



**T22/14**  
**REQUEST FOR TENDER**  
TOWN SQUARE  
REDEVELOPMENT –  
DESIGN  
CONSULTANT  
SERVICES

**BROKEN HILL**  
CITY COUNCIL

**AUSTRALIA'S FIRST  
HERITAGE LISTED CITY**

## About Broken Hill

The City of Broken Hill is the largest regional centre in the western half of New South Wales. It lies in the centre of the sparsely settled New South Wales Outback, close to the South Australian border and midway between the Queensland and Victorian borders.

The nearest population centre is Mildura in Victoria, approximately 300 kilometres in distance to the south on the Murray River. The nearest capital city is Adelaide, approximately 500 kilometres to the southwest.

Because of its location, Broken Hill has strong cultural and historical connections with South Australia and operates on Central Australian Time, half hour behind Eastern Standard Time.

Broken Hill's isolation is a strength as much as it is a weakness. The city is an ideal place to raise a family in a friendly regional city that embraces true country values. Connected by air, rail, and road and with all the facilities that one would expect of a regional city, the Broken Hill lifestyle is treasured by many.

QUALITY CONTROL	
EDRMS Reference	D22/55752
Original Release Date	Friday, 25 November 2022
Tender Number	T22/14
Revision Number and Date	Revision 2, 23 November 2022
Closing Date and Time	Friday, 16 December 2022 at 3pm (ACST)
Contact Officer	Asad Nizamani
Contact Officer Title	Projects Engineer
Company	Broken Hill City Council
Method for Enquiries	Via Vendor Panel
Submission Method	Via Vendor Panel
Alternate Council Contact Officer	Codie Howard
Alternate Contact Officer Title	Chief Assets & Projects Officer

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# PRINCIPAL'S REQUEST

## 1. REQUEST FOR TENDER OVERVIEW

This is an open invitation to tender for the Broken Hill Town Square Redevelopment - Design Consultant Services for Broken Hill City Council. Tenderers will be required to demonstrate in their response that they have the necessary resources, skills, experience, financial capacity, insurances, licences, and accreditations etc, to fulfil the Tender requirements.

Tender documentation issued for the purpose of tender includes:

- a) Section 1 – Principal's Request (read and keep this section);
- b) Section 2 – Conditions of Tender (read and keep this section);
- c) Section 3 – Specifications (read and keep this section);
- d) Section 4 – General Conditions of Contract (read and keep this section);
- e) Section 5 – Special Conditions of Contract (read and keep this section);
- f) Section 6 – Tenderer's Offer Form (complete and return this section);
- g) Section 7 – Tender Response Schedules – (complete and return this section);
- h) Appendix A – Notice of Acceptance (read and keep this appendix);
- i) Appendix B – Formal Instrument of Agreement (read and keep this appendix).

The Tenderer warrants and represents that it will, prior to submission of Tender, obtain the information and documentation referred to above and will obtain all other information relevant to the services, contingencies and other circumstances influencing its Tender.

### 1.1 Tender Briefing/Site Inspection

Attendance at a site meeting is **not mandatory**. However, respondents should attend the site and ensure they are familiar with all site conditions at all locations.

Please contact the Contact Officer through Vendor Panel to book a site inspection prior to Thursday 8<sup>th</sup> December 2022. The last date of inspection(s) will be Thursday 8<sup>th</sup> December.

Special circumstances may be granted for other date(s) of site visit(s) at Council's discretion.

All respondents must make themselves aware of all site conditions that may apply to this project.

No claims will be considered after contract award due to not understanding site conditions.

### 1.2 Definitions

Below is a summary of some of the important defined terms used in this Tender:

<b>Attachments:</b>	Shall mean the documents attached to the Offer Form as part of the Tender;
<b>Closing Date and Time:</b>	Shall mean the closing date and time for lodgement of Tender;
<b>Contact Officer:</b>	Shall mean the person identified on page 2;
<b>Conditions of Tender:</b>	Shall mean the conditions set out under Section 2;

<b>Contractor:</b>	Shall mean the person(s), corporation(s) or firm whose Tender is accepted by the Principal and includes the executors or administrators, successors and assigns of such person(s), corporation(s) or firm;
<b>Council</b>	Shall mean the elected members of the Broken Hill City Council;
<b>General Conditions of Contract:</b>	Shall mean the General Conditions of Contract nominated in Section 4;
<b>Information:</b>	Shall mean the information contained in this Request for Tender or sent with it or which has been or will be made available to the Tenderer in connection with any further enquiries in relation to its subject matter;
<b>Non-Conforming Tender</b>	Shall mean a Tender which: a) does not comply with any requirement specified in these Conditions of Tender; or b) contains any qualifications, condition or other indication, that the Tenderer is not willing to perform in strict accordance with the Contract;
<b>Notice of Acceptance:</b>	Shall mean the Notice of Acceptance set out in Appendix A;
<b>Offer Form:</b>	Shall mean the Offer Form set out in Section 6;
<b>Principal:</b>	Shall mean the Broken Hill City Council
<b>Request or Request for Tender:</b>	Shall mean the documents listed under Section 1;
<b>Requirements:</b>	Shall mean the goods and/or services requested by the Principal;
<b>Selection Criteria:</b>	Shall mean the criteria used by the Principal in evaluating the Tender;
<b>Special Conditions:</b>	Shall mean the additional contractual terms;
<b>Specification:</b>	Shall mean the statement of requirements that the Principal requests the Tenderer to provide if selected.
<b>Tender:</b>	Shall mean the completed Offer Form, Tender Response Schedules and associated Attachments;
<b>Tenderer:</b>	Shall mean someone who has or intends to submit a Tender to the Principal.

In this Request:

- a) unless the context otherwise requires, the singular includes the plural and vice versa and words importing persons shall include partnerships and corporations and vice versa;
- b) a reference to an Act includes all regulations, proclamations, instruments, policies and codes made under that Act.

## **2. CONDITIONS OF TENDER**

### **2.1 Participants to be Bound**

Tenders are invited in accordance with these Conditions of Tender. The Principal agrees to be bound by these Conditions of Tender. Tenderers agree to be bound by these Conditions of Tender.

### **2.2 How to Prepare Your Tender**

- a) Carefully read all parts of this document;
- b) Ensure you understand the requirements;
- c) Complete and return the Tenderer's Offer Form (Section 6) in all respects and include all Attachments;
- d) Make sure you have signed the Tenderer's Offer Form and responded to all of the Selection Criteria;
- e) Lodge your Tender before the closing date and time.

### **2.3 Lodgement of Tender**

#### **2.3.1 Place to Lodge Tenders**

Tenders are to be lodged by via VendorPanel website.

The size limit for this mailbox is 50MB.

If the size limit for the tender submission exceeds 50MB, the Principal will accept submissions to the above listed email address via a cloud based file share system.

#### **2.3.2 Notification of Tenders Received**

Upon submission of a Tender to VendorPanel an automated response should be received. If, however, no response is received, the Tender has not been received and the Tenderer will be required to re-submit and/or further investigate.

#### **2.3.3 Closing Date and Time**

Tenders must be received by the closing date and time specified on Page 2 of this Request for Tender. Late Tenders may be rejected with the decision at the absolute discretion of the Principal.

#### **2.3.4 Information to be Submitted with Tender**

The Tenderer must submit the following documents as part of the Tender:

- a) Tenderer's Offer Form;
- b) Tender Response Schedules;
- c) Completed Attachments and required policies.

The Tenderer should set out the above information to be submitted with its Tender in accordance with the Tenderers Checklist.

#### **2.3.5 Completing Tender Documents for Submission**

The Tenderer must complete all forms and schedules which are mandatory parts of the Request for Tender and shall include all information required under this Request for Tender. The Tenderer must sign the forms and schedules or if the Tenderer is a corporation execute the Tender Response Schedules in the manner authorised by the *Corporations Act 2001* and binding on the corporation.

All the Request for Tender shall be deemed to form part of the Tender.

## **2.4 Tenderers to Inform Themselves**

The Information has been provided in good faith. It is intended only as an explanation of the Principal's requirements and is not intended to form the basis of a Tenderer's decision on whether to enter into any contractual relationship with the Principal.

The information provided does not purport to be all-inclusive or to contain all information that a prospective contractor may require. Tenderers and their advisors must take their own steps to verify information which they use and must make an independent assessment of the opportunity described in this Request for Tender after making such investigation and taking such professional advice as they deem necessary.

Tenderers will be deemed to have:

- a) examined the Request for Tender and any other information available in writing to Tenderers for the purpose of tendering;
- b) examined all further information relevant to the risks, contingencies and other circumstances having an effect on their Tender which is obtainable by the making of reasonable enquires;
- c) satisfied themselves as to the correctness and sufficiency of their Tenders including tendered prices which will be deemed to cover the cost of complying with this Request for Tender and of all matters and things necessary for the due and proper performance and completion of the work described therein; and
- d) satisfied themselves they have a full set of the Request for Tender documents and all relevant attachments which includes all pages which are numbered consecutively and that all supplements referred to are also included.

None of the Principal, the Principal's members, directors, officers, employees, agents or advisors may make any representation or warranty as to the adequacy, accuracy, reasonableness or completeness of the Information.

Neither the Principal nor their professional advisors shall be liable for any loss or damage arising because of reliance on the Information nor for any expenses incurred by Tenderers at any time.

Any advisors or agents appointed by the Principal, whether legal, financial, technical or other, will not be responsible to anyone other than the Principal for providing advice in connection with the Request for Tender.

