



City of
Melville

ATTACHMENT – DRAFT CONTRACT

DRAFT ONLY
DO NOT COMPLETE AT THIS STAGE
READ AND RETAIN

RFQ222320

Contract for the Supply of PHAZE Urban Art Project

between the

City of Melville

ABN: 81 152 433 900

and

XXXXXXX

ABN: XX XXX XXX XXX

TABLE OF CONTENTS

ATTACHMENT – DRAFT CONTRACT	1
DETAILS	5
AGREED TERMS	6
1. DEFINED TERMS AND INTERPRETATION	6
1.1 DEFINED TERMS	6
1.2 INTERPRETATION	9
2. AGREEMENT	10
2.1 COVENANTS	10
2.2 TERM	10
2.3 OPTION PERIODS	10
2.4 EXTENSION OF CONTRACT TERM	11
2.5 CONTRACT PRICE	11
2.6 CUSTOM DUTIES	12
2.7 GST	12
2.8 PAYMENT TERMS	12
2.9 PRICE VARIATIONS	13
3. SERVICES	14
3.1 SAMPLES	14
3.2 SUPPLY OF GOODS AND SERVICES	14
3.3 REMOVAL OF CONTRACTOR'S EMPLOYEES	15
3.4 SUBCONTRACTING	15
3.5 WARRANTY	16
3.6 SUPPLY BY PURCHASE ORDER	16
3.7 DELIVERY	17
3.8 TIME	17
3.9 CANCELLATION OF A PURCHASE ORDER	17
3.10 WORKING HOURS	17
3.11 SECURITY	18
3.12 INSURANCE	18
3.13 PROTECTION OF PEOPLE AND PROPERTY	20
3.14 NOTICE OF INJURY OR DEATH	20
3.15 INDEMNITY	20
3.16 TITLE, RISK AND ACCEPTANCE OF GOODS	21
3.17 DEFECTS LIABILITY	22
3.18 DIRECTIONS FROM THE CITY	22
3.19 FAILURE TO PERFORM OBLIGATIONS	22
3.20 SUSPENSION OF SERVICES	22
3.21 VARIATION	23
4. RECORD KEEPING AND AUDIT	23
4.1 RECORDS	23
5. MISCELLANEOUS	23
5.1 CONTRACTOR TO PROVIDE ACCESS	23
5.2 CONFIDENTIALITY	23
5.3 CYBER SECURITY	24
5.4 MEDIA	24
5.5 INTELLECTUAL PROPERTY RIGHTS	25
5.6 MORAL RIGHTS	25
5.7 PATENT RIGHTS	25
5.8 PATTERNS, JIGS, DIES AND DRAWINGS	26

City of Melville PHAZE Urban Art Project 2022-2024
--

5.9	DISCRETION NOT FETTERED.....	26
5.10	RELATIONSHIP BETWEEN THE CITY AND THE CONTRACTOR.....	26
5.11	ENTIRE AGREEMENT – NO WARRANTY.....	26
5.12	ASSIGNMENT.....	26
5.13	NOTICES.....	27
5.14	DISPUTE RESOLUTION.....	27
5.15	FORCE MAJEURE.....	28
5.16	DEFAULT AND TERMINATION.....	29
5.17	SEVERABILITY.....	30
5.18	MODIFICATION AND WAIVER.....	30
5.19	LAWS OF WESTERN AUSTRALIA APPLY.....	30
5.20	LEGAL COSTS.....	30
5.21	ENVIRONMENTAL MANAGEMENT/FLORA CONSERVATION.....	30
5.22	STATEMENT OF BUSINESS ETHICS.....	31
5.23	PAYMENT OF BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND LEVY	31
SCHEDULE 1 – CONTRACT DETAILS.....		32
SCHEDULE 2 – SPECIFICATIONS / STATEMENT OF WORK AND SPECIAL		
CONDITIONS.....		34
1.1	BACKGROUND.....	34
1.2	SCOPE OF SERVICES.....	34
1.2.1	LOCATIONS.....	34
1.2.2	DETERMINE DATES.....	35
1.2.3	ADVERTISING AND PROMOTIONS.....	35
1.2.4	REGISTRATIONS.....	35
1.2.5	ASSISTANT ARTISTS.....	35
1.2.6	SUPPLIES.....	35
1.2.7	CATERING.....	36
1.2.8	REMOVAL OF EXISTING ART/GRAFFITI AND BASE COATING.....	36
1.2.9	SIZE OF SESSION.....	36
1.2.10	NUMBER OF LOCATION SESSIONS.....	36
1.2.11	PAINTABLE AREAS.....	37
1.2.12	SESSION RESPONSIBILITIES.....	37
1.3	SPECIAL CONDITIONS.....	37
1.3.1	INCIDENT REPORTING.....	38
1.3.2	COMMUNITY COMMUNICATIONS.....	38
1.3.3	REPORTING.....	38
1.3.4	INVOICING.....	38
1.3.5	CLEARANCES AND CHECKS.....	38
1.3.6	ENVIRONMENT.....	38
1.3.7	SMOKE/DRUG & ALCOHOL FREE.....	39
1.3.8	CITY VISITS.....	39
1.3.9	CONTRACTOR'S ONGOING PERFORMANCE.....	39
1.3.10	PERFORMANCE REVIEW.....	39
1.3.11	SAFETY INDUCTION.....	39
1.3.12	DIVERSITY.....	40
1.3.13	USE OF SOCIAL MEDIA.....	40
1.3.14	ASSOCIATION WITH ILLEGAL GRAFFITI VANDALISM.....	41
1.3.15	OBJECTIVES AND OUTCOMES.....	41
1.3.16	YOUTH CO-DESIGN.....	41
1.3.17	KEYS AND ACCESS CARDS.....	42
APPENDICES REGISTER.....		43
NIL.....		43
SCHEDULE 3 – PRICING.....		44

