



## **Professional Services Agreement for**

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**Cleaning Services**

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## Schedule

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<b>Item 1</b> Council	District Council of Robe  ABN 26 597 040 498  Fax: 08-8768 2432  Email: council@robe.sa.gov.au  Phone: 08-8768 2003
<b>Item 2</b> Contractor	ABN  Fax:  Email:  Phone:
<b>Item 3</b> Reimbursable Expenses	Not applicable
<b>Item 4</b> Insurance requirements	<b>Public liability insurance</b>  Company:  Policy:  Expiry:  Amount : \$20M for any one incident
<b>Item 5</b> Commencement Date	1 July 2017
<b>Item 6</b> Termination Date	30 June 2020
<b>Item 7</b> Council's Representative	Nick Brown, Deputy Chief Executive Officer and any other person as may be advised by the Council in writing

<b>Item 8</b> Contractor's Staff	writing and any other person as may be approved by the Council in
<b>Item 9</b> Confidential Sections	Not applicable
<b>Item 10</b> Contractor's Representative	in writing and any other person as may be advised by the Contractor

## Date

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23 June 2017

## Parties

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District Council of Robe ABN 26 597 040 498 of Royal Circus (PO Box 1) Robe, SA 5276 (**Council**)

The person specified in Item 2 of the Schedule (**Contractor**)

## Background

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- A. Pursuant to a Request for Tender process, the Council sought submissions from suitably qualified parties for the Services.
- B. The Contractor submitted a tender for the Services, and the Council accepted it.
- C. The Contractor agrees to perform the Services on the terms in this agreement.

## Agreed Terms

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### 1. Definitions and Interpretation

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#### 1.1 Definitions

In this agreement:

**Agreement** means this agreement and includes the Schedule and the Annexures.

**Annexure** refers to an Annexure of this agreement.

**Authorisation** includes any authorisation, agreement, approval, licence, permit, consent, qualification, accreditation, registration, certificate, declaration or exemption and any renewal and variation of them by or with a Governmental Agency.

**Background Intellectual Property** means Intellectual Property Rights in the Deliverables which were not specifically created as part of the Services (including the pre-existing Intellectual Property Rights of the Contractor and Intellectual Property Rights of third parties).

**Clause** refers to a clause of this agreement.

**Commencement Date** means the date specified in Item 5 of the Schedule.

**Confidential Information** means any documentation or information of a confidential nature supplied by either of the parties to the other in connection with this agreement and includes all

scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by each party, but specifically excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by Law.

**Confidential Sections** are those clauses, Schedules and/or Annexures specified in specified in Item 9 of the Schedule that are deemed to be confidential for the purposes of the FOI Act.

**Contractor's Representative** means the person specified in Item 10 of the Schedule.

**Contractor's Staff** means the people approved by the Council to perform the Services, being those persons specified in Item 8 of the Schedule.

**Council** means the Council specified in Item 1 of the Schedule.

**Council's Representative** means the person specified in Item 7 of the Schedule.

**Data** means information directly or indirectly relating to this agreement and/or the Services.

**Deliverables** means all documents, equipment, software, information and Data produced as part of the Services and supplied to the Council as part of the Services.

**Fee** means the fee payable by the Council for the Services, which is to be determined and reviewed in the manner set out in Annexure B, and which is more specifically set out in each Purchase Order.

**FOI Act** means *Freedom of Information Act 1991 (SA)*.

**Force Majeure Event** means an event beyond the reasonable control of the parties which precludes a party from performing on time an obligation under this agreement. Such circumstances include:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.

**Governmental Agency** means any government or any government, semi-governmental, administrative, fiscal or judicial body, commission, authority, tribunal, agency or entity including any self-regulatory organisation established under statute or any stock exchange.

**Intellectual Property Rights** includes property and rights in respect of or in connection with copyright (including future copyright and rights in the nature of or analogous to copyright), know-how, trade mark, service mark, design, inventions (including patents), business or company names, or other proprietary rights, or any rights to registration of such rights (including all renewals and extensions) whether created before or on or after the agreement.

**Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

**Notice** means a notice, demand, consent, approval or communication under this agreement.

**Purchase Order** refers to any of purchase orders placed by the Council pursuant to clause 3.1 in the form attached at **Error! Reference source not found.** to this agreement.

**Recipient** refers to a party who receives a supply pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Reimbursable Expenses** means the expenses specified in Item 3 of the Schedule.

**Reportable Incident** means any accident, injury, property or environmental damage or any potential breach of any Law that occurs during or as a result of this agreement.

**Schedule** refers to the Schedule of this agreement.

**Services** means those services which the Contractor is to perform under this agreement, more specifically set out in Annexure A.

**Special Conditions** mean the special conditions set out in Annexure C, if any.

**Standing Offer** means the standing offer made by the Contractor to the Council pursuant to clause 3.1.

**Supplier** refers to a party who makes an supply under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Term** means the period starting on the Commencement Date and finishing on the Termination Date.