## **2.5 Acceptance of Tenders**

Unless otherwise stated in this Request for Tender, Tenders may be for all or part of the requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Tender and may reject any or all Tenders submitted and may waive any irregularities therein.

A Tender shall be accepted (and for all purposes shall be deemed to be accepted) when a Notice of Acceptance is handed to the Tenderer or is delivered by prepaid post to the address furnished in the Offer Form. In the latter case, the time of posting shall be deemed to be the time of acceptance.

The Tender and the acceptance thereof shall constitute a binding contract between the Principal and the Tenderer on and subject to the terms of the:

- Tenderer's Offer Form including Attachments (Section 6);
- Formal Instrument of Agreement (Appendix B);
- Special Conditions of Contract (Section 5);
- General Conditions of Contract (Section 4);
- Specifications (Section 3).

The Tenderer must thereafter, at the direction of the Principal, execute as a deed the Formal Instrument of Agreement.

## **2.6 Rejection of Tenders**

A Tender may be rejected without consideration of its merit if

- a) It is not submitted before the closing date and time; or
- b) It is not submitted at the place specified in the Request for Tender;

The Principal may reject any Non-Conforming Tender.

## **2.7 Non-Conforming Tenders**

The Principal reserves the right to accept a Non-Conforming Tender. It is the Tenderers responsibility to submit a Tender in accordance with the conditions of the Request for Tender in a legible form.

## **2.8 Tender Validity Period**

All Tenders will remain valid and open for acceptance for a minimum period of ninety days from the closing date or forty-five days from the Principal's decision for determining the Tender, whichever is the later (the Tender Validity Period) unless extended by mutual agreement between the Principal and the Tenderer in writing. Tenderers may withdraw their Tender at any time after the expiration of the Tender Validity Period.

## **2.9 Tenderers Details**

Tenderers must provide sufficient information in the Tender submission to enable the Principal to clearly identify the legal entity. After lodging a Tender, the Tenderer must promptly notify the Principal of any changes to this information.

In response to the Tender submission, Tenderers must nominate a person to answer requests by the Principal for further information or to provide clarification.

## **2.10 Identity of the Tenderer**

The identity of the Tenderer and the Contractor is fundamental to the Principal and therefore the Tenderer will be the individuals(s), corporation(s) or firm named as the Tenderer in Section 6 and whose execution appears on the Offer Form in Section 6 of this Request for Tender. Upon acceptance of the Tender, the Tenderer will become the Contractor.

## **2.11 Registration or Licencing of Contractors**

Where an Act requires that a contractor (as defined by the Act) be registered or licenced to carry out the work described in the Request for Tender, the Tenderer shall state on the Tenderer's Offer Form in the schedule, its registration or licence number. The Tender may not be considered if the Tenderer fails to provide such registration or licence number.

## **2.12 Clarification of the Request for Tender**

If the Tenderer has any doubt as to the meaning of any part of this Request for Tender or the scope of the work required thereunder, then the Tenderer should seek to clarify any point of doubt or difficulty with the Contact Officer before submitting a Tender. All requests for clarification must be made in writing and the Contact Officer will, so far as practicable, respond in writing.

All questions and answers will be circulated except where Tenderers have marked their requests for clarification or further information "Confidential – not to be circulated to other Tenderers". At its absolute discretion, the Principal will respond to that specific request privately, providing that the principle of "equal availability of information to all Tenderers" is not breached. If the Principal is not

prepared to respond privately, the Principal will ask the Tenderer to retract the query or remove its confidentiality requirement.

The Principal reserves the right not to answer requests for clarifying information made within seven days prior to the closing date and time.

### **2.13 Costs of Tender**

Tenderers remain responsible for all costs incurred by them in connection with their Tender whether before or after the submission date and whether incurred directly by them or their advisors and regardless of whether such costs arise as a consequence direct or indirect of any amendments made to the Request for Tender by the Principal at any time. For the avoidance of doubt, the Principal shall have no liability whatsoever to Tenderers for the costs of any negotiations conducted in the event that the Principal decides not to accept any Tenders.

### **2.14 Tender Opening**

Tenders will be opened in the Principal's offices, following the advertised closing date and time. Any Tenderer and/or member of the public may attend or be represented at the opening of Tenders.

The names of the persons who submitted a Tender by the closing date and time will be recorded at the tender opening. No discussions will be entered into between Tenderers and the Principal's officers present or otherwise, concerning the Tenders submitted.

The Tender opening will be at 3pm ACST on Friday 11<sup>th</sup> November 2022 through Vendor Panel.

### **2.15 Late Tenders**

Council may reject any Tender not received by the closing date and time.

Lodgement of tenders by the closing date and time is entirely the responsibility of the Tenderer.

### **2.16 Withdrawal of Tenders**

Tenderers may withdraw their Tender at any time after expiration of the ninety-day validity period, provided the Tenderer has not been notified in writing of the acceptance of the Tender in accordance with Section 2.23 of the Request for Tender.

### **2.17 Alternative Offers**

Notwithstanding Section 3.2 of the Request for Tender, Tenderers may only lodge a Tender which contains an offer materially departing from the Specifications in Section 3 (an Alternative Offer) if the Tenderer also lodges a Tender that substantially complies with Section 3 (Specification).

The Alternative Offer must be clearly identified as an "alternative offer" and must be lodged in accordance with Section 2.4 of the Request for Tender.

Alternative offers will be considered at the sole discretion of the Principal.

### **2.18 No Joint Tenders**

The Principal will not consider Tenders which are submitted by Joint Tenderers.

The Principal will only accept Tenders from a consortium if the consortium agrees to enter into an agreement with the Principal under the name of a single entity, in which the entity must provide a single point of contact.

All conditions of this tender will apply jointly and severally to all parties listed under the agreement.

## **2.19 Subcontractors**

If a Tenderer proposes that any part of the requirement in this Request for Tender is to be performed under a subcontract, the names of the proposed subcontractors and details of the work proposed to be undertaken by them must be set out in the Tender Response Schedules.

The successful Tenderer will:

- a) Be responsible for the actions of any subcontractor; and
- b) At all times remain responsible for the delivery of the requirement as set out in the Specifications.

The Tenderer must obtain the written approval of the Principal prior to engaging any subcontractor to perform any of the Tenderers obligations.

## **2.20 Conditions for Participation**

Tenders must address the Conditions for Participation.

The Conditions for Participation are minimum standards that the Principal expects all Tenderers to meet in order to participate in the tender process.

Without limiting rejection of tenders, the Principal reserves the right to exclude a Tenderer that fails to meet the Conditions for Participation.

The Principal expects all Tenderers and Contractors to Council to conduct their business with the Principal in an ethical manner and be aware that they may be subject to public scrutiny by such bodies as the Independent Commission Against Corruption.

Canvassing of Councillors and Council staff (other than the Principal's nominated Contact Officer) at any stage up to and including the acceptance of tenders may automatically disqualify the Tenderer.

The Principal shall furnish in the documents issued by it for the purposes of Request for Tender all information that it considers necessary for the preparation of a Tender. Verbal advice given by any Councillor or Officer of the Council shall not be considered in the preparation of a Tender.

The Tenderer must be solvent at all times during the Tender Process.

The Tenderer must commit to being socially responsible and strive to be a good corporate citizen.

### **2.20.1 Requirements for Contractors Insurance**

- a) Certificates of Currency:

All contractors must provide the Principal with copies of Certificates of Currency for the following classes of insurance. All Certificates of Currency must be signed and come from insurance companies. The Certificates must also include:

- The name of the insured;
- The name of the insurance company;
- The expiry date of the policy;
- The occupation of the contractor;
- What is covered;
- The sum insured;
- Public Liability shall name "Broken Hill City Council for their respective rights and interests" on the document.

b) Workers Compensation:

The Certificate of Currency must include the following information:

- The name of the insured;
- A policy number;
- The industry covered;
- Average number of employees;
- The estimated wages;
- The name of the underwritten.

c) Public Liability

All contractors must carry a current Public Liability Policy for a minimum coverage of \$20 million dollars. The Certificate of Currency for Public Liability insurance must note Broken Hill City Council for its respective rights and interest.

d) Professional Indemnity

All contractors must carry a Professional Indemnity Insurance Policy for a minimum coverage of \$20 million dollars. The Certificate of Currency for Professional Indemnity insurance must note Broken Hill City Council for its respective rights and interest.

e) Motor Vehicle/Plant

If a registered vehicle is used, either a Comprehensive Motor Vehicle Policy or an unlimited Third-Party Property Damage Policy is required. All sub-contractors must also provide a Certificate of Currency covering all vehicles and plant used in connection with the services or works that they are providing.

Note: The only acceptable proof of insurance by the Principal is a copy of the current Certificate of Currency from the Contractor's Insurer. A Premium Renewal Notice is NOT acceptable as proof of insurance.

The Tenderer warrants that they have not, within five (5) years prior to submitting a Tender, been found guilty of breaching any Act or Regulation.

## **2.21 Evaluation**

### **2.21.1 Evaluation Process**

Tenders will be evaluated using information provided in your Tender.