1.1	PRICING REQUIREMENTS.....	44
	SIGNING PAGE.....	45

Details

Parties

Name:	City of Melville
Short Form Name:	City
Notice Details:	10 Almondbury Road, Booragoon, Western Australia
	Attention: Chief Executive Officer

Name:	The Contractor specified in Item 4 of Schedule 1
Short Form Name:	Contractor
Notice Details:	The details specified in Item 5 of Schedule 1

Background

- A. The City publicly invited Offers for the supply of the Goods and Services.
- B. The Contractor submitted the Offer in response to the City's Request.
- C. The City has chosen the Contractor as the successful respondent to the Request.
- D. The City and the Contractor wish to enter into this Contract to evidence their agreement in relation to the supply of the Goods and Services.

Agreed Terms

1. DEFINED TERMS AND INTERPRETATION

1.1 DEFINED TERMS

In this document unless the context requires otherwise:

Addendum means any document evidencing a change, amendment or clarification of the specification and or scope of work prior to the signing of this Contract.

Approved Security means an unconditional and irrevocable undertaking in the form set out at Schedule 4 and otherwise on similar terms, and given by a financial Institution that:

- (1) has an office open for business in Western Australia; and
 - (2) is registered in Western Australia;
 - (3) is regulated by the Australian Prudential Regulatory Authority (APRA); and
 - (4) meets a credit rating not less than A as assessed by Standard and Poors
- APRA** has the same meaning given to it in clause 3.12(1).

Australian Cyber Security Centre means the Government Agency known as the Australian Cyber Security Centre.

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia other than a day in the period beginning on 25 December in a year and ending on 7 January in the following year.

Business Hours means the period from 8:30 AM to 5:00 PM Western Standard Time on a Business Day.

City means the City of Melville.

City's Code of Conduct means the City of Melville's Code of Conduct (Employees), Policy OP-027, located on the City's website, hyperlink [https://www.melvillecity.com.au/our-city/publications-and-forms/corporate-services/code-of-conduct-\(employees\)](https://www.melvillecity.com.au/our-city/publications-and-forms/corporate-services/code-of-conduct-(employees)).

City's Representative means an Officer or person who has been notified by the City to the Contractor as being an authorised Officer for the purposes of the Contract.

Claim means all and any claim, demand, writ, summons, action, suit, prosecution, proceeding, judgment, order, decree, damages, costs (including legal costs), loss and expense of any nature whatsoever.

Contamination means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the premises or the surrounding environment:

- (5) unsafe or unfit for habitation or occupation by persons or animals;
- (6) degraded in its capacity to support plant life; or
- (7) otherwise degraded or harmed.

Contract means all of the documents that constitute and evidence the final agreement between the parties for the supply of Goods and Services by the Contractor to the City, comprising the terms in this document, the Request, the Offer, any Addendum and the Special Conditions.

Contract IP means all Intellectual Property Rights created, discovered, developed or that come into existence in relation to the performance of this Contract by one or both of the parties.

