TENDERER TO KEEP THIS PART



**Invitation to Tender**

**Part C - Contract**

Katherine Civic Centre Refurbishment

Design & Construct

T23-03B

|  |
| --- |
|  |
| Closing Time and Date: 2pm Friday 11th April, 2025 |
| Method of Lodgement: Electronic Tender Response via Tenderlink |
|  |

FORMAL INSTRUMENT OF AGREEMENT

Parties

Katherine Town Council ABN 47 8368 898 65 of Civic Centre, Lot 1865 Stuart Highway, Katherine, 0850 in the Northern Territory

('the *Principal*')

      ACN       of      ,       in the Northern Territory

 ('the *Contractor*')

Recitals:

1. The *Contractor* has submitted an offer to carry out and complete the Work Under Contract (*WUC)* and has given the *Principal* warranties and made representations to the *Principal*.
2. Inreliance on the warranties given and representations made by the *Contractor*, the *Principal* has accepted the *Contractor's* offer.
3. The parties wish to enter into this *Contract* to record the terms of their agreement.

The Parties Agree:

1. **THE CONTRACT**
	1. The *Contract* shall comprise the following documents:

### this *Formal Instrument of Agreement*;

### [Annexure](#AnnexurePartA) [Part A to AS4902-2000 General conditions of contract for design and construct](#AnnexurePartA);

### [Annexure Part E to AS4902-2000 General conditions of contract for design and construct](#AnnexurePartE);

### Annexure Part B – Approved Form of Unconditional Undertaking (which forms a part of this *Contract* notwithstanding that a copy is not physically incorporated into this *Contract*);

### AS4902-2000 General conditions of contract for design and construct (which form a part of this *Contract* notwithstanding that a copy is not physically incorporated into this *Contract*);

### Annexure Part C – Deed of novation (which forms a part of this *Contract* notwithstanding that a copy is not physically incorporated into this *Contract*);

### Annexure Part D – Deed of novation (which forms a part of this *Contract* notwithstanding that a copy is not physically incorporated into this *Contract*);

### [Annexure Part F – Specification](#AnnexurePartF);

### Annexure Part G – Methodology;

### [Annexure Part H – Price Schedule](#AnnexurePartG);

### [Annexure Part I – Variation Rates](#AnnexurePartH);

### [Annexure Part J – Contractor's Statutory Declaration](#AnnexurePartI); and

### [Annexure Part K – Other Documents](#AnnexurePartJ).

* 1. The *Contract* constitutes the entire, final and concluded agreement between the parties. It supersedes all prior representations, agreements, statements and understandings between the *Contractor* and the *Principal* (whether oral or in writing)*.*
	2. If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1 of this *Formal Instrument of Agreement* then the ambiguity, inconsistency, conflict or discrepancy shall be resolved by giving precedence to the document which places the highest or more onerous requirement on the *Contractor.* If that does not resolve the issue, then the documents will take precedence in the order set out in clause 1.1 of this *Formal Instrument of Agreement*, with the *Formal Instrument of Agreement* being the highest in the order.
1. **CONSIDERATION**
	1. In consideration of:

### the *Principal* agreeing to pay the *Contractor* in accordance with the provisions of the *Contract*, the *Contractor* will perform the *WUC* in accordance with the provisions of the *Contract* and will otherwise comply with its obligations under the *Contract* at its expense;

### the *Contractor* carrying out the *WUC* and complying with its obligations under the *Contract* at its expense, the *Principal* will pay the *Contractor* in accordance with the provisions of the *Contract* and will otherwise comply with its obligations under the *Contract*.

1. **INTERPRETATION**
	1. Italicised terms used in this *Formal Instrument of Agreement* have the same meaning as defined in the documents listed in clauses 1.1(b) to 1.1(e) above.
	2. The contra proferentem rule and other rules of construction will not apply to the *Contract* to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
	3. To the extent permitted by law, if either party consists of two or more persons the *Contract* binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally.
	4. Each indemnity provided in the *Contract* is a continuing indemnity which survives the expiration or termination of the *Contract*. The *Principal* need not incur any expense or make any payment in order to rely on an indemnity. Each indemnity will be read as if the word ‘indemnify’ was followed by ‘and hold harmless’.
	5. The rights and remedies of a party to the *Contract* are in addition to the rights or remedies conferred on the party elsewhere in the *Contract*, at law or in equity.
	6. If a provision of the *Contract* is void or unenforceable it must be severed from this *Contract* and the provisions that are not void or unenforceable are unaffected by the severance.
	7. In the *Contract* the words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation'.
	8. The *Contract* may be executed in any number of counterparts and communication of the fact of execution to the other party may be made by sending evidence of execution by email to the other party.
2. **STANDARDS AUSTRALIA COPYRIGHTED MATERIAL**
	1. This document contains Standards Australia Ltd copyrighted material which is reproduced by or distributed by Katherine Town Council under licence by Standards Australia. The Standards Australia copyrighted material may have been modified by a licensed user and may not reflect AS 4902-2000. Standards Australia takes no responsibility for the content of this document. Should a user be interested in reproducing or distributing any content from AS 4902-2000, please contact Standards Australia via copyright@standards.org.au
	2. A copy of AS4902-2000 General conditions of contract for design and construct and Annexures (as current at the *date of acceptance of tender*) forms part of this *Contract* notwithstanding that a copy is not physically included. A copy of the AS4902-2000 General conditions of contract for design and construct can be obtained by contacting Standards Australia via copyright@standards.org.au
	3. In Annexure Part A, items or words which have been struck through are deleted from Annexure Part A and items or words which have been underlined have been added to Annexure Part A.