The following evaluation methodology will be used in respect of this Request for Tender:

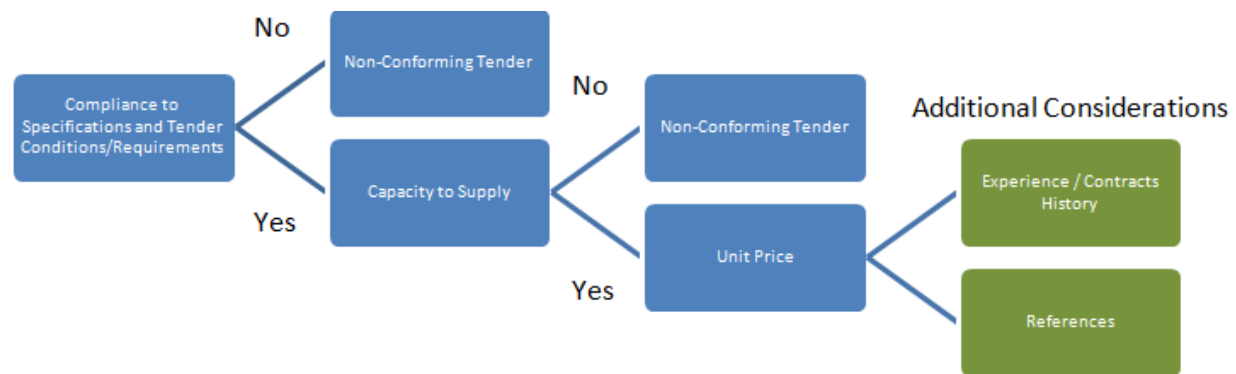
- a) Tenders are checked for completeness and compliance. Tenders that do not contain all information requested (e.g. completed Tenderer's Offer Form and Attachments) may be excluded from evaluation;
- b) Tenders are assessed against the Selection Criteria.

Subject to the Principal's right to decline to accept any of the Tenders, the Principal will accept the Tender which, having regard to all the circumstances, appears to be the most advantageous.

### **2.21.2 Selection Process**

Tenders will be assessed in terms of conformity with the requirements of the Request for Tender and product specifications. Council reserves the right to exclude any Non-Conforming Tender from evaluation at any stage of the Tender Process.

Tenders will then be assessed on the evaluation criteria listed below.



The Principal reserves the right, at any stage of the tender process, to shortlist Tenders based on conformance with the Request for Tender and/or assessment against any or all of the evaluation criteria.

The Principal reserves the right, at any stage of the tender process, to:

- a) Invite some or all Tenderers to give presentations;
- b) Conduct interviews with some or all Tenderers;
- c) Visit some or all Tenderer supply/storage sites; or
- d) Visit referees nominated by any Tenderer or any other customers of any Tenderer.

The Principal will establish a Tender Evaluation Panel to oversee and manage the tender evaluation process.

At the conclusion of the tender evaluation process, the Tender Evaluation Panel will prepare a report and recommendation(s) to be received by the elected Council.

The elected Council will determine whether to accept the Tender(s) or to decline to accept any Tender(s).

### 2.21.3 Selection Criteria

The Tenders will be judged against the following selection criteria.

- Lump sum price;
- Technical project specific methodology and compliance;
- Up to date list of comparable completed projects, or in the case of major projects details of work to date on current projects and the details of the clients, referees;
- Personnel allocated to the project including their qualifications and experience
- WHS management including verified documentation of safety performance;
- Quality control and assurance;
- Environmental management;
- ISO accreditation(s)
- Compliance with statutory requirements;
- Statement outlining financial capability to complete the requirements.

#### 2.21.4 Compliance Criteria of the Tender

If compliance criteria are specified, it will be detailed in the Request for Tender and will not be point scored. Each Tender will be assessed on a Yes/No basis as to whether the criterion is satisfactorily met. An assessment of "No" against any criterion may eliminate the Tender from consideration.

#### 2.21.5 Specified Compliance Statements

Where providing compliance statements, as required in the Request for Tender, Tenderers must indicate 'Complies' 'Partially Complies' or 'Does Not Comply' in accordance with the following definitions:

COMPLIANCE STATEMENT	DEFINITION
Complies	<p>A Tender will be considered to comply if it meets the requirements without exception. For example, in the case of a clause which:</p> <ul style="list-style-type: none"><li>• Imposes a contractual condition - that the condition is agreed to;</li><li>• Specifies a characteristic or performance requirement - that the proposal includes the requirement as specified;</li><li>• Is for the purposes of informing the Tenderer - that the clause has been read and understood; or</li><li>• Requests a response to be provided with a degree of detail - that the response provided is sufficient in detail and in the required format.</li></ul> <p>Tenderers are encouraged to briefly explain how their Tender delivers the required outcomes. Failure to provide these details may result in a Tender being considered less effective than more comprehensive Tenders.</p>
Partially Complies	<p>A Tender will be considered to partially comply if the Tenderer can demonstrate that a condition, characteristic or performance requirement can be met, subject to certain qualifications, which must be fully disclosed.</p> <p>An explanation must be given supporting the claim of partial compliance.</p>
Does not Comply	<p>A Tender will be considered to not comply if the Tender does not demonstrate an ability to meet the contractual condition, characteristic or performance requirement. A Tenderer must provide details relating to the extent of non-compliance.</p> <p>An explanation must be given stating the reason why the requirement is deemed "Does not Comply".</p>

#### 2.21.6 Qualitative Criteria

It is essential that Tenderers address each qualitative criterion.

Failure to provide the specified information may result in elimination from the tender evaluation process.

#### 2.22 Prices

Unless otherwise specified, prices must:

- a) Be inclusive of Goods and Services Tax (GST) and any other taxes and duties, with the GST and other tax and duty components included;

- b) Unless otherwise indicated, must include, without limitation, delivery, site allowances, unloading, packing, marking all applicable levies (including long service leave levy), duties (including customs duty), taxes and charges. Any charge not stated in the Tender, as being additional will not be allowed as a charge for any transaction under and resultant Contract;
- c) Be available for acceptance by the Principal for a period of ninety days from the closing date;
- d) Not vary according to the mode of payment; and
- e) Take into account the liability, indemnity and other relevant provisions regarding risk.

### **2.23 Notification to Successful Tenderers**

The Principal will notify a successful Tenderer in writing of the acceptance of its Tender (Letter of Acceptance). The notification of the Acceptance of Tender; Request for Tender; Request for Tender Submission, Tender Response Schedules and Formal Instrument of Agreement will create a deed of contract between the Principal and the Tenderer.

The Principal will forward to the successful Tenderer a formal agreement which the successful Tenderer must execute and return to the Principal within seven days of receipt.

### **2.24 Notification to Unsuccessful Tenderer**

The Principal shall notify unsuccessful Tenderers that their Tenders were unsuccessful, in writing.

### **2.25 Feedback**

The Principal is not obliged to give reasons for rejecting any Tender. However, the Principal values the ongoing participation of the Tenderer in future Tender processes and may, at its absolute discretion, provide feedback to unsuccessful Tenderers to assist in improving the quality of future tenders.

### **2.26 Precedence of Documents**

In the event of there being any conflict or inconsistency between the terms and conditions in the Principal's Request and those in the General Conditions of Contract, the terms and conditions appearing in the Principal's Request will have precedence.

### **2.27 Amendments to the Request for Tender – Addenda**

The Tenderer must not alter or add to the Request for Tender unless required by an addendum.

The Principal may issue an Addenda to clarify issues or to amend the Request for Tender before the closing date and time. An Addenda shall become part of the Request for Tender. No explanation, elaboration of or amendment to the Request for Tender will be effective unless it is in the form of an Addendum. An Addenda will be numbered consecutively, commencing with the number 1. Tenderers must acknowledge receipt of Addenda if requested by the Principal.

### **2.28 Variation of Tender**

- a) At any time before the Principal accepts any of the Tenders that it has received for the Contract, a person who has submitted a Tender may, subject to subparagraphs b) and c) below, vary the Tender:
  - i. by providing the Principal with further information by way of explanation or clarification, or
  - ii. by correcting a mistake or anomaly.
- b) Such a variation may be made either:
  - i. at the request of the Principal, or

- ii. with the consent of the Principal at the request of the Tenderer, but only if, in the circumstances, it appears to the Principal reasonable to allow the Tenderer to provide the information or correct the mistake or anomaly.
- c) If a Tender is varied in accordance with this paragraph, the Principal will notify in writing all other Tenderers whose Tenders have the same or similar characteristics as the varied Tender and provide them with the opportunity of varying their Tenders in a similar way.
- d) The Principal will not consider a variation of a Tender made under this paragraph if the variation would substantially alter the original Tender.

## **2.29 Respondents to Provide Additional Information**

The Principal may request any additional information it considers necessary in properly evaluating Tenders. Tenderers shall provide requested documents or information within three working days. The Principal may also direct that such information be provided to a third party assisting in the tender evaluation process. For example, Tenderers may be required to provide copies of audited financial statements to a firm engaged by the Principal to assess the financial position of short listed Tenderers.

## **2.30 Ownership and Copyright of Tenders**

All documents, materials, articles and information submitted by the Tenderer as part of or in support of a Tender will become upon submission the absolute property of the Principal and will not be returned to the Tenderer at the conclusion of the Tender process provided that the Tenderer be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

The Tenderer does not acquire any intellectual property rights in the Request for Tender documents. Tenderers shall not reproduce any of the Request for Tender in any material form (including photocopying or storage in any medium by electronic means) without the written permission of the Principal other than for use strictly for the purpose of preparing a Tender.

The ownership of all copyright in the Request for Tender and its accompanying documentation remains with the Principal at all times. The Request for Tender and any document at any time issued as supplemental to it are and shall remain the property of the Principal and must be returned upon demand.