Contractor Data means the information and materials relating to the City or the possession of Goods or Services under this Agreement:

- (1) which the Contractor has in its possession, custody or control; or

- (2) which are accessed, transmitted or stored or on the Contractor's information systems or equipment.

Commencement Date means the date stipulated in Item 7 of Schedule 1.

Contract Price means the price or prices stipulated in Item 10 of Schedule 1 or Schedule 3.

Cyber Incident has the same meaning given to it in clause 5.3(2).

Deficient Goods has the same meaning given to it in clause 5.16(3).

Deficient Services has the same meaning given to it in clause 5.16(3).

Defect Liability Period means the period (if any) stipulated in Item 15 of Schedule 1 which commences on the date of Practical Completion or any other date agreed between the parties.

Delivery Note means a note in writing, in a form approved by the City, which includes:

- (1) the number and date of the Purchase Order under which the Goods are delivered (if applicable);
- (2) a description of the Goods delivered;
- (3) a statement of the quantity of the Goods delivered;
- (4) the date of a delivery; and
- (5) the place of delivery.

Dispute Notice has the same meaning given to it in clause 5.13(1).

Environmental Laws means any law, whether statute, or common law, concerning environmental matters, and includes but is not limited to law concerning land use, development, pollution, waste disposal, toxic and hazardous substances, conservation of natural or cultural resources and resource allocation including any law relating to exploration for or development of any natural resource.

Excluded Loss means any one of more of the following, arising under statute, common law or equity, from or related in any way to this Contract or its subject matter:

- (1) any loss of profit, loss of revenue, loss of product, loss of expected savings, loss of income, rent or holding costs, loss of expected production, opportunity costs, loss of business (including loss or reduction of goodwill or opportunity); and damage to reputation, whether actual, direct, indirect, anticipated or otherwise; and
- (2) any indirect or consequential loss which is not covered by paragraph (a) of this definition.

Expiry Date means the date stipulated in Item 8 of Schedule 1.

Extension Period has the same meaning given to it in clause 2.4(1).

Force Majeure means any event or circumstance beyond the reasonable control of a party which prevents or impedes the due performance of the obligations under this Contract and which by the exercise of reasonable diligence that party is unable to prevent, including acts of war, acts of terrorism, civil commotion, regional strikes or similar labour disputes, acts of God or other severe weather conditions, legal restraint, governmental interference or regulation. Force Majeure does not include lack of finances, breakdown of any equipment used by the Contractor or its subcontractors unless caused by a Force Majeure event, or contractual commitment made by the Contractor to third parties which limits the ability of the Contractor to perform under this Contract.

Goods means the goods as set out in this Contract, to be supplied by the Contractor.

Instalments means the portions of the Contract Price stipulated in Item 13 of Schedule 1 (if any).

Instalment Period means the respective period in which the Instalment is due and payable by the City to the Contractor.

Insurance Amount means the amount stipulated in Items 14 of Schedule 1.

Intellectual Property Rights means the intellectual, industrial or commercial property rights or rights of a proprietary nature throughout the word, including:

- (1) rights related to copyright in any jurisdiction, including future copyright and rights in the nature of or analogous to copyright;
- (2) right in inventions, patents, trademarks, service marks, designs;
- (3) rights in confidential information, including know-how and trade secrets;
- (4) intellectual property rights in a licence;
- (5) a right to apply for the registration of an intellectual property right;
- (6) a renewal and extensions of an intellectual property right;
- (7) a similar or equivalent right to an of an intellectual property right; and
- (8) a protection of an intellectual property right,

regardless of the manner or medium in which it is stored or incorporated.

Moral Right means:

- (1) a right of attribution of authorship; or
- (2) a right not to have authorship falsely attributed;
- (3) a right of integrity of authorship; or
- (4) a right of a similar nature

which is conferred by statute, and which exists or comes to exists anywhere in the world.

Motor Vehicle Insurance means the insurance specified in clause 3.12(4).

Nominated Goods and/or Service Provider means the person or class of persons stipulated in Item 11 of Schedule 1 to supply the Goods and Services under this Contract.

Notice has the same meaning given to it in clause 5.13(1).

Offender has the same meaning given to it in clause 5.16(1)(g).

Offer means the offer submitted by the Contractor in response to the Request.

Officer means:

- (1) the Chief Executive Officer of the City; and
- (2) any employee of the City or person authorised by the Chief Executive Officer of the City, and notified to the Contractor, as an authorised officer for the purpose of the Contract.

Option Period means the periods stipulated in Schedule 1, if any and more clearly described in clause 2.3.