**Termination Date** means the date specified in Item 6 of the Schedule, unless this agreement is terminated in accordance with this agreement.

**Variation** means any change to the Services including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Services.

## 1.2 Interpretation

In this agreement, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 a reference to a party includes its executors, administrators, successors and permitted assigns;



- 1.2.4 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.5 a reference to this agreement includes any schedules and annexures to this agreement;
- 1.2.6 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.7 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.8 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.9 a provision is not construed against a party only because that party drafted it;
- 1.2.10 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
- 1.2.11 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.12 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that Act at the date of this agreement;
- 1.2.13 an expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given by that Act at the date of this agreement.

## **2. Engagement of Contractor**

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- 2.1 The Council engages the Contractor who accepts the engagement for the Term to perform the Services on the terms of this agreement.
- 2.2 The parties acknowledge that nothing in this agreement creates or infers a relationship between the parties of partnership or employer/employee.

## **3. Basis of Engagement**

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### **3.1 Standing Offer Arrangement**

- 3.1.1 The Contractor hereby irrevocably grants the Council with a Standing Offer during the Term to provide the Services for the Fee at the times requested by the Council.
- 3.1.2 The Council may place an order for the Services at any time during the Term by sending a Purchase Order to the Contractor.
- 3.1.3 Each Purchase Order by the Council constitutes an acceptance of the Standing Offer by the Contractor to provide the Services and will constitute an agreement for the

Contractor to provide the Services to the Council in accordance with the Purchase Order and the terms and conditions of this agreement.

- 3.1.4 The Council is not obliged to request any or any minimum number of Services from the Contractor under this agreement.
- 3.1.5 The arrangements contemplated by this agreement are not an exclusive arrangement and the Council may, at its discretion, engage other Contractors to provide the Services.
- 3.1.6 The Services will be provided as and when required by the Council in accordance with a Purchase Order.

## 3.2 **Publicity and Changes**

- 3.2.1 The Contractor must not (without the prior written consent of the Council) advertise, promote or publish in any form, the fact that the Contractor is providing the Services to the Council.
- 3.2.2 The Contractor must immediately notify the Council in writing of:
  - 3.2.2.1 any change in the financial or technical capacity of the Contractor which a reasonable person would consider adversely impacts upon the Contractor's ability to provide the Services to the Council; and/or
  - 3.2.2.2 any change in the Contractor's ownership.

## 4. Invoicing and Payment

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### 4.1 Payment of Fee

- 4.1.1 The Council will pay to the Contractor the Fee for the provision of the Services in accordance with the provisions of this agreement.
- 4.1.2 The Contractor will issue the Council with an invoice at the end of the month in which it provides a cleaning service.

### 4.2 Reimbursable Expenses

Subject to clause 4.3.2.4, the Council will pay to the Contractor the Reimbursable Expenses directly incurred by the Contractor in the supply of the Services.

### 4.3 Payment terms

- 4.3.1 Payment of the Fee and Reimbursable Expenses will be due within 30 days from the end of the month in which the Council receives a correctly rendered tax invoice from the Contractor.
- 4.3.2 A tax invoice is correctly rendered when it:
  - 4.3.2.1 describes the Services provided and the period to which the Services relate;
  - 4.3.2.2 displays the Council's Purchase Order number;
  - 4.3.2.3 displays the terms of payment of the Fee described in the invoice;
  - 4.3.2.4 displays the terms of payment of the Reimbursable Expenses and attaches receipts for all Reimbursable Expenses claimed for the period;
  - 4.3.2.5 is addressed to the Council's address specified in Item 1 of the Schedule; and
  - 4.3.2.6 set out in reasonable detail the manner and basis of the calculation of the Fee and Reimbursable Expenses, including the component of GST.

### 4.4 Effect of payment

A payment of all or part of the Fee is not an acceptance of the Services or a waiver of a right or action of the Council.

### 4.5 Right of set off

The Council may deduct from amounts otherwise payable to the Contractor any amount due from the Contractor to the Council.

## 5. Standard and Scope of Services

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- 5.1 The Contractor represents and warrants to the Council that:

