract or Order, Council will not be required to pay for those Services (until they are provided correctly). Council may either reject the Services or any part of them or may issue a notice of breach requiring the Contractor to remedy any default or rectify the Services within the time specified in the notice (which must not be less than 5 days).
- b) If the default referred to in the notice is not capable of being remedied or the Services are not capable of being re-performed, or the Contractor fails within the time specified in the notice to remedy the default or rectify the Services, Council may have the Services remedied or rectified by a third party or do so itself. In either case, the Contractor must pay to Council on demand the reasonable costs incurred by Council in doing so, or Council may deduct those costs from any sum payable by it to the Contractor. Council will use its reasonable endeavours to mitigate any costs incurred under this clause.
- c) In exercising its powers under clause 17(b) Council may, without payment of compensation to the Contractor, take possession of and use any plant, equipment, goods, materials and other things on or in the vicinity of the premises or site that were used or intended to be used by the Contractor for the Services, which are reasonably required to facilitate the completion of the Services.



17. Termination

- a) Without limiting any other available remedy Council may terminate the Contract at any time and without giving prior notice when the Contractor has not remedied a breach within the time specified in notice given under clause 17(a).
- b) Council may terminate or cancel the Contract at any time for convenience by giving 28 days written notice to the Contractor who must, on receipt, immediately cease all work and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the Services.
- c) Council must pay all reasonable amounts due in accordance with clause 2 for all work performed by the Contractor up until termination. Council will not be liable to compensate the Contractor for any loss of prospective profits which it would have earned but for the termination. If the contract is terminated by Council for convenience under clause 18(b) Council must also pay any direct demobilisation costs that are reasonably incurred as a result of the termination.
- d) Either party may terminate this agreement upon 48 hours written notice on the grounds of bankruptcy, receivership, insolvency, winding up, criminal conduct of its senior staff (including partners) or merger, wholly or partially, with another entity.

18. Indemnity

The Contractor indemnifies Council, its employees and agents from and against all actions, claims, losses, damages, penalties, demands or costs whatsoever which may be brought or made against it or them by any person in respect of or by reason of or arising out of the performance of the Contract including:

- a) Any negligence, wrongful act or omission by the Contractor or of any other persons for whose acts or omissions the Contractor is liable
- b) Death or injury to any person or loss of or damage to any property
- c) Any breach of the Contract by the Contractor
- d) Any breach by the Contractor of the *Work Health & Safety Act 2011* and associated legislation (so far as is permissible at law).

The Contractor's liability to indemnify Council is reduced proportionally to the extent that an action or omission of Council or its employees or agents (other than the Contractor) may have contributed to the injury, damage or loss.

19. Insurance

- a) The Contractor must take out and maintain for the duration of the Contract the following insurance policies and any other insurance identified in the Request:
 - i. Workers' Compensation Insurance in respect of its employees;
 - ii. Public Liability Insurance for at least \$20 million (any one occurrence, and noting an aggregate) or such higher amount specified in the Contract or Order covering Council and the Contractor against all claims for loss or injury arising from the provision of the Services by the Contractor, its subcontractors, employees and agents;



- iii. In the case of any unregistered vehicles (Plant) used in the performance of the Services, insurance against any damage arising as a result of the plant being used as a 'tool of trade' – to be covered by either an extension to the Contractor's Comprehensive Motor Vehicle Insurance or the liability endorsed onto the Contractor's Public Liability Insurance;
 - iv. Professional Indemnity Insurance for the amount specified in the Contract or Order (any one occurrence and unlimited in the aggregate) covering the Contractor's legal liability arising out of any act, neglect, default, error or omission made or done by or on behalf of the Contractor or any of its employees or agents in connection with the Services.
- b) On request, the Contractor must provide Council with certificates of currency of any insurance it is required to have under the Contract.

20. Workplace Health & Safety (WHS)

Council is obligated to provide and maintain, so far as is practicable, a working environment for its employees and members of the public, that is safe and without risk to health. As a condition of this contract, Council requires that any contractors or subcontractors that may be engaged to perform a service on behalf of Council, will at all times identify and exercise all necessary precautions for the health and safety of all persons including contractor employees, Council employees and members of the public who may be affected by the services.

21. Environmental Management

Cootamundra-Gundagai Regional Council is committed to maximising environmental and social sustainability outcomes within the properties it owns and manages.