EXECUTED AS AN AGREEMENT

**EXECUTION BY THE PRINCIPAL**

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of Katherine Town Council in accordance with the Council's local laws and in the presence of: Signature of witness Name of witness (block letters)Date: / /  | ))))))))) |  Signature of Chief Executive Officer Name of Chief Executive Officer (block letters)Date: / /  |

**EXECUTION BY THE CONTRACTOR (WHERE CONTRACTOR IS A CORPORATION)**

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of the *Contractor* in accordance with its Constitution and Section 127 of the *Corporations Act 2001* in the presence of: Signature of witness Name of witness (block letters)Date: / /  | ))))))))) |  Signature of Director Name of Director (block letters) Signature of Director/Secretary Name of Director/Secretary (block letters) |

**EXECUTION BY CONTRACTOR (WHERE CONTRACTOR IS NOT A CORPORATION)**

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of the *Contractor* by its authorised representativein the presence of: Signature of witness Name of witness (block letters)Date: / /  | ))))))))) |  Signature Name of authorised representativeDate: / /  |

|  |  |
| --- | --- |
| ANNEXURE to the Australia StandardGeneral conditions of contract for design and constructAS4902-2000 | **PART A** |
| This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of *Contract* and shall be read as part of the *Contract*.  |
| *Item* |  |
| 1 | *Principal*(clause 1) | Katherine Town Council |
| ABN | 47 836 889 865 |
| 2 | *Principal's* address  | Civic Centre, Lot 1865 Stuart Highway, Katherine, 0850 |
| 3 | *Contractor*(clause 1) |       |
|  | ACN |       |
|  | ABN |       |
| 4 | *Contractor's* address  |  |
| 5 | *Superintendent*(clause 1) | Katherine Town Council CEO |
|  | ACN |       |
|  |       |
| 6 | *Superintendent's* address | Lot 1865 Stuart Highway, Katherine, NT |
| 7\* | 1. *Date for practical completion*

(clause 1) | 31st July 2026 |
|  | OR |  |
|  | 1. Period of time for *practical completion*

(clause 1) |  |
| 8 | Governing law(clause 1(h)) | Northern Territory GovernmentIf nothing stated, that of the jurisdiction where the *site* is located |
| 9 | 1. Currency

(clause 1(g)) | AUDIf nothing stated, that of the jurisdiction where the *site* is located |
|  | 1. Place for payments

(clause 1(g)) | Payments will be made by electronic transfer into the bank account last notified in writing by the *Contractor* to the *Principal*. |
|  | 1. Not used
 |  |
| 10 | The Principal's project requirements are described in the following documents(clause 1) | 1. T23-03E - Part B – Specification.pdf
2. T23-03E – Part F1 – Troppo – Concept.pdf
3. T23-03E – Troppo – Material Schedule.pdf
4. T23-03E – Part F3 – MDP – Structural Report.pdf
5. T23-03E – Part A – Tender Info and Conditions.pdf
 |
| 11 | Preliminary design(clause 1) | (a) A *preliminary design* is: [x] is included[ ]  is not includedin the *Principal's project requirements*.If nothing selected, a *preliminary design* is not included.  |
| (b) The *preliminary design* documents are* Part F1 – Troppo Concept
* Part F4 – Troppo – Material Schedule
* Part B – Specification
 |
| 11A | *Contract sum*(clause 1 and clause 2) | The *Contract* is a:[ ] *schedule of rates contract*[ ]  *lump sum contract* If nothing stated, the *Contract* is a *lump sum contract*. |
| 12 | Quantities in *schedule of rates*, limits of accuracy(subclause 2.6~~5~~(b)) | Upper Limit       Lower Limit      If nothing stated, upper limit is 120%, lower limit is 80% |
| 13 | *Provisional sum*, percentage for profit and attendance (clause 3) | No profit and attendance is payable. |
| 14\* | *Contractor's security* |  |
|  | 1. Form