- 5.1.1 all actions and conditions required to be taken, fulfilled and done by it in order to enable it to enter into, exercise its rights and perform its obligations under this agreement have been done; and
- 5.1.2 all Authorisations required for its entry into, exercise of its rights under, and performance of its obligations under this agreement have been obtained.
- 5.2 The Contractor must provide the Council with the Services in the manner and at the times or within the timeframe specified in each Purchase Order.
- 5.3 The Contractor must:
  - 5.3.1 perform the Services with all the skill, care and diligence to be expected from a qualified, competent and experienced provider of services similar to the Services;
  - 5.3.2 devote such of its time and ability as is appropriate and reasonably necessary for the proper and timely performance of the Services;
  - 5.3.3 comply with all Authorisations and all applicable Laws, accepted industry standards, specifications and procedures in the performance of the Services and its obligations under this agreement; and
  - 5.3.4 comply with any reasonable requests of the Council, whether in relation to the manner of the performance of the Services or otherwise.
- 5.4 The Contractor must supply at its own expense all plant, equipment and facilities required for the performance of the Services and maintain them in a safe and good working condition.
- 5.5 The Contractor must keep the Council fully and regularly informed as to all matters affecting or relating to the Services and must provide to the Council any information reasonably requested by the Council to monitor the performance of the Contractor's obligations under this agreement.
- 5.6 The Contractor must promptly notify the Council of a Reportable Incident within 24 hours of the incident taking place. The Contractor must provide a report to the Council's Representative giving complete details, including results of investigations into its cause, and any recommendations or strategies for prevention in the future.
- 5.7 Times for the fulfilment of the Contractor's obligations under this agreement are essential terms of this agreement.

## **6. Variation to Services**

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- 6.1 The Council may, by written notice to the Contractor, request a Variation to the Services. This may consist of a direction to the Contractor to change the character, quality, scope and/or extent of the Services.
- 6.2 Subject to clause 6.4, the Contractor must not carry out a Variation unless and until the Council provides to the Contractor a written Variation and the Variation is valued.
- 6.3 A Variation is valued as follows:
  - 6.3.1 where the Variation can be valued by the application of rates accepted by the Council - by the application of those rates; or

- 6.3.2 where there are no relevant rates - the Council's Representative and the Contractor's Representative may, by agreement, determine a reasonable value.
- 6.4 If the Council gives the Contractor a written instruction that a matter is so urgent that the Contractor should proceed with the Variation before it is valued, the Contractor may proceed with the Variation and the Variation must be valued afterwards by the Council's Representative and the Contractor's Representative.
- 6.5 If the Council's Representative and the Contractor's Representative are unable to reach agreement under clauses 6.3.2 or 6.4, the matter will be resolved under clause 15.
- 6.6 No Variation invalidates this agreement irrespective of the character or value of the Variation.
- 6.7 All Variations must be in writing and signed by the Council's Representative.

## **7. Contractor's Staff**

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- 7.1 The Contractor acknowledges that the Council enters into this agreement on the basis of the skills, reputation, qualifications, experience and knowledge of the Contractor's Staff and that the Services must be performed only by the Contractor's Staff.
- 7.2 The Contractor may request in writing that the Council approve further people as Contractor's Staff.
- 7.3 The Council may, in its absolute discretion, give (conditionally or unconditionally) or withhold such approval.
- 7.4 The Contractor is responsible for the performance of the Services by Contractor's Staff and will not be relieved of its obligations or liabilities under this agreement.
- 7.5 The Contractor is responsible for labour management and industrial relations in respect of the provision of the Services by the Contractor's Staff.
  - 7.5.1 The Council does not bear or accept any additional costs as a result of the impact of any industrial dispute on the performance of the Services.
  - 7.5.2 In the event of an industrial dispute, the Contractor must take all reasonable steps to ensure the continuation of the Services without adverse impact on the Council.

## **8. Insurance**

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- 8.1 During the Term, the Contractor must maintain all insurances required by Law and this agreement, including:
  - 8.1.1 public liability insurance for the amount specified in Item 4 of the Schedule in respect of any one incident arising during or in consequence of the performance of the Services. The insurance policy must bear an endorsement from the insurer acknowledging the indemnities given by the Contractor under this agreement;
  - 8.1.2 any other insurances specified in Item 4 of the Schedule.
- 8.2 The Contractor must produce evidence of those insurances to the Council upon request.

- 8.3 All insurance policies must bear an endorsement from the insurer that it will notify the Council if the policy is cancelled or altered or allowed to lapse.
- 8.4 The Contractor must not allow any act or omission which would make any policy of insurance void or unenforceable.
- 8.5 The Contractor must register itself with WorkCover and maintain that registration and pay all levies pursuant to the *Workers Rehabilitation and Compensation Act 1986* (SA) at all times during the Term. The Contractor must produce evidence of that registration to the Council upon request.
- 8.6 The Contractor must ensure that its subcontractors (so long as they have been approved by the Council) comply with this clause.

## 9. Ownership of Intellectual Property Rights and Deliverables

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- 9.1 The Contractor warrants that the Deliverables will not infringe the Intellectual Property Rights of any person. The Contractor fully indemnifies the Council against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against the Council alleging that the Deliverables infringe any such Intellectual Property Rights.
- 9.2 The Contractor hereby assigns to the Council all future copyright and all other rights of a like nature in the Deliverables throughout all countries of the world to the intent that such rights will, upon their creation, vest in the Council.
- 9.3 Subject to clause 9.4, title to all Intellectual Property Rights in the Deliverables (other than copyright vesting in the Council under clause 9.2), will be assigned to the Council upon its creation.
- 9.4 The Contractor hereby grants the Council a perpetual, royalty-free, non-exclusive licence of Background Intellectual Property, with a right to grant sub-licences, to the extent necessary to use or reproduce in any way the Deliverables.
- 9.5 The Contractor must do all such things and execute all such forms and documents as are necessary to permit or facilitate the performance of the transactions contemplated by this clause 9.