Each Tenderer grants to the Principal a non-exclusive, royalty-free licence to use, reproduce or adapt any information contained in a Tender for the purpose of the Request for Tender.

## **2.31 Confidentiality**

Information is made available on condition that it is treated as confidential by the Tenderer and is not disclosed, copied, reproduced, distributed or passed to any other person at any time except for the purpose of enabling a Tender to be made, for example by disclosure by a Tenderer to its insurers or professional advisors, provided they have each given an undertaking at the time of receipt of the relevant information (and for the benefit of the Principal) to keep such information confidential. Other than specified above, or as required by law and safe insofar as the information is in the public domain, Tenderers shall not make any of the Information available to any other parties in any circumstances without the prior written consent of the Principal nor use it for any purpose other than that for which it is intended.

## **2.32 Publicity**

Tenderers must obtain the written approval from the nominated Contact Officer by the Principal, before any disclosures relating to the Tender or the contract are made to the press or in any other public domain. Tenderers must not undertake any publicity activities with any part of the media in relation to the Tender or contract without the agreement of the Principal, including agreement on the format and content of any publicity.

### **2.33 Canvassing of Officials**

Any Tenderer who, to solicit support for their Tender or otherwise seek to influence the outcome of the tender process:

- a) offers any inducement, fee or reward to any member or officer of the Principal or any person acting as an advisor for the Principal; or
- b) canvasses any Councillors; or
- c) contacts any member or officer of the Principal about the Request for Tender or any process relating thereto, except as authorised by this Request for Tender including (but without limitation) for the purposes of discussing the possible transfer to the employment of the Tenderer of such member or officer,

may, at the Principal's discretion, be disqualified from any further involvement in this tender process (without prejudice to any other civil remedies available to the Principal and without prejudice to any criminal liability which such conduct by a Tenderer may attract).

### **2.34 Non-Collusion**

Any Tenderer who:

- a) fixes or adjusts the amount of its Tender by or in accordance with any agreement or arrangement with any other Tenderers; or
- b) enters into any agreement or arrangement with any other Tenderer that it shall refrain from tendering or as to the amount of any Tender to be submitted; or
- c) causes or induces any person to enter such agreement as is mentioned in either paragraph 2.34 a) or 2.34 b) above or to inform the Tenderer of the amount or approximate amount of any rival Tender for the Contract; or
- d) canvasses any of the persons referred to in 2.34 a) and 2.34 b) above in connection with the Tender or the outcome of the tender process; or
- e) offers or agrees to pay or give or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender any act or omission; or
- f) communicates to any person other than the Principal the amount or approximate amount of its proposed Tender (except where such disclosure made in confidence in order to obtain quotations necessary for the preparation of the Tender, for insurance or contract guarantee bonds and/or performance bonds or professional advice required for the preparation of a Tender), may, at the discretion of the Principal, be disqualified from any further involvement in the tender process (without prejudice to any other civil remedies available to the Principal and without prejudice to any criminal liability which such conduct by a Tenderer may attract).

### **2.35 Ethics and Fair Dealings**

The Tenderer must comply with and observe the ethical principles in the Principal's Statement of Business Ethics which is available from Council's website

<https://www.brokenhill.nsw.gov.au/Statement-of-Business-Ethics>

### **2.36 Code of Conduct**

The Tenderer must comply with and observe the ethical practices in Council's Code of Conduct which is available from Council's website under 'Policies' then select the 'Code of Conduct Policy'

[https://www.brokenhill.nsw.gov.au/Council/Policies?dlv\\_OC%20CL%20Public%20DocLib%20Relative%20Index%20Page%202](https://www.brokenhill.nsw.gov.au/Council/Policies?dlv_OC%20CL%20Public%20DocLib%20Relative%20Index%20Page%202)

### **2.37 Conflict of Interest**

The Tenderer declares that, at the time of submitting the Tender, other than the conflicts notified to the Principal, no conflict of interest exists, or it likely to arise, which would affect the performance of its obligations, if the Tenderer were to enter into a contract.

### **2.38 Security, Probity, Risk and Financial Checks**

The Principal reserves the right to perform any security, probity, risk assessment and financial checks it considers necessary in relation to any Tenderer. External consultants may be engaged to undertake these checks. The Tenderer agrees to provide, at its own cost, all reasonable assistance to the Principal in this regard.

### **2.39 Government Information (Public Access) Act 2009**

All Tenderers need to be aware of the obligations imposed by the Government Information (Public Access) Act 2009 for the Principal to record information about contracts awarded in excess of \$150,000.

Tenderers shall familiarise themselves with Sections 27-36 of the *Government Information (Public Access) Act 2009* and provide all information as requested on the Tenderers Offer Form.

### **2.40 Referees**

Tenderers must provide the details of at least three client referees.

Where possible, these referees should be customers of the Tenderer and the Tenderer should have provided similar design services to that customer as are required by the Principal in this Request for Tender.

The Tenderer should not have any vested commercial interest in, or in connection with, any of its referees.

The Principal is under no obligation to contact the referees nominated by Tenderers.

The Tenderer agrees to the Principal contacting nominated referees or any other customers of the Tenderer for the purpose of evaluating its Tender.

## **3. SPECIFICATIONS**

### **3.1 Introduction**

#### **Background**

Broken Hill City Council is seeking a suitably qualified and experienced Lead Design Consultant to carry out technical design documentation works for the re-development of Broken Hill CBD Town Square. The project part of the Central Business District Masterplan to beautify the connections in the city from the Railway Station to the City's Sturt Park.

It also actions identified projects in the Broken Hill Cultural Framework and Synopsis Report, 2019 that address the need to revitalise the city's key existing public spaces to activate the Central Business District. It noted that the Town Square is tired, under-used and unwelcoming and that Argent Street needs invigoration as a shaded street as it is the geographic and cultural heart of this Heritage City.

This project creates a Welcome Walk - an avenue of planting from the Railway Station to Town Square and on to Sturt Park.

It will:

1. Increase the tree canopy with planting of semi-mature trees along the Chloride Street corridor (Crystal Street to Wolfram Street) to reduce the impact of summer heat in the Central Business District
2. Replace and improve Town Square infrastructure and parking to open the pedestrian flow from the Railway Station into the Town Square and main street.
3. Purchase mobile stage structure for use at town square festivals and events (the current permanent stage will be removed to open the welcome way).
4. Install street furniture.
5. Look at the feasibility of installing a water play feature
6. It will improve the public face of the CBD from the train station, improve the public open space, most notably the Town Square and enhance the lighting CBD activation, currently installed in the vicinity as a partnership project between Broken Hill City Council and the NSW Government.

Please note that these are previous suggestions based on past studies. This design project requires further stakeholder engagements to confirm the final scope of works and meet the community's expectations.

### Lead design consultant

The project is at an early stage of works with a lead design consultant to be appointed to the project with responsibilities for the following stages of the project:

1. Key stakeholder engagements
2. Design documentation
3. Cost surveys

Following this, final design will be taken to council for approvals to proceed to the development stages of the works, including lodgement of a Development Application and Construction Certification(s) by Council ready to go out for tender.

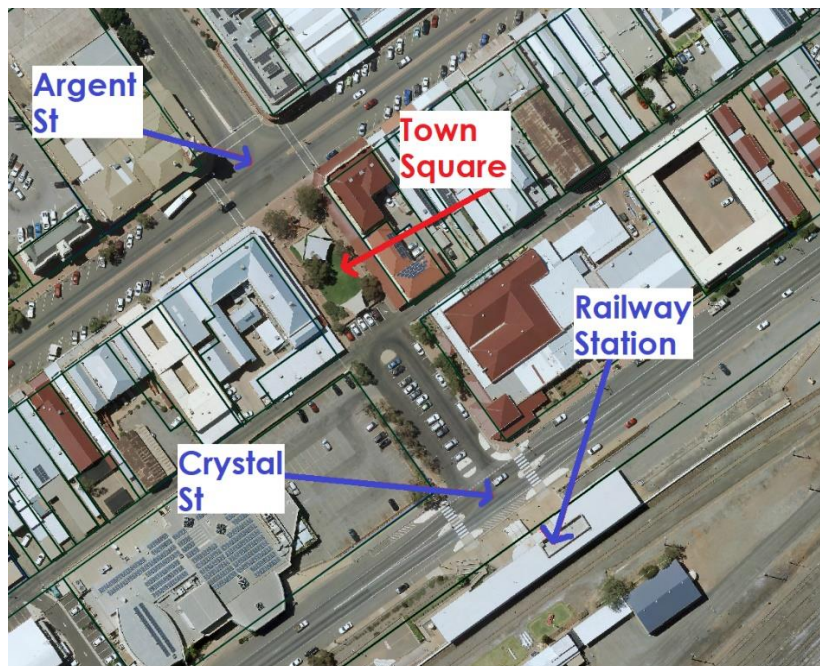


Figure 1: General view of the current Town Square, viewed from Argent Street

## 3.2 Scope of Work

### General

The tenderer will be expected to manage the complete design stage of the project, including consultations with council's stakeholders and all subconsultants, involved with design documentation and a cost survey.

The successful tenderer will be expected to attend weekly meetings with Council staff with subconsultants attending these meetings where beneficial to the project.

Accepted formats for project deliverables are MS Office suite documents, pdf, CAD/dwg. The Tenderer is required to provide a fee for development of a computer-generated 3D model of the site, as an optional extra deliverable for the project.