(clause 5) | Two (2) unconditional bank guarantees in equal amounts. |
|  | 1. Amount or maximum percentage of *contract sum*

(clause 5) | 5%If nothing stated, 5% of the *contract sum* |
|  | 1. If retention moneys, percentageof each *progress certificate*

(clause 5 and subclause 37.2) | N/AIf nothing stated, 10% until the limit in *Item* 13(b) |
|  | 1. Time for provision (except for retention moneys)

(clause 5) | Within 10 *business days* after the *date of acceptance of tender*If nothing stated, within 10 *business* *days* after *date of acceptance of tender* |
|  | 1. Additional *security* for unfixed plant and materials

(subclauses 5.4 and 37.3) | Not applicable     $      |
|  | 1. *Contractor's security* upon *certificate of practical completion* is reduced by

(subclause 5.4) | 50% of amount heldIf nothing stated, 50% of amount held |
| 15\* | *Principal's security* |  |
|  | 1. Form

(clause 5) | Not applicable |
|  | 1. Amount or maximum percentage of *contract sum*

(clause 5) | Not applicableIf nothing stated, nil |
|  | 1. Time for provision

(clause 5) | Not applicableIf nothing stated, within 20 *business days* after the *date of acceptance of tender* |
|  | 1. *Principal's security* upon *certificate of practical completion* is reduced by

(subclause 5.4) | Not applicableIf nothing stated, 50% of amount held |
| 16 | *Principal*-supplied documents | Document | No. of copies |
|  | (subclause 8.2) | Copy of Contract | 1 |
|  |  | If nothing stated, 5 copies of the drawings, specification, *bill* *of quantities* or *schedule of rates* (if any) |
| 17 | Documents, numbers of copies, and the times or stages at which they are to be supplied by the *Contractor*(subclause 8.3) |  |  |
|  | Document | No. of copies | Time/stage |
|  |  |  |  |
|  |  |  |  |
| 18 | Time for *Superintendent's direction* about documents(subclause 8.3) | 10 business daysIf nothing stated, 10 *business* days |
|  |  |  |  |  |
| 19 | Subcontracting (subclause 9.2) | Work by consultants | Work by others |
| The whole or any part of WUC | The whole or any part of WUC |
|  |  |  |  |
| 20 | Novation(subclause 9.4) | Subcontractor or selected subcontractor as the case may be | Particular part of the *preliminary design* or *selected subcontract work*, as the case may be |
|  |  | Not applicable | Not applicable |
|  |  |  |  |
|  |  |  |  |
| 21 | *Intellectual property rights* granted to the *Principal*, the Alternative applying (subclause 10.2) |  If nothing stated, Alternative 1 applies |
| 22 | *Legislative requirements* |  |
|  | 1. Those excepted