## 10. Indemnity and Exclusion of Liability

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- 10.1 The Contractor must indemnify the Council and its employees, officers and Contractors against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person, caused or contributed to by the Contractor, a breach by the Contractor of this agreement, a wilful unlawful or negligent act or omission of the Contractor, and any claim action or proceeding by a third party against the Council or its employees officers and Contractors caused or contributed to by the Contractor.
- 10.2 This indemnity is reduced by the extent to which the Council contributes to the event giving rise to the claim for the indemnity.
- 10.3 The Contractor must perform the Services at its own risk in all things and releases the Council and its employees, officers, members and Contractors from all claims, actions, proceedings,

costs, expenses, losses, suffering, and liabilities incurred by the Contractor or its employees, agents, subcontractors and third parties which arise from the performance of the Services.

## 11. Non Performance by Contractor

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If the Contractor breaches a provision of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so, the Council may:

- 11.1 suspend any or all payment of the Fee until the breach is remedied; and/or
- 11.2 remedy the breach itself whether by the use of the Council's employees or other Contractors and deduct the cost of remediation from any Fee due to the Contractor; and/or
- 11.3 terminate this agreement in accordance with clause 13.1; and/or
- 11.4 pursue any other legal remedies available to the Council.

## 12. Force Majeure

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- 12.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this agreement:
  - 12.1.1 neither party is liable for such delay or failure; and
  - 12.1.2 all obligations of a party under this agreement are suspended until the Force Majeure Event ceases to apply.
- 12.2 A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this agreement must:
  - 12.2.1 notify the other party as soon as possible giving:
    - 12.2.1.1 reasonably full particulars of the Force Majeure Event;
    - 12.2.1.2 the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
    - 12.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
  - 12.2.2 use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;
  - 12.2.3 resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;
  - 12.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
  - 12.2.5 notify the other party when resumption of performance occurs.

- 12.3 If a delay or failure under this clause exceeds 60 days, the Council may immediately terminate this agreement by written notice to the Contractor. In such circumstances, the Council will be liable to the Contractor only in respect of the Fees properly owing up to the date of termination in respect of the Services (or part thereof) performed to the Force Majeure Event. Without limiting the effect of this clause 12.3, the Council will not be liable to compensate the Contractor for loss of potential profits or other consequential loss incurred by the Contractor arising from termination by the Council pursuant to this clause.

## 13. Termination

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### 13.1 Termination by Council

13.1.1 The Council may immediately terminate this agreement by giving notice to the Contractor if the Contractor:

13.1.1.1 ceases to carry on business or becomes otherwise unable to perform its obligations under this agreement; or

13.1.1.2 breaches a material or essential term of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so; or

13.1.1.3 becomes an externally-administered body corporate or an insolvent under administration; or

13.1.1.4 becomes insolvent or bankrupt.

13.1.2 In such circumstances, the Council will be liable to the Contractor only in respect of the Fees properly owing up to the date of termination in respect of the Services (or part thereof) performed to that time. Without limiting the effect of this clause 13.1.2, the Council will not be liable to compensate the Contractor for loss of potential profits or other consequential loss incurred by the Contractor arising from termination by the Council pursuant to this clause.

### 13.2 Termination by Contractor

The Contractor may immediately terminate this agreement if the Council breaches a material term of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so.

### 13.3 Accrued rights and remedies

Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

## 14. Confidential Information and Freedom of Information

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14.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this agreement, and agrees that it will:

14.1.1 keep confidential;



14.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;

14.1.3 maintain proper and secure custody of; and

14.1.4 not use or reproduce in any form;

any Confidential Information belonging to the other party. Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this agreement.

14.2 The Contractor consents to any disclosures made as a result of the Council complying with its obligations under the FOI Act, subject to any legally required consultation.

14.3 Unauthorised disclosure of any Confidential Sections constitutes a breach of a party's obligations under this agreement.

## 15. Dispute Resolution

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### 15.1 General

15.1.1 A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.

15.1.2 A party claiming that a dispute has arisen under this agreement must give written notice to the other party specifying the nature and details of the dispute.

15.1.3 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.

15.1.4 If the parties are unable to resolve the dispute within 10 business days, they must promptly refer the dispute:

15.1.4.1 in the case of the Council to the Chief Executive Officer; and

15.1.4.2 in the case of the Contractor to the Contractor's Representative.