Throughout the project, the Tenderer will provide at a minimum:

- Documentation of meeting minutes as required
- Provision of supporting investigations/documentation undertaken e.g., scans, approvals.

### **Site photographs**

Enclosed with this request are Site Photos – Broken Hill Town Square. This is only intended as a visual guide to assist respondents to see a general overview of the Town Square.

### **Key stakeholder engagements**

The project is at an early stage of works and the lead design consultant will be involved with key stakeholders from Council (as well as other nominated by Council) to develop a scope brief to identify the current focus on the project. This may be:

1. Increased shade requirements in form of trees and shade structures
2. Opening of the stage structure for a continuous pathway from the railway station
3. A water play feature
4. Other concepts that may be of interest to the various stakeholders to meet the expectations of the community

Previous ideas are available and the Broken Hill Cultural Framework and Synopsis Report, 2019 is included as an attachment with this request.

### **Design documentation**

The scope of services is broadly described as detailed design of a 'fit for purpose' facility at the existing Town Square site. This includes but is not limited to design to the following:

- Detailed survey
- Architectural design and documentation showing new landscaping and footpaths
- Civil and structural engineering
- Hydraulic design
- Electrical and lighting designs for upgrades and adjustments to current lighting
- Fire compliance design documentation
- Traffic assessment report
- Design of accessibility compliance
- Stormwater design
- Review of Environmental Factors (REF)
- BCA compliance report
- Quantity surveying at 70% design documentation

### **Stage 1 – Concept Design**

- Review supporting documentation supplied by Council
- Facilitate one (1) concept design development meeting at Broken Hill with Council stakeholders (which may include members of the community)
- Develop project management plan

- Undertake required investigations to begin and complete design e.g., service location works.
- Development of concept design and at a minimum to include design documentation of:
  - Site survey
  - General site plan
  - Demolition plan
  - A “floor” plan(s) type design showing all new works, including landscaping, new features as per stakeholder engagement(s) detail concept of the project
  - Stormwater concept plan
  - Indicative services plan
  - Review of Environmental Factors (REF)
- Allow for online meetings (or in person if preferred by the tenderer) for Council review meetings and discussions

## **Stage 2 – Complete Design Documentation**

- Progress concept to design documentation ready for planning approvals and tendering including but not limited to design documentation of:
  - Full architectural design documentation of the site including soft and hard landscaping as well as all new features of the project
  - Civil and structural designs
  - Stormwater design documentation including a stormwater management plan
  - Electrical design documentation
  - Fire compliance design documentation
  - Traffic assessment report
  - Design of accessibility compliance
  - Irrigation design
  - Environmental assessment report
  - BCA compliance report
  - Full specifications
- Design documents shall be to a quality and detail that a cost estimate be made by a qualified quantity surveyor – see **Stage 3 – Cost estimates**
- The design documentation shall also be ready for building approvals and construction tendering
- Work with council on design documentation review(s) of this stage and the preparation to lodge a development application (only for the provision of documentation, application will be lodged by Council)

## **Stage 3 – Cost estimate(s)**

Tenderers shall provide a **separate cost item** for engaging a suitably qualified quantity surveyor to carry out a cost estimate of the project based on Stage 2 of the design works. This cost item shall be an option to Council. Council may or may not proceed with this cost and this stage of works.

## **Council reviews of design package(s)**

Broken Hill City Council will review completed documentation at each stage of the design project. Reviews will be undertaken at the following stages:

1. Review 1: Documentation because of Key stakeholder engagements
2. Review 2: Stage 1 – Concept Design
3. Review 3: Stage 2 – Complete Design Documentation
4. Review 4: Stage 3 – Cost estimate(s) – if applicable

The contractor shall only proceed to the next stage of works when confirmed in writing by Council.

### **Option for 3D Renderings**

Tenderers shall provide a separate cost in the Quotation Offer Form for a 3D rendering of the new site plan for the purposes of community and stakeholder viewing.

#### **3.2.1 Objectives**

Derived from the Broken Hill 2040 Community Strategic Plan, the objective of this program is to enhance a welcoming feel to the city with considerations to maintaining a strong cultural and heritage sense to the central business district for all demographic groups in Broken Hill and visitors coming into the township.

The key objectives are:

1.1.4 Provide opportunities to practice traditions in community settings and experience good social and cultural health

1.4.1 Raise awareness of cultural and community events that celebrate Broken Hill's cultural diversity

1.4.3 Ensure our residents and visitors are aware of the importance of Broken Hill in Australian and global history and in particular that the criteria which resulted in the City being listed as Australia's first city on the National Heritage List, is widely known and valued

1.4.5 Celebrate the City's milestones and traditions publicly to increase the opportunity for tourism interest, social interaction and gathering

1.4.6 Promote the importance and maintenance of the heritage and history of the City through initiatives that will increase heritage value locally, nationally and internationally

1.5.1 Maintain the character of our historic City through good design and initiatives

1.5.2 Maintain an attractive and welcoming Central Business and Activities District

1.5.6 Seek opportunities for vibrant spaces and inclusive facilities to increase access to active and passive recreational facilities

### **3.3 Specific Requirements of the Tender**

#### **3.3.1 Deliverables**

As per section 3.2 of this request.

#### **Site Inspections**

The respondent is to include all site inspections required to adequately carry out the works required under this request for tender. The respondent shall **quantify** the number of site inspections included in their response.

#### **3.3.2 Inclusions**

This Tender encompasses all day-to-day management of design services as outlined in Section 3.2 and deliverables outlined in Section 3.3.1.

#### **Performance Requirements:**

- Design life of all infrastructure and services of 50 years minimum.
- Well considered services design

#### **3.3.3 Exclusions**

- Construction and construction phase services are excluded from this Tender.

### 3.4 Indicative Project Timeline

Project timeline is subject to timelines nominated by the successful Tenderer and agreed upon with Council. An indicative project timeline is presented below.

DELIVERABLE	TIME/DURATION	EXPECTED DATE OF DELIVERY
Tender advertised	Not applicable	25/11/2022
Advertising Period	21 days	16/12/2022
Tenders Close	Not applicable	16/12/2022
Award Tender	2 weeks	30/01/2023
Stage 1 - Concept Design	4 Weeks	03/03/2023
Council Review Period	2 Weeks	17/03/2023
Stage 2 – Complete Design Documentation	4 Weeks	17/04/2023
Council Review Period	1 Weeks	28/04/2023
Detailed Design Complete/Project Handover	1 Weeks	May 2023

## 4. GENERAL CONDITIONS OF CONTRACT

### 4.1 Execution of Contract

Acceptance of a Tender shall only be evidenced by a Letter of Acceptance or Official Purchase Order issued by the Principal. No other document or action shall constitute acceptance of a Tender.

### 4.2 Documents to Form the Contract

Upon acceptance of a Tender, the following documents shall form the contract.

- The Letter of Acceptance;
- The Request for Tender (including attachments), except any Sections, components of Attachments specifically excluded from forming part of the Contract;
- The Tender Response Schedules excluding any forms of schedules specifically excluded from forming part of the contract;
- The Formal Instrument of Agreement;
- Any clarifications, corrections, alterations, additional information and documents submitted by the Tenderer and specifically referenced in the Principal's Letter of Acceptance;
- Any other documents specifically referenced in the Letter of Acceptance.

### **4.3 General Conditions of Contract for the Design Services for the Town Square Re-Development**

Australian Standard AS 4122-2010 General conditions of contract for consultants may also form part of the contract documentation for the Design Services under this request for tender. This document is available from Standards Australia. However, Council also reserves the right to use or not to use AS 4122. The document is available from Standards Australia.

### **4.4 Contractors Obligations**

#### **4.4.1 Professional Standards of Care**

The Contractor shall perform the services in a diligent manner and to the standard of skill and care expected of a contractor experienced in the provision of the type of services required by the Principal in accordance with this Contract.

#### **4.4.2 Knowledge of Requirements of the Principal**

The Contractor shall use all reasonable efforts to inform itself of the requirements of the Principal and shall regularly consult with the Principal during the performance of the services.

#### **4.4.3 Discrepancies in Information**

If the Contractor considers that information, documents and other particulars made available to it are inadequate or contain errors or ambiguities, the Contractor shall give written notice as soon as practicable to the Principal detailing the errors or ambiguities.

#### **4.4.4 Program**

The tenderer will provide a project program within the scope that directly responds to the requirements of the Specification in accordance with the indicative project timeline.

#### **4.4.5 Delay**

Not less than one day after becoming aware of any matter which is likely to change or which has changed the scope or timing of the services, the Contractor shall give written notice to the Principal detailing the circumstances and extent or likely extent of the change or delay.

#### **4.4.6 Alterations to Approved Documents**

The Contractor shall not make any alteration to, addition to or omission from the Warnock Street Master Plan, other approved documents, or requirements set out in this tender without the prior written approval of the Principal.

#### **4.4.7 Cooperation by the Contractor**

The Contractor shall liaise, cooperate, and confer with others as directed by the Principal.

#### **4.4.8 Contractor's Relationship with the Principal**

The Contractor shall not act outside the scope of the authority conferred on it by this Contract and shall not bind the Principal in any way or hold itself out as having an authority to do so, except where authorised by the Principal in writing.

#### **4.4.9 Commercial in Confidence**

The Contractor and its servants or agents shall not, without the prior written consent of the Principal, at any time issue any statement or communication or make any representation directly or indirectly in connection with the services or this Contract to any person or entity not a party to this Contract other than as necessary to perform the services, or with respect to any matter already within the public domain.