(subclause 11.1) | None excepted |
|  | 1. Identified *WUC*

(subclause 11.2(a)(iii)) |            |
| 22A | Long service leave(subclause 11A.1) | The:[x] *Principal*[ ] *Contractor*is to make payments and give *notices pursuant to the Construction Industry Long Service Leave and Benefits Act 2005 (NT)*If nothing selected the *Contractor* is to do so |
| 22B | *Third party requirements* that apply to this *Contract*: (clause 1, subclause 11A.5) | *Building Code 2022* | [x]  Yes | [ ]  No |
| *WHS Accreditation Scheme* | [x]  Yes | [ ]  No |
| *National Construction Code 2022 Northern Territory* | [x]  Yes | [ ]  No |
| *Northern Territory IPP* | [ ]  Yes | [x]  No |
| *Federal IPP* | [ ]  Yes | [x]  No |
| *Training Policy* | [ ]  Yes | [x]  No |
| *Funding Requirements* | [ ]  Yes | [x]  No |
| If not selected, the *third party requirement* does not apply |
| 22C | The *Contractor's* liability is limited to(clause 1 and clause 15A) |      If nothing stated, the *Contractor's* liability is not limited |
| 22D | The *Principal's* liability is limited to(clause 1 and clause 15A) |      If nothing stated, the *Principal's* liability is limited to the *contract sum* as adjusted pursuant to the *Contract.* |
| 23 | Insurance of *the Works*(clause 16A) |  |
|  | 1. Alternative applying
 | Alternative 1If nothing stated, Alternative 1 applies |
|  | If Alternative 1 applies |  |
|  | 1. Provision for demolition and removal of debris
 |           $     OR10% of the *contract sum* |
|  | 1. Provision for *consultants'* fees and Principal's consultants' fees
 |           $     OR10% of the *contract sum* |
|  | 1. Value of materials or things to be supplied by the *Principal*
 | Nil |
|  | 1. Additional amount or percentage
 |           $     OR10% of the total of paragraphs (a) to (d) in clause 16A |
| 24 | Professional indemnity insurance(clause 16B and subclause 9.2(d)) |  |
|  | (a) Levels of cover of Contractor's professional indemnity insurance shall be not less than | $10,000,000If nothing stated, $5,000,000 |
|  | (b) Period for which Contractor's professional indemnity insurance shall be maintained after issue of the final certificate | 6 yearsIf nothing stated, 6 years |
|  | (c) Categories of consultants and levels of cover of consultants' professional indemnity insurance | Category  | Levels of cover |
|            |            |
|  |  |
|  |  |  | If nothing stated, $1,000,000 |
|  | (d) Period for which each consultant's professional indemnity insurance shall be maintained after issue of the final certificate | 6 yearsIf nothing stated, 6 years |
| 25 | Public liability insurance(clause 17) |  |
|  | 1. Alternative applying
 | Alternative 1If nothing stated, Alternative 1 applies |
|  | If Alternative 1 applies |  |
|  | 1. Amount per occurrence shall be not less than
 | Twenty million dollars $20,000,000If nothing stated, then not less than $20,000,000 |
| 25A | Key Personnel(Clause 23A) | Name | Role | Period |
|  |  |  |
|  |  |  |
|  |  |  |
| 26 | 1. Time for giving access(subclause 24.1)
 | Within 20 *business days* after the *date of acceptance of tender*If nothing stated, within 10 *working days* after the *date of acceptance of tender* |
| 1. Time for giving possession(subclause 24.1)
 | Within 20 *business days* after the *date of acceptance of tender*If nothing stated, within 10 *working days* after the *date of acceptance of tender* |
| 26A | *Working days* and working hours(clause 31) | **Working days** | **Working hours** |
| Monday to Friday | 7am to 6pm |
| Saturday | 7am to 4pm |
| but shall not include:1. a public holiday, special holiday or bank holiday at the *site*;
2. 22 December to 10 January in any year; or
3. any other day which the *Contract* elsewhere provides is a day on which *work* cannot be carried out
 |
| 27 | The information, materials, documents or instructions and the times by, or periods within which they are to be given to the Contractor(clause 32) | Documents or instructions | Times/Periods |
|  |  |
|  |  |
| 28 | *Qualifying causes of delay*,causes of delay for which *EOTs* will not be granted(~~paragraph (b)(iii) of~~ clause 1 and subclause 34.3) | Nil |
|  29\* | Liquidated damages, rate(subclause 34.7) | $1,200 per day |
|  30\* | Bonus for early *practical completion*(subclause 34.8) | Not applicable |
|  | 1. Rate
 |       per day |
|  | 1. Limit
 |       $      OR     % of *contract sum*If nothing stated, there is no waiver |
|  31\* | Other *compensable causes*(page 1, clause 1 and subclause ~~34.9~~ 34A) | No other *compensable causes* |
| 31A | Delay costs, limit per *working day*(clause 34A) |      If nothing stated, $500 per *working day* |
| 32 | *Defects liability period*(clause 35) | 12 monthsIf nothing stated, 12 months |
| 32A | *Variations*, percentage for profit and overheads(subclause 36.4)  | Profit | 5%If nothing stated 5% |
| Overheads | 5%If nothing stated 5% |
| 33 | Progress Claims(subclause 37.1) |  |
|  | 1. Times for progress claims
 | 21st day of each month in which *WUC* is carried out up to and including the month in which *practical completion* is reached, for work done to the 21st day of the month |
|  | OR |  |
|  | 1. Stages of *WUC* for progress claims
 |       |
| 34 | Unfixed plant and materials for which payment claims may be made(subclause 37.3) | Nil           |
| 35 | Interest rate on overdue payments(subclause 37.5) | 8 % per annumIf nothing stated, 18% per annum |
| 36 | 1. Time for *Principal* to rectify inadequate access

(subclause 39.7(a)(iii)) | 25 *working days*If nothing stated, 25 *working days* |
|  | 1. Time for *Principal* to rectify inadequate possession

(subclause 39.7(a)(iv)) | 25 *working days*If nothing stated, 25 *working days* |
| 37 | Not used |  |

\*If applicable, delete and instead complete equivalent Item in the separable portions section of the Annexure Part A.

The amended AS.4902 contract for execution will incorporate the filled items nominated in Annexure Part A.

Requests to vary these filled items should be included in Return Schedule 13 – Contract departures