15.1.4.3 a mediator agreed by the parties; or

15.1.4.4 if the parties are unable to agree a mediator within five business days, a mediator nominated by the President of the Law Society or the President's nominee.

15.1.5 The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has agreed in writing.

15.1.6 Any information or documents disclosed by a party under this clause:

15.1.6.1 must be kept confidential; and

15.1.6.2 may not be used except to attempt to resolve the dispute.

15.1.7 Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.

## 15.2 **Arbitration**

15.2.1 If the dispute is not resolved within 10 business days of appointment of the mediator, a party may refer the dispute to:

15.2.1.1 an arbitrator agreed by the parties; or

15.2.1.2 if the parties are unable to agree an arbitrator within five business days, an arbitrator nominated by the Chairperson of the South Australian Chapter of The Institute of Arbitrators and Mediators Australia or the Chairperson's nominee.

15.2.2 A referral to arbitration is a submission to arbitration within the meaning of the *Commercial Arbitration Act 2011 (SA)*.

15.2.3 The party serving the notice of arbitration must lodge with the arbitrator a security deposit for the cost of the arbitration proceedings.

15.2.4 The arbitrator may determine the amount of costs, how costs are to be apportioned and by whom they must be paid.

## 15.3 **Performance**

If possible, each party must perform its obligations under this agreement during negotiations, mediation and arbitration proceedings.

## 16. **Subcontracting and Assigning**

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16.1 The Contractor must not assign or subcontract this agreement or any right or obligation under it without the prior written consent of the Council, which may be granted or withheld by the Council in its absolute discretion.

16.2 With any application for such consent, the Contractor must provide all information required by the Council, including evidence that the proposed assignee or subcontractor is capable of performing the Services to be assigned or subcontracted.

16.3 Unless otherwise agreed in writing by the Council, no such assignment or subcontract relieves the Contractor from any liability under this agreement or at Law in respect of the performance or purported performance of this agreement and the Contractor is responsible for the acts and omissions of any assignee or subcontractor or any assignee's or subcontractor's employees and agents as if they were the acts or omissions of the Contractor.

16.4 For the purpose of this clause, if the Contractor is a company, an assignment of this agreement includes any change in the beneficial ownership of the share capital of the Contractor, or the resignation, death or appointment of any director of the company, which alters the effective control of the Contractor.

## 17. Miscellaneous

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### 17.1 Special Conditions

If there is an inconsistency between a Special Condition set out in Annexure C and the rest of this agreement, the Special Condition prevails to the extent of the inconsistency.

### 17.2 Alteration

This agreement may be altered only in writing signed by each party.

### 17.3 Entire agreement

This agreement:

17.3.1 constitutes the entire agreement between the parties about its subject matter; and

17.3.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

### 17.4 Waiver

A waiver of a provision of or right under this agreement must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.

### 17.5 Exercise of power

17.5.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.

17.5.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

### 17.6 Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

### 17.7 Further action

Each party must do all things necessary to give full effect to this agreement and the transactions contemplated by this agreement.

### 17.8 Governing law

17.8.1 This agreement is governed by the law in South Australia.

17.8.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

## 17.9 Ombudsman

The Contractor acknowledges that the *Ombudsman Act 1972* (SA) empowers the Ombudsman to investigate matters in the public interest. The Contractor must ensure compliance with all obligations arising under that Act and all applicable Laws.

## 17.10 Work Health and Safety

In complying with its obligations pursuant to this agreement, the Contractor agrees to:

- 17.10.1 comply with any environmental requirements of the Council communicated from time to time by the Council to the Contractor;
- 17.10.2 comply with all requirements of the *Work Health and Safety Act 2012* (SA) and any regulations made under it;
- 17.10.3 comply with any reasonable requests of the Council in relation to the Contractor's performance of its obligations pursuant to this agreement; and
- 17.10.4 promptly notify the Council of any accident, injury, property or environmental damage of any potential breach of any law (reportable incident) that occurs during or as a result of this agreement. Within 24 hours of a reportable incident, the Contractor must provide a report to the Council's Representative giving complete details, including the results of investigations into its cause and recommendations or strategies for prevention in the future.

## 17.11 ICAC

The Contractor acknowledges and agrees that by entering into this agreement with the Council the Contractor will be considered to be a public officer for the purposes of the *Independent Commissioner Against Corruption Act, 2012* (SA) (**ICAC Act**) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

## 18. Goods and Services Tax

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### 18.1 Consideration does not include GST

Unless specifically described as 'GST inclusive', any payment or consideration under this agreement does not include GST.

### 18.2 Gross up of consideration

Where a supply by a Supplier to a Recipient under this agreement is subject to GST (other than a supply specifically described as 'GST inclusive'):

- 18.2.1 the expressed consideration for that supply must be increased by, and the Recipient must pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply; and
- 18.2.2 the Recipient must pay that additional amount at the same time and in the same manner as the expressed consideration.