The provision of Goods or Services to Council entails environmental and social impacts related to:

- a) efficient use of energy including electricity, gas and other forms of energy;
- b) conservation of water and promotion of water and wastewater recycling and reuse;
- c) avoidance of materials or construction processes that are toxic or create undesirable emissions or discharges;
- d) reduction of solid waste from construction activity being disposed of in landfill through increased reuse, recycling and waste avoidance practices;
- e) compliance with all relevant Federal and State environmental laws, regulations and standards of good practice; and
- f) the implementation of a structured and systematic process within construction projects to achieve the above and demonstrate an adequate level of environmental due diligence.

Council is obligated to take all reasonable measures, through the execution of this Contract, to mitigate these impacts.

22. Damage to Property

Without limiting any other remedy if the Contractor causes any damage to property, including Council property, the Contractor must promptly rectify the damage at its own expense.



23. Dispute Resolution

- a) Any party claiming that an issue, dispute or difference (“Issue”) has arisen must notify the other party giving details of the Issue. During a 21-day period after a notice is given of an Issue, each party must use its best endeavours to resolve the dispute, by conferring at least once to endeavour to reach agreement or to agree on methods of doing so.
- b) At every such conference, each party is to be represented by a person who has the appropriate authority to agree to resolutions or methods. All such conferences must be conducted in good faith and without prejudice.
- c) If, after a 21-day period from the date a notice is given of an Issue, the Issue has not been resolved, then the Issue may be referred for mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.
- d) Neither party may commence legal proceedings (other than for urgent interlocutory or like relief) until the procedures in paragraphs (a) and (b) have been followed.

24. Relationship and Non-Exclusivity

- a) This Contract is not a contract of employment. If Council has an obligation to pay any employee entitlement or statutory charge in respect of the Contractor’s employees including the Key Personnel, the Contractor must pay the entitlement or charge on Council’s behalf or the fee will be reduced by a corresponding amount.
- b) The Contractor must not act outside the scope of the authority conferred on it by this Contract and must not bind Council in any way or hold itself out as having any authority to do so, except where authorised by Council in writing.
- c) Unless otherwise specified in the Contract or Order, this Contract is non-exclusive. Council has the right to engage others to provide services which are similar to or connected with the Services under the Contract.

25. Service of Notices

Notices under this Contract may be served by hand, mail, or email to the address of the other party as stated in the Contract or Order.

26. Governing Law

This Contract is governed by and is to be construed in accordance with the laws applicable in New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

27. Entire Agreement

- a) This Contract constitutes the entire agreement between Council and the Contractor, and replaces any previous written or oral agreements between Council and Contractor.
- b) Any terms or conditions provided by the Contractor which are inconsistent with the provisions of this Contract are deemed to be withdrawn by the commencement of the performance of the Services to Council by the Contractor.
- c) The issue by Council of a Contract or Order does not constitute acceptance by Council of any terms and conditions of supply provided to Council by the Contractor unless otherwise agreed in writing by Council.



28. Surviving Obligations

The Contractor's obligations under clause 9, clause 10 and clauses 12 to 22 will survive the termination or expiry of this Contract.

29. Interpretation

In these Conditions, unless the context otherwise requires:

Contract/Agreement means the contract for the provision of the Services of which these Conditions form part including a Contract made pursuant to a Request for Tender, Quotation or Proposal.

Contractor means the person supplying the Services under these Conditions and includes its successors and permitted assigns.

Conditions means these *General Conditions of Contract (Services)*.

Contractor's Representative means the person nominated by and representing the Contractor for the purposes of the Contract.

Principal/Council means Cootamundra-Gundagai Regional Council.

Council's Representative means the person nominated by and representing Council for the purposes of the Contract.

Day means calendar day.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Laws means the law in force in New South Wales and the Commonwealth of Australia, including common law and legislation.

Order means a purchase order, work order, letter of acceptance or other form of order or acknowledgement from Council for the provision of the Services which incorporates these Conditions.

Services means the work or services (or any of them) specified or referred to in the Contract or Order.

Terms and Conditions in the Contract or Order prevail over these Conditions to the extent of any inconsistency.

Words importing the singular include the plural and vice versa and words importing a gender include every other gender.

Monetary references are to Australian currency.

Reference to an Act by name includes the rules, regulations and local laws for the time being in force under the Act for the period of the Contract.

Where two or more persons or bodies comprise the Contractor they will be bound under the Contract jointly and severally.



Appendix 2. – Attachment

Jubilee Park – Cootamundra NSW 2590

Cootamundra Caravan Park