Payment Terms means the periods stipulated in Item 12 of Schedule 1.

Professional Indemnity Insurance means the insurance specified in clause 3.12(3) and in the amount specified in Item 14 of Schedule 1.

Purchase Order means an order placed by an Officer to the Contractor for the supply of Goods and/or Services under this Contract.

Rectification Notice has the meaning given to it in clause 3.16(2)(b).

Records has the same meaning given to it in clause 4.1(2).

Request means the request issued by the City for the supply of goods and services. Particulars of which are stipulated in items 1 and 2 of Schedule 1.

Schedule means a schedule to this Contract.

Services means the whole of the services, tasks, work and requisites as set out in Schedule 2 including the supply of goods (if applicable), the Request and the Offer, to be supplied by the Contractor under this Contract.

Site means the land on which the actual services are being provided which forms the subject matter of the services.

Social Media means any electronic forum that offers the opportunity for people to gather in online communities of shared interest and create, share, transmit or consume content. Including, but is not limited to social networking sites (e.g. Facebook, Google+), video and photo sharing site (e.g. Instagram, YouTube,

Vimeo), micro-blogging sites (e.g. Twitter) and weblogs, including corporate blogs, personal blogs and blogs hosted by traditional media publications and any other sites that allow individual users or company to use simple publishing tools.

Special Conditions means the conditions (if any) stipulated in Schedule 2.

Specifications means all technical specifications or schedules with respect to the Services, forming part of the Request and the Offer.

Statement of Business Ethics means the guide produced by the City for potential or current suppliers, located on this City's website, <https://www.melvillecity.com.au/our-city/publications-and-forms/corporate-services/city-of-melville-statement-of-business-ethics>.

Subcontractor has the same meaning to it in clause 3.4(2).

Subcontractor Payment has the same meaning given to it in clause 3.4(5).

Term means the terms of this Contract.

Variation Request means a written request made by the Contractor to the City to vary the Contract Price under clause 2.9(2).

Workers' Compensation Insurance means the insurance specified in clause 3.12(2) and in the amount specified in Item 14 of the Schedule.

Written Law has the same meaning given to that term in the *Interpretation Act 1984*.

1.2 INTERPRETATION

In this Contract, unless otherwise stated:

- (1) headings and bolding are for convenience only and do not affect the interpretation of this Contract;
- (2) words importing the singular include the plural and vice versa;
- (3) a reference to a gender includes a reference to each other gender;
- (4) a reference to a person or individual includes a reference to a firm, corporation or other corporate body, authorities, governments and governmental agencies and vice versa;
- (5) where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning;
- (6) a reference to any Written Law includes:
 - (a) all Written Laws amending, consolidating or replacing that written law; and
 - (b) all subsidiary legislation, as that term is defined in the *Interpretation Act 1984*, made under that Written Law;
- (7) a reference to a party includes that party, its successors, permitted assigns, receivers, administrators, executors, substitutes and liquidators;
- (8) a reference to any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document;
- (9) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (10) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it;
- (11) an obligation, representation or warranty in favour of two or more persons:
 - (a) is for the benefit of them jointly and severally; and
 - (b) binds them jointly and severally;
- (12) a reference to '\$' or 'dollars' is a reference to Australian dollars;

- (13) unless expressly stated otherwise, a reference to a party, clause, sub-clause, paragraph or part, is a reference a party, clause, sub-clause, paragraph or part of or in this Contract;
- (14) anything in this Contract which is expressed to be done or performed by the City shall properly and lawfully be done and performed if so done and performed by an Officer.
- (15) in the event of any inconsistency between the Specifications and this Contract, the Specifications shall prevail unless this Contract provides otherwise.
- (16) If there is any inconsistency, ambiguity or discrepancy in this Contract, the City shall direct the Contractor as to the appropriate interpretation to be complied with.
- (17) If there is any inconsistency between the documents, the order or precedence of documents shall be as follows:
 - (a) These General Conditions of Contract;
 - (b) Addendums;
 - (c) Price Schedule;
 - (d) Technical Specification;
 - (e) The Request, and
 - (f) The Offer.

2. AGREEMENT

2.1 COVENANTS

- (1) The parties covenant with each other on the terms and conditions outlined in this Contract.
- (2) In consideration for the payment of the Contract Price by the City, the Contractor covenants with the City, during the Term, to:
 - (a) supply the Goods and Services in accordance with this Contract; and
 - (b) do and perform all other things mentioned or described, or which may be implied in this Contract.