### 18.3 Reimbursements

If a payment to a party under this agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with the previous subclause.

### 18.4 Tax invoices

Notwithstanding any other provision of this agreement, the Recipient need not make any payment for a taxable supply made by the Supplier under this agreement until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

### 18.5 Adjustments

If an adjustment event has occurred in respect of a taxable supply made under this agreement, any party that becomes aware of the occurrence of that adjustment event must notify each other party to that taxable supply as soon as practicable, and all of those parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the Supplier first becomes aware that the adjustment event has occurred.

## 19. Notices

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### 19.1 A Notice must be:

19.1.1 in writing, in English and signed by a person authorised by the sender; and

19.1.2 hand delivered or sent by pre paid post or facsimile or electronic communication to the recipient's address or facsimile number specified in the Schedule, as varied by any Notice given by the recipient to the sender.

### 19.2 A Notice is deemed to be received:

19.2.1 if hand delivered, on delivery;

19.2.2 if sent by prepaid post, two business days after posting (or seven business days after posting if posting to or from a place outside Australia);

19.2.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender;

19.2.4 if sent by electronic communication, at the time deemed to be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if the notice was being given under a Law of the Commonwealth of Australia.

### 19.3 However if the Notice is deemed to be received on a day that is not a business day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next business day.

## 20. **Costs**

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Each party must pay its own costs of preparing this agreement and any document required by it.

## **Annexure A Services**

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The cleaning of Council buildings and toilets as per the follow specifications:

- Specification 1 Council Administrative Building
- Specification 2 CAFHS Room
- Specification 3 Library & Visitor Information Centre Building
- Specification 4 Works Depot Lunch & Amenities Room
- Specification 5 Public Toilets

## SPECIFICATION 1: Council Administration Building

### 1. General Description of Premises

Council's Administration Centre including Council Chamber & kitchen.

Location: Royal Circus, Robe 5276

### 2. Cleaning Standards

The Contractor is required to maintain the following items, areas and surfaces to be free of dust, scuff marks, litter, spillages, stains, encrustations, finger marks, soiling, and cobwebs.

AREA/ DESCRIPTION	FREQUENCY
Floors swept or vacuumed clean (including under movable items)	Twice weekly
Furniture and equipment, including all tables, benches, sinks, appliances and equipment.	Twice weekly
Computer monitors, keyboards, telephones and other electronic equipment, dusted to be free of dust, no chemical cleaning aids to be applied	Twice weekly
Toilet wet areas floors walls, fittings, basin, benches, pans, and urinal cleaned and sanitized.	Twice weekly
Empty all litter bins and shredding machine[s] into 240L Mobile Garbage Bins (MGB) recyclables and general waste into 140L mobile garbage bin.	Twice weekly
Walls (including surfaces, ledges, fixtures, picture frames, tiles and skirting boards) Glass doors, including front, side and passage	Weekly
Hard floor areas washed and polished	Monthly
Windows and surrounds (inside & out)	Quarterly
Light fittings, shades, reflectors, diffusers	Quarterly
Telephone handsets, cleaned and sanitised	Quarterly

### 3. Specific Requirements

Council Chamber - Cutlery and crockery is to be washed and placed in appropriate cupboards or storage area, if empty beverage containers are on benches and/or tables place in recycling bin.

Lunchroom - Any cutlery and crockery is to be washed and placed away.

Breakages - Report all repairs and breakages to the Council.



**4. Timing and Frequency**

Cleaning of the Council Administration Building will be performed as per the Schedule at Item 2 once between the hours of 6:00pm Wednesday and 7:00 am Thursday and once between the hours of 6:00pm Friday and 7:00am Monday.

**5. Equipment and Materials**

The contractor is required to provide all necessary equipment and materials to execute this contract.

A store room is available for storage of cleaning products, consumables and equipment at Council's administration building. Material Safety Data Sheets (MSDS) must be provided to Council before storage and use of chemicals.

**6. WHS**

The contractor will comply with the requirements Council's WHS Contractor Management Tender Document as a minimum at all times.

**7. General**

The Contractor is compelled to maintain total confidentiality of all information or activities at the Robe Council Office.

## SPECIFICATION 2: CAFHS Room

### 1. General Description of Premises

Child, Adolescent Mental Health Services Room (CAFHS Room)

Location: Royal Circus, Robe 5276

### 2. Cleaning Standards

The Contractor is required to maintain the following items, areas and surfaces to be free of dust, scuff marks, litter, spillages, stains, encrustations, finger marks, soiling, and cobwebs.