#### **4.4.10 Contractor's Representative**

The person named in the Schedules as the Contractor's representative shall be responsible on behalf of the Contractor for all aspects of the services and shall have the legal power to bind the Contractor in respect of any matters arising in connection with the services. Any substituted representative shall be notified immediately in writing to the Principal.

#### **4.4.11 Subcontracting and Assignment**

The Contractor shall not assign or subcontract any part of the services without the prior written approval of the Principal. Any such approval given by the Principal shall not relieve the Contractor from its obligations and liabilities pursuant to the Contract.

#### **4.4.12 Statutory Requirements**

The Contractor shall ensure that all work done in connection with the services complies with the requirements of all applicable legislation, codes and Principal's requirements and all relevant Australian Standards applicable to the services.

#### **4.4.13 Security of Premises**

The Contractor shall comply with all directions, procedures and policies relating to work health and safety and security pertaining to the Principal's premises.

### **4.5 Principal's Obligations**

#### **4.5.1 Provide Information**

The Principal shall as soon as practicable, or as required by this Contract:

- Make available to the Contractor all relevant instructions, information, documents and any other material and particulars;
- Answer queries made by the Contractor, relating to the Principal's requirements in connection with this Contract.

#### **4.5.2 Appoint a Representative**

The Principal will appoint a Principal's representative. The Principal's representative has the legal power to bind the Principal in respect of any matters arising in connection with this Contract.

### **4.6 Payment**

#### **4.6.1 Fee**

In consideration of the provision of the services, the Principal shall pay the Contractor the fee set out in the Fee Schedule, subject to this Contract.

#### **4.6.2 Effect of Payment of the Fee**

Payment, in part or in total, of the fee shall not constitute an acceptance by the Principal of the services and does not amount to a waiver of any right or action which the Principal may have at any time against the Contractor.

#### **4.6.3 Reimbursable Expenses**

All costs, expenses, fees or charges incurred or paid by the Contractor shall be deemed to be covered by the fee, unless they are specifically detailed as reimbursable expenses in this Contract. Where reimbursable expenses are agreed, the Contractor shall first obtain the Principal's specific written approval, prior to incurring them.

#### **4.6.4 Timing of Payment**

On completion of agreed deliverables the Contractor shall lodge with the Principal a payment claim for the services performed (and for any approved reimbursable expenses).

The Principal shall make a payment within thirty days from the end of the month in which the claim is received, but if the Principal requests access to information required to substantiate the claim, the time for payment shall be extended by the number of days elapsing between the date of the Principal's request and the date access to the information is granted.

#### **4.6.5 Conditions Precedent**

The Contractor shall not be entitled to any payment until it has submitted the program of work and proof of insurance required under this Contract. The Contractor shall not be entitled to any payment until it has submitted a completed Subcontractors Statement covering the period of time to which the payment claim relates.

### **4.7 Variations**

#### **4.7.1 Instruction**

The Principal may instruct the Contractor in writing to vary the services, so long as the variation is consistent with the general nature of the services. The Contractor shall comply with such an instruction.

#### **4.7.2 Request for Estimate**

The Principal may, at any time, request the Contractor to provide a written estimate of the time, cost and programming effects of a variation or a proposed variation.

A written estimate shall be provided by the Contractor within a time nominated by the Principal.

#### **4.7.3 Change in Principal's Operations**

The Principal and Contractor acknowledge that a significant change in the operations of the Principal such as an amalgamation with another Council, sharing of major operational or administrative services with other councils or other similar events that constitute significant changes in operations which could give rise to variations in the Contract.

### **4.8 Intellectual Property**

#### **4.8.1 Vesting**

The Contractor hereby as a beneficial owner irrevocably assigns to the Principal ownership of intellectual property rights including without limitation all copyright, rights to inventions (whether patentable or not) all industrial designs (whether registrable or not) and all other intellectual property rights as are not already vested in the Principal in all materials (whether completed or not or in the course of preparation) produced in connection with or pursuant to this Contract.

If requested by the Principal to do so, the Contractor shall deliver all such materials to the Principal. The Contractor upon request of the Principal shall execute and procure the execution of all documents and do and procure the doing of all acts and things requested by the Principal for the purpose of giving effect to this Clause. The Contractor's obligation under this clause shall survive the termination of this Contract.

The Contractor warrants that it shall not breach any intellectual property rights of any third party.

#### **4.8.2 Delivery**

On, or as soon as practicable after, the execution or earlier termination of this Contract, the Contractor shall deliver to the Principal all contract materials and / or services.

#### **4.8.3 Limitations**

The Contractor shall 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 shall not unreasonably withhold approval, it may attach any terms and conditions it considers appropriate.

### **4.9 Indemnity and Insurance**

#### **4.9.1 Indemnity**

The Contractor shall be responsible for and shall indemnify the Principal against liability for all loss, damage or injury to persons or property to the extent that such is caused or contributed to by the Contractor, or its employees or agents.

Any claim or demand made to the Contractor or notice given to the Contractor for loss, damage or injury to person or property arising out of the performance of this Contract, shall be reported to the Principal within one day.

#### **4.9.2 Insurance**

The Contractor shall affect all insurance required to be effected by law. Prior to commencement of the work, the Contractor shall take out and subsequently maintain in force the following insurance policies. The Contractor shall ensure that any subcontractors also take out and subsequently maintain in force the insurance policies as described below in clauses 4.9.3, 4.9.4 and 4.9.5.

#### **4.9.3 Professional Indemnity Insurance**

The Contractor shall affect Professional Indemnity Insurance for a minimum of \$20 million. This shall be kept current, with evidence of renewal to be provided for all and any period of the Contract. This insurance shall be maintained for a period of six years after completion of the services.

#### **4.9.4 Workers Compensation Insurance**

Workers Compensation Insurance shall be affected by the Contractor as required by law in respect of any persons deemed to be an employee.

#### **4.9.5 Public Liability Insurance**

The Contractor shall affect Public Liability Insurance for a minimum of \$20 million. This shall be kept current, with evidence of renewal to be provided for all and any period of the Contract.

### **4.10 Records**

The Contractor shall keep correct accounts, records and timesheets in accordance with accounting principles generally applied in commercial practice in respect of its time, billing, reimbursable expenditure and fees and reimbursements payable to others properly engaged pursuant to this Contract.

### **4.11 Termination of Contract**

#### **4.11.1 Termination by the Principal (Other than for Default by the Contractor)**

The Principal reserves the right to terminate the contract should:

- The supplied services prove to be of unacceptable quality. Determination of acceptability will be at the sole discretion of the Principal;
- The Contractor fails to adhere to relevant Broken Hill City Council's policies and plans or obey reasonable directions from the Principal;
- The Contractor fails to renew insurance policies, registrations, etc and to provide the Principal copies when required; or
- The Contractor fails to deliver according to the Request for Tender Specification.

The Principal may terminate whole or part of the performance of the services at any time, by written termination notice addressed to the Contractor. The Contractor shall immediately comply with such a notice. Upon termination of the services pursuant to this clause, the Contractor's only entitlement to payment shall be the aggregate of:

1. The amount of the fee covering services performed up to the date of termination notice less any previous payments; and
2. The amount of approved reimbursable expenses incurred up to the date of termination notice less any previous payments; and
3. A further amount, being 10% of the residual of the fee (excluding any provisional sums covering the terminated component of the services).

As soon as practical after ceasing work under this clause, the Contractor shall lodge a claim with the Principal for full and final payment as set out in this clause.

#### **4.11.2 Termination by the Principal for Default by the Contractor**

If the Contractor becomes bankrupt, or insolvent, or enters into a scheme or arrangement with its creditors, the Principal may terminate this Contract by written termination notice addressed to the Contractor.

If the Contractor:

- Fails to carry out the services with due diligence and competence;
- Without reasonable cause suspends the carrying out of the services; or
- Commits a substantial breach of the Contract;

the Principal may terminate this Contract by written termination notice addressed to the Contractor if the Contractor fails to remedy the default within fourteen days from the date of service of a default notice by the Principal on the Contractor specifying the relevant default.

Upon termination of this Contract under this clause, the Contractor's only entitlement to payment shall be for the services performed by the Contractor as at the date of the termination notice, taking into account any adjustments and deductions for loss or damage suffered, or reasonably likely to be suffered by the Principal as a consequence of breach by the Contractor. The Principal may recover any short-fall from the Contractor as a debt due and payable.

#### **4.11.3 Termination by the Contractor**

If the Principal becomes insolvent or enters into a scheme of arrangement with its creditors, the Contractor may forthwith terminate this Contract by written notice addressed to the Principal.

If the Principal:

- Fails to pay the Contractor in accordance with this Contract; or
- Commits a substantial breach of this Contract;

the Contractor may terminate this Contract by written termination notice addressed to the Principal if the Principal fails to remedy the default within fourteen days from the date of service of a default notice by the Contractor on the Principal specifying the relevant default.

Upon termination of the services pursuant to this clause, the Contractor's only entitlement to payment shall be the aggregate of:

- The amount of the fee covering services performed up to the date of the termination notice (less any previous payments);
- The amount of approved reimbursable expenses incurred up to the date of termination notice (less any previous payments);
- A further amount, being 10% of the residual of the fee (excluding any provisional sums) covering the terminated component of the services.