2.2 TERM

The Term of this Contract commences on the Commencement Date and ends on the Expiry Date or unless otherwise terminated earlier in accordance with this Contract.

2.3 OPTION PERIODS

- (1) The City shall have the right at its sole discretion to extend the Contract for the period or periods referred to in Item 3 of Schedule 1 (**Option Period**), provided:
 - (a) the City notifies the Contractor in writing no less than 45 days before the Expiry Date; and
 - (b) the Contractor has not notified the City within fourteen (14) days of receiving the notification that they are unwilling to extend the Contract.
- (2) The terms and conditions of this Contract will apply to any Option Period.
- (3) The payment for the Goods and Services during any Option Period shall be in accordance with Schedule 3 Pricing Schedule for the applicable period or any approved revised price.

2.4 EXTENSION OF CONTRACT TERM

- (1) The City may, by giving written notice to the Contractor, not less than forty five (45) days prior to the Expiry Date, and on written acceptance by the Contractor within fourteen (14) days of receipt of such notice, extend this Contract for a further period (**Extension Period**).
- (2) The notice from the City to the Contractor shall specify the term of the Extension Period;
- (3) The terms and conditions of this Contract will apply to any Extension Period; and
- (4) The Contract Price for the Goods and Services during any Extension Period shall be that which applies on the last business day before the Expiry Date, subject to clause 2.9(b)(2).

2.5 CONTRACT PRICE

- (1) Subject to clauses 2.7(4) and 2.8, the City shall pay to the Contractor all monies in accordance with this clause that become due and payable under this Contract.
- (2) Where the Contract Price is to be paid as a lump sum, the Contract Price shall be payable by the City to the Contractor only after the whole of the Goods and Services that are to be supplied under this Contract have been supplied to the satisfaction of the City.
- (3) Where the Contract Price is to be paid in Instalments, each particular Instalment shall be payable by the City to the Contractor on the date specified in Item 13 of Schedule 1 for that particular Instalment.
- (4) Where the Contract Price comprises a schedule of rates for the supply of the Goods and Services, at the conclusion of each Instalment Period the City shall pay the Contractor an amount calculated in accordance with the following formula:

(Quantity of Goods supplied during the Instalment Period x the corresponding rate in the schedule of rates) + (quantity of Services supplied during the Instalment Period x the corresponding rate in the schedule of rates.)

- (5) Where the Contract Price is made up of a combination of two (2) or more of the methods outlined in subclauses (2) to (4), each of those parts of the Contract Price shall be calculated and payable in accordance with the appropriate corresponding method for that part under subclauses (2) to (4).
- (6) Where the Contract Price comprises of a schedule of rates, the City shall be required to pay only the amounts calculated under subclause (4) and not any total amount specified in the Offer.
- (7) Unless otherwise stated in this Contract, the Contract Price shall be inclusive of all costs for:
 - (a) delivery and forwarding the Goods;
 - (b) the return of Goods wrongly supplied or not in accordance with this Contract;
 - (c) packaging, wrapping and containers of any kind for secure and adequate protection and transport of Goods.
- (8) Where the Request provides for reimbursement of freight paid, the Contractor shall be entitled to recover from the City only an amount calculated at the rates prevailing at the time of dispatch for the carriage of

like Goods to those Goods freighted. The Contractor shall provide written evidence to the City of the general prevailing freight rate.

- (9) The City may suspend some or all payments due to the Contractor under this Contract if the Contractor is in breach of any of its obligations under this Contract.

2.6 CUSTOM DUTIES

- (1) The Contract Price shall, be inclusive of all customs, excise and other like duties and charges payable on or in respect of the Goods and Services, unless otherwise stated.
- (2) If Goods are of overseas origin, the Contractor shall, for the purpose of enabling the City to apply for remission of duties, supply to the City, if so requested, information as to the customs tariff classification, the amount of duty payable, its application to the price charged and date or proposed date of importation. All prices and costs shall be shown in Australian currency together with the rate and date of application of any exchange rate applicable.

2.7 GST

- (1) In this clause:
GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
GST Law means the GST Act and any associated legislation including without limitation delegated legislation.
GST, Registered, supply, tax invoice and any other expression used that is defined in the GST Law has the same meaning as given to it in the GST Law.
- (2) Any amount referred to in this Contract which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.
- (3) Where, under the GST Law, any supply to be made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this Contract is subject to GST (other than a supply the consideration for which is specifically described in this Contract as GST-inclusive