AREA/ DESCRIPTION	FREQUENCY
Floors swept or vacuumed clean (including under movable items)	monthly
Furniture and equipment (including all tables, benches, sinks, appliances and technical equipment) including computer monitors, keyboards and other electronic equipment.	monthly
Walls (including surfaces, ledges, fixtures, picture frames, tiles and skirting boards)	monthly
Rubbish Bins & Paper- empty all litter bins into 240 Mobile Garbage Bins (MGB) recyclables and general waste into 140litre mobile garbage bin.	monthly
Wet areas, Toilet hand-basins cleaned and sanitised	monthly
Window glass, doors (inside and out)	quarterly
Light shades reflectors and deflectors	quarterly
Telephone handsets	quarterly

### 3. Specific Requirements

Breakages - Report all repairs and breakages to the Council.

### 4. Timing and Frequency

Cleaning of the CAFHS building will be performed every second week in each month at a time to coincide with the cleaning of the Council office.

### 5. Equipment and Materials

The contractor is required to provide all necessary equipment and materials to execute this contract. A store room is available for storage of cleaning products, consumables and equipment at Council's Administration office. Material Safety Data Sheet (MSDS) must be provided to Council before storage and use of chemicals.

### 6. WHS

The contractor will comply with the requirements Council's WHS Contractor Management Tender Document as a minimum at all times.

### 7. General

The Contractor is compelled to maintain total confidentiality of all information or activities at CAFHS.

## SPECIFICATION 3: Library and Visitor Information Centre Building

### 1. General Description of Premises

Library and Visitor Information Centre Building including the Kathleen Browne Room  
Location: Mundy Terrace, Robe

**(NOT to include the Main Hall Area and Hall Kitchen)**

### 2. Cleaning Standards

You will be required to maintain the following items, areas and surfaces to be free of dust, scuff marks, litter, spillages, stains, encrustations, finger marks, soiling, and cobwebs.

Area/ Description	Frequency
Floors vacuumed or swept and washed (including under movable items)	Weekly
<i>Additional cleaning from 26<sup>th</sup> December until and including the following Easter weekend.</i>	<i>Twice weekly</i>
Furniture and equipment (including all tables, benches, sinks, appliances and technical equipment)	weekly
Computer monitors, keyboards and other electronic equipment. (to be wiped over with a clean cloth with <b>no</b> chemicals)	weekly
Walls (including surfaces, ledges, fixtures, picture frames, tiles and skirting boards)	weekly
Toilet wet areas floors and walls, fittings basin, benches, pans, and urinal clean and sanitise.	Weekly
<i>Additional cleaning from 1<sup>st</sup> September until 25<sup>th</sup> December</i>	<i>Twice weekly</i>
<i>Additional cleaning from 26<sup>th</sup> December until and including the following Easter Weekend.</i>	<i>Three to Four time weekly (every other day)</i>
Hard floor areas washed & polished	weekly
Glass entrance doors and windows (including main and side entrance)	weekly
Windows (north facing wall in Library, and Kathleen Browne Room)	quarterly
Telephone handsets	quarterly

### 3. Specific Requirements

Lunchroom - Cutlery and crockery is **not** to be washed or placed away.

Breakages - Report all repairs and breakages to the Library/Vic Manager and Works Supervisor.

**4. Timing and Frequency**

Cleaning of the Library/Visitor Information Centre will be performed as per the Schedule at Item 2 between the hours of 6:00pm and 6:00am on a day agreed between Council and the contractor.

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**5. Equipment and Materials**

The contract is required to provide all necessary equipment and materials to execute this contract. Material Safety Data Sheet (MSDS) must be provided to Council before storage and use of chemicals. Appropriate safety equipment must be worn at all times

**6. OHS&W**

The contractor will comply with the requirements Council's WHS Contractor Management Tender Document as a minimum at all times.

**7. General**

The Contractor is compelled to maintain total confidentiality of all information or activities at the Library/Visitor Information Centre.

## Specification 4: Works Depot Lunch & Amenities Room

### 1. General Description of Premises

Robe Council Works Depot Lunch & Amenities Room  
Location: Robe Street, Robe SA 5276.

### 2. Cleaning Standards

You are required to maintain the following items, areas and surfaces to be free of dust, scuff marks, litter, spillages, stains, encrustations, finger marks, soiling, and cobwebs.

Area/ Description	Frequency
Floors to be swept or vacuumed clean and washed (including under movable items)	Weekly
Furniture and equipment, including all tables, benches, sinks, appliances machines and equipment.	Weekly
Toilet & Shower wet areas floors, walls and fittings basin, benches, pans, and urinal clean and sanitise.	Weekly
Window glass and internal glass doors	quarterly
Light (shades, reflectors and diffusers)	quarterly

### 3. Specific Requirements

Breakages - Report all repairs and breakages to the Council.

### 4. Timing and Frequency

Cleaning of the Robe Council Works Depot Lunch & Amenities room will be performed as per the Schedule at Item 2 between the hours of 7:30am to 4:00pm on a day Monday to Friday, agreed between Council and the Contractor.