## 5. SELECTION CRITERIA

SELECTION CRITERIA	WEIGHTING
Price	40%
Level of local content provided	10%
Project specific methodology and understanding of the project's timeline	25%
Previous projects' experience and the experience and qualifications of key staff allocated to this project	25%
At least three referees provided	Yes / No
Insurances provided	Yes / No
Work Health and Safety management procedures and documentation provided	Yes / No
Relevant professional accreditations	Yes / No
ISO Certifications (such as ISO 9001)	Yes / No

## 6. TENDERER'S OFFER FORM

### Offer Form

#### Privacy Notification

- By completing and submitting this Offer Form and attaching any related information or documentation, the Tenderer will be providing the Principal with "personal information" within the meaning of the *Privacy and Personal Information Protection Act 1998*.
- The purpose of the Principal collecting the personal information is to assist the Principal; to identify, access and evaluate the Tender and to notify the Tenderer of any matters required under Part 7 of the *Local Government (General) Regulation 2005*.
- If the personal information requested in this Offer Form and the Attachments is not provided, the Principal may be unable to identify, consider or evaluate the Tender.
- If you are the successful Tenderer, some of the personal information provided, such as your name and successful tender price, may be disclosed to unsuccessful Tenderers.
- The personal information may also be included in business papers for Council meetings. Unless the relevant part of the meeting is closed to the public, Council is required to make business papers available for inspection by the public.
- The Principal may make any personal information provided available for public inspection in accordance with the *Local Government Act 1993* or the *Government Information (Public Access) Act 2009*.
- The Tenderer may apply for access or amendment to personal information held by the Principal. The Tenderer may also make a request that the Principal suppress your personal information from being made publicly available. The Principal will consider any such application in accordance with the relevant legislation.

Date:

Between (Principal): Broken Hill City Council  
240 Blende Street  
BROKEN HILL NSW 2880

AND

Name of person, firm or company tendering (Tenderer): (USE BLOCK LETTERS)

---

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

---

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

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

If the Tenderer is a company, the full names of all Directors must be stated here:

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Name of Tenderer (Entity): \_\_\_\_\_

Trading Name (Business Name): \_\_\_\_\_

Business Type (Sole Trader/Partnership/Registered Company, etc):

---

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

Mailing Address (if different from above): \_\_\_\_\_

Australian Business Number (ABN): \_\_\_\_\_

Australian Company Number (ACN): \_\_\_\_\_

Registration or Licence Number: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person Telephone Number: \_\_\_\_\_

Contact Person Email Address: \_\_\_\_\_

## **This Deed Witness**

### **Recitals**

1. The Principal has invited tenders for a Contract for T22/14 - Request for Tender - Town Square Redevelopment - Design Consultant Services
2. The Tenderer wishes to submit a Tender on and subject to this Offer Form and the Request for Tender.
3. This Offer Form is intended to take effect as a deed.

### **Tender**

The Tenderer hereby submits its Tender on and subject to the Request for Tender, including the Conditions of Tender. The Tenderer submits with this Offer Form the following completed Tender Attachments:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

The services are to be provided for the Lump Sum of:

\$ \_\_\_\_\_ INCL GST.

### **Formation of Contract**

The Tenderer agrees that, upon service by the Principal of a Notice of Acceptance, a contract shall be formed between the parties on and subject to:

1. This Offer Form;
2. The Formal Instrument of Agreement set out in Appendix B of the Request for Tender;
3. The General Conditions of Contract set out in Section 4 of the Request for Tender;
4. The Special Conditions of Contract set out in Section 5 of the Request for Tender;
5. The Specifications set out in Section 3 of the Request for Contract;
6. The Attachments as required by Request for Tender.

### **Execution of Agreement**

The Tenderer agrees to execute as a deed and at the direction of the Principal, the Formal Instrument of Agreement.

### **Variations**

This deed may only be varied or replaced by a document duly executed by both parties.

**Definitions**

Save for terms defined in this deed, terms defined in the Request for Tender have the same meaning when used in this deed.

**Governing Law**

This deed is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

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Tenderers Name

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Tenderers Signature

In the presence of:

---

Witness Name

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Witness Signature

---

Witness Usual Address

**Executed** by the Tenderer as a deed poll.

If the Tenderer is a **company** and is required to execute documents **under seal**, the company must execute this deed under seal in the following manner, in accordance with Section 127(2) of the *Corporations Act 2001*:

The Common Seal of

Affix seal here:

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Company Name

Was hereunto affixed in accordance with its  
Articles of Association in the presence of:

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**Director #1 Signature**

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Full name

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Usual Address

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Director #2 (or Company Secretary) Signature

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Full name

---

Usual Address

**Executed** by the Tenderer as a deed poll.

If the Tenderer is a **company** and is executing the documents **without seal**, the company must execute this deed under seal in the following manner, in accordance with Section 127(1) of the *Corporations Act 2001*:

Executed by

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Company Name

By being signed by the following persons who are authorised to sign for the company

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**Director #1**

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Full name

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Usual Address

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**Director #2 (or Company Secretary)**

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Full name

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Usual Address

**Executed** by the Tenderer as a deed poll.

If the Tenderer is a **Proprietary Company** with a **Sole Director** the company must execute this deed under seal in the following manner, in accordance with Section 127(1)(c) of the *Corporations Act 2001*:

Executed by

---

Company Name

By being signed by the following persons who are authorised to sign for the company

---

**Director**

---

Full name

---

Usual Address

**Executed** by the Tenderer as a deed poll.

If the Tenderer is an **individual**:

By

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Signature

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Full name

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Usual Address

In the presence of:

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Witness Signature

---

Witness Full name

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Witness Usual Address

**Executed** by the Tenderer as a deed poll.

If the Tenderer is a **partnership** the partnership must execute this deed in the following manner:

Signed Sealed and Delivered  
on behalf of

\_\_\_\_\_  
Firm/Partnership Name

By being signed by the following person(s) who are authorised to bind the firm in accordance with the Section 5 and 6 of the *Partnership Act 1892*

\_\_\_\_\_  
**Partner #1 Signature**

\_\_\_\_\_  
**Partner #2 Signature**

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Usual Address

\_\_\_\_\_  
Usual Address

In the presence of:

In the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Full name

\_\_\_\_\_  
Witness Full name

\_\_\_\_\_  
Witness Usual Address

\_\_\_\_\_  
Witness Usual Address

## 7. TENDER RESPONSE SCHEDULES

### Trading History

How many years has the Tenderer been in the business under its current business name?

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How many years' experience has the Tenderer had in the type of service it would be required to provide under the Contract?

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Have any civil court or tribunal judgments been obtained against the Tenderer in the past? If so, please provide details.

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### Contract History of the Tenderer

List any contracts of a similar type and size that the Tenderer has completed or is currently engaged in:

#### Previous Contracts

Description of Contract: \_\_\_\_\_

Location of Contract: \_\_\_\_\_

Contract Client: \_\_\_\_\_

Client Contact Details: \_\_\_\_\_

Indicative Value of Work: \_\_\_\_\_

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

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

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Description of Contract: \_\_\_\_\_

Location of Contract: \_\_\_\_\_

Contract Client: \_\_\_\_\_

Client Contact Details: \_\_\_\_\_

Indicative Value of Work: \_\_\_\_\_

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

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

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Description of Contract: \_\_\_\_\_

Location of Contract: \_\_\_\_\_

Contract Client: \_\_\_\_\_

Client Contact Details: \_\_\_\_\_

Indicative Value of Work: \_\_\_\_\_

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

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

### **Current Contracts**

Description of Contract: \_\_\_\_\_

Location of Contract: \_\_\_\_\_

Contract Client: \_\_\_\_\_

Client Contact Details: \_\_\_\_\_

Indicative Value of Work: \_\_\_\_\_

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

Anticipated Completion Date: \_\_\_\_\_

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Description of Contract: \_\_\_\_\_

Location of Contract: \_\_\_\_\_

Contract Client: \_\_\_\_\_

Client Contact Details: \_\_\_\_\_

Indicative Value of Work: \_\_\_\_\_

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

Anticipated Completion Date: \_\_\_\_\_

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Description of Contract: \_\_\_\_\_

Location of Contract: \_\_\_\_\_

Contract Client: \_\_\_\_\_

Client Contact Details: \_\_\_\_\_

Indicative Value of Work: \_\_\_\_\_

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

Anticipated Completion Date: \_\_\_\_\_

### **Tenderer's Resources**

State the number of personnel and the equivalent full-time staff that the Tenderer intends to employ in performing this Contract:

Number of Personnel: \_\_\_\_\_

Equivalent Full Time Staff: \_\_\_\_\_

Will any subcontractors be engaged by the Tenderer in performing this Contract YES / NO

If YES, provide the following details:

Name of Subcontractor: \_\_\_\_\_

Qualifications, Skills and Experience: \_\_\_\_\_

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Name of Subcontractor: \_\_\_\_\_

Qualifications, Skills and Experience: \_\_\_\_\_

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Name of Subcontractor: \_\_\_\_\_

Qualifications, Skills and Experience: \_\_\_\_\_

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**Tenderer's Financial Interest**

Does the Tenderer have a financial interest in other types of businesses? YES / NO

If YES, provide details: \_\_\_\_\_

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**Quality Assurance**

Does the Tenderer have a written Quality Assurance Policy? YES / NO

If YES, please provide a copy of the policy.