### 5. Equipment and Materials

The contractor is required to provide all necessary equipment and materials to execute this contract. A store room is available for storage of cleaning products, consumables and equipment at Council's Administration office. Material Safety Data Sheet (MSDS) must be provided to Council before storage and use of chemicals. Appropriate safety equipment must be worn at all times.

### 6. WHS

The contractor will comply with the requirements Council's WHS Contractor Management Tender Document as a minimum at all times.

### 7. General

The Contractor is compelled to maintain total confidentiality of all information or activities at the Robe Council works depot.

## SPECIFICATION 5: Public Toilets

### 1. General Description of Premises

District Council of Robe Public Toilets

Location: Various, see below & attached maps for site locations

1. Lipson Park (1 tank toilet)
2. Yacht Club car park (2 tank toilets)
3. Foreshore Toilets, Mundy Terrace
4. Amateur boat car park (1 tank toilet)
5. Tennis Club/Skate Park Toilets
6. Marina Toilets
7. Long Beach Toilets, The Esplanade
8. Ski Lake Toilets
9. Lannum Park Toilets (tank toilet)
10. Jenny Mathews Playground Toilet
11. Third Ramp (Long Drop)
12. Jumbo's Landing – **not yet operational**

### 2. Cleaning Standards

You are required to maintain the following items, areas and surfaces to be free of dust, scuff marks, litter, spillages, stains, encrustations, finger marks, soiling, and cobwebs.

Area/ Description	Frequency
Floors, wet areas and entry area washed and sanitised.	Each clean
Toilet & Shower area and fittings, basin, benches, pans, and urinal) clean and sanitised.	Each clean
Doors and Window glass	quarterly
Light (shades, reflectors and diffusers)	quarterly

### 3. Specific Requirements

Consumables - Maintain a supply of toilet paper to ensure an uninterrupted supply and liquid soap where a dispenser is installed.

Breakages - Report all repairs and breakages to the Council.

### 4. Timing and Frequency

Routine Cleaning:

Monday, Wednesday, Friday of each week [including if these days fall on a public holiday]

Additional programmed cleaning:

From the 26<sup>th</sup> December until 31<sup>st</sup> January, seven days a week.

Foreshore Toilets – Sunday from 1<sup>st</sup> February until 30<sup>th</sup> April  
Easter - Saturday, Sunday, Monday.  
Public Holiday long week ends Sunday including June long weekend.

Additional event cleaning:

Special Events Weddings etc. as required (generally busier during the summer off-peak period i.e. outside school holiday period).

Council undertakes to provide as much notice as possible when events are to occur, at the least Council will provide seven (7) days' notice.

Cleaning can be undertaken at a time suitable to the contractor, but every effort should be used to avoid peak usage times.

**5. Equipment and Materials**

The contractor is required to provide all necessary equipment, materials and consumables to execute this contract. No storage is available. Material Safety Data Sheet (MSDS) must be provided to Council before use of chemicals. Appropriate safety equipment must be worn at all times.

**6. WHS**

The contractor will comply with the requirements Council's WHS Contractor Management Tender Document as a minimum at all times.

**7. General**

The Contractor is compelled to maintain total confidentiality of all information or activities of the District Council of Robe.

The Contractor is to advise the contract supervisor of any damage or defect [e.g. leaks, vandalism etc.] that is apparent at the earliest possible opportunity.

## Annexure B Fee

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<b>Description of Services</b>	Cleaning
<b>Price (exclusive of GST)</b>	\$
<b>Other Pricing Detail (if applicable):</b>  <b>Price to be increased annually on 1 July by the Adelaide CPI.</b>	
<b>Proposed Start Date:</b> 1 July 2017  <b>Proposed Completion Date:</b> 30 June 2020	

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## **Annexure C Special Conditions**

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# EXECUTED as an agreement

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By the Council

<b>SIGNED</b> by Chief Executive Officer under delegated authority in the presence of:	
..... Signature	..... Signature of witness
	..... Name of witness (print)

<b>The common seal of [Insert Company name]</b> was affixed in accordance with its Constitution and by the authority of its directors:	
..... Director	..... Director/Secretary

**Executed** by **[Insert Company name]** in accordance with section 127(1) of the *Corporations Act* by the authority of its directors:

.....  
Signature of Director

.....  
Name of Director (print)

.....  
Signature of Director/Secretary

.....  
Name of Director/Secretary (print)

**Signed** by **[insert name]** in the presence of:

.....  
Signature

.....  
Signature of witness

.....  
Name of witness (print)

**Partner 1:**

<b>Signed by [insert name] in the presence of:</b>	
..... Signature of witness	..... Signature of partner
..... Name of witness (print)	
..... Address of witness (print)	

**Partner 2:**

<b>Signed by [insert name] in the presence of:</b>	
..... Signature of witness	..... Signature of partner
..... Name of witness (print)	
..... Address of witness (print)	