If NO, how does the Tenderer ensure a quality product? Provide examples: \_\_\_\_\_

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Does the Tenderer have a Quality Assurance System certified by a recognised independent authority? YES / NO

If YES, state the accreditation details: \_\_\_\_\_

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### Professional Referees for Tenderer

List the details of three professional referees for the Tenderer:

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

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

Organisation: \_\_\_\_\_

Contact Number: \_\_\_\_\_

Type of work performed by Tenderer for client: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

Organisation: \_\_\_\_\_

Contact Number: \_\_\_\_\_

Type of work performed by Tenderer for client: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

Organisation: \_\_\_\_\_

Contact Number: \_\_\_\_\_

Type of work performed by Tenderer for client: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Work Health and Safety

Does the Tenderer have a written Work Health & Safety Policy?

YES / NO

If YES, please provide a copy of the policy.

Does the Tenderer have any WH&S documentation (Safe Work Method Statements), such as manuals or booklets?

If YES, please provide a copy of the Contents Page(s).

If NO, how does your company manage WH&S? Provide examples:

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Does your Safe System of Work cover the use of subcontractors?

YES / NO

If YES, please provide examples: \_\_\_\_\_

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If NO, what procedures do you have to ensure subcontractors meet their WH&S obligations?

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**Equal Employment Opportunity**

Does the Tenderer have an Equal Employment Opportunity Policy?

YES / NO

If YES, please provide a copy of the policy.

Environmental Management Policy

Does the Tenderer have an Environmental Management Policy?

YES / NO

If YES, please provide a copy of the policy.

Does the Tenderer have an Environmental Management System certified by a recognised independent authority?

YES / NO

If YES, please state the accreditation details: \_\_\_\_\_

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If NO, how do you ensure control of environmental impacts associated with your activities?

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### **Completion of Contract**

Demonstrate the Tenderer's ability to deliver the design services within any specified timeframe as determined in the Specifications detailed in Section 3 of this Request for Tender.

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Demonstrate the Tenderer's ability to deliver the design services in compliance to the specified quality standards as determined in the Specifications detailed in Section 3 of this Request for Tender.

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## Addenda

List all addenda, additional information and correspondence (if any) which the Tenderer received from the Principal prior to the Request for Tender closing date and time.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

## Additional Information

The Tenderer provides (below or in an attachment to this Offer Form) any additional information required by the Principal and/or other information considered by the Tenderer to be relevant to this Request for Tender:

[illegible]

### Non-Conforming Response

If the Tenderer's response does not conform to the requirements of this Request for Tender, the following details of non-conformity are:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

### Conflict of Interest

If the Tenderer has a conflict of interest (or any potential for a conflict of interest) concerning this Request for Tender, details of that conflict or potential conflict are as follows:

[illegible]

## Insurance Details

A copy of the Certificate of Currency must be provided for ALL insurances.

### Public Liability Insurance

Name of Insurance Company: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Amount of Cover: \$\_\_\_\_\_

Period of Cover: \_\_\_\_\_ to \_\_\_\_\_

### Workers Compensation Insurance

Name of Insurance Company: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Period of Cover: \_\_\_\_\_ to \_\_\_\_\_

### Public Liability Insurance

Name of Insurance Company: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Amount of Cover: \$\_\_\_\_\_

Period of Cover: \_\_\_\_\_ to \_\_\_\_\_

### Personal Accident Insurance (If individual)

Name of Insurance Company: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Period of Cover: \_\_\_\_\_ to \_\_\_\_\_

### Plant/Vehicle Insurance/Third Party Property Damage

Name of Insurance Company: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Period of Cover: \_\_\_\_\_ to \_\_\_\_\_

**Schedule of Rates (if applicable)**

Schedule of Rates for services.

All prices are to be inclusive of GST.

List items from Specification (Section 3).

ITEM	DESCRIPTION	UNIT	RATE PER UNIT	DELIVERY RATE PER UNIT	TOTAL RATE
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$

**Schedule of Sub-Suppliers/Contractors (if applicable)**

If the Tenderer is engaging sub-suppliers/contractors for the detailed design services, please complete the below table.

Schedule of sub-suppliers/contractors for services:

ITEM	SUPPLIER NAME	SUPPLIER ADDRESS
Supply Summary:		
Supply Summary:		
Supply Summary:		
Supply Summary:		
Supply Summary:		

**Schedule of Producers/Manufacturers (if applicable)**

If the Tenderer is not responsible for the detailed design services as part of the construction, please complete the below.

Schedule of Producers/Manufacturers for services:

ITEM	SUPPLIER NAME	SUPPLIER ADDRESS
Supply Summary:		
Supply Summary:		
Supply Summary:		
Supply Summary:		
Supply Summary:		

### Schedule of Compliance

Tenderers must complete the compliance schedule below:

COMPLIANCE SELECTION CRITERIA	YES	NO	ATTACHED
Product Specifications			
Quality Management System ISO 9001 compliance			
Statutory Requirements			
WH&S management including verified documentation of Safety Performance			
Environmental Management			
Insurance			

### Tenderer's Checklist

- ☐ Tender Offer Form (Section 6) and required documentation
- ☐ Specification Criteria Documentation (Section 3)
- ☐ Tender Response Schedules (Section 7)
- ☐ Quality Assurance Policy
- ☐ Work Health & Safety Policy
- ☐ Work Health & Safety Documentation
- ☐ Equal Employment Opportunity Policy
- ☐ Environmental Management Policy
- ☐ Schedule of Rates
- ☐ Schedule of Sub-Suppliers/Contractors
- ☐ Schedule of Producers/Manufacturers
- ☐ Schedule of Compliance

## APPENDIX A - NOTICE OF ACCEPTANCE

From: Broken Hill City Council of 240 Blende Street, Broken Hill NSW 2880

To: <Enter successful Tenderer Name and Address>

Date: <Enter date of acceptance>

The Principal has by resolution of the Council determined to accept the Tender submitted by you under the Offer Form dated <DATE>.

This Notice of Acceptance constitutes an irrevocable acceptance of that Tender as set out in the Tenderer's Offer Form.

**SIGNED** for and behalf of the  
Broken Hill City Council  
by its duly authorised officer

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Signature

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Name

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Title

## APPENDIX B - FORMAL INSTRUMENT OF AGREEMENT

Date [XX/XX/20XX](#)

### Between

Broken Hill City Council

of 240 Blende Street  
Broken Hill NSW 2880

(Principal)

### And

[\[Name\]](#) [\[ABN\]](#) [\[Address\]](#)

(Contractor)

### Recitals

- A. The Principal invited tenders for [\[insert description of contract\]](#) (**Request for Tender**).
- B. The Contractor's Tender to the Principal has been accepted.
- C. The parties wish to formalise their agreement on and subject to the terms of this deed.
- D. This agreement is executed as and is intended to take effect as, a deed.

### It Is Agreed

#### 1. Definitions

Words defined in the Request for Tender have the same meaning in this Formal Instrument of Agreement.

#### 2. Agreement

The following documents comprise the agreement between the parties:

- 1.1 this Formal Instrument of Agreement; and
- 1.2 the attached:
  - 1.2.1 Special Conditions of Contract (set out herein as Section 5);
  - 1.2.2 General Conditions of Contract (set out herein as Section 4);
  - 1.2.3 Specifications (set out herein as Section 3);
  - 1.2.4 the attached completed Tender Response Schedules (set out herein as Section 7); and
  - 1.2.5 [other]

### 3. Agreement Discharged and Released

On the full and effective execution of this deed, the agreement constituted pursuant to the Offer Form is discharged and released, save that, discharge and release is without prejudice to and shall not affect, any accrued rights or remedies arising in relation thereto.

**Executed** by the parties as a deed

**Signed** for and on behalf of the **Broken Hill City Council** by its duly authorised officer.

)

)

)

)

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

Title:

1. If the Tenderer is a **company** and is required to execute documents **under seal**, the company must execute this deed under seal in the following manner, in accordance with section 127(2) of the *Corporations Act 2001*:

The Common Seal of

\_\_\_\_\_

Affix seal here:

Company Name

was hereunto affixed in accordance with its

Articles of Association in the presence of:

\_\_\_\_\_  
**Director #1 Signature**

Director #2 Signature (or Company Secretary)

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Usual Address

\_\_\_\_\_  
Usual Address

2. If the Tenderer is a **company** and is executing the documents **without seal**, the company must execute this deed in the following manner in accordance with section 127(1) of the *Corporations Act 2001*:

Executed by

Company Name

by being signed by the following persons who are authorised to sign for the company

Director #1 Signature

Full name

Usual address

Director # 2 Signature (or Company Secretary)

Full name

Usual address

3. If the Tenderer is a **proprietary company** with a **sole director**, the company must execute this deed in the following manner in accordance with section 127(1)(c) of the *Corporations Act 2001*:

Executed by

Company Name

by being signed by that person who is  
the sole director of the company

Director Signature

Full name

Usual address

4. If the Tenderer is an **individual**:

Signed Sealed and Delivered

by

Signature

Full name

Usual address

in the presence of:

Witness Signature

Witness Full name

Witness Usual address

5. If the Tenderer is a **partnership**, the partnership must execute this deed in the following manner:

Signed Sealed and Delivered

on behalf of

**Firm/Partnership Name**

by being signed by the following person(s) who are authorised to bind the firm in accordance with sections 5 and 6 of the *Partnership Act 1919*.

Partner #1 Signature

Partner #2 Signature

Full name

Full name

Usual address

Usual address

in the presence of:

in the presence of:

Witness Signature

Witness Signature

Witness Full name

Witness Full name

Witness Usual address

Witness Usual address



[www.brokenhill.nsw.gov.au](http://www.brokenhill.nsw.gov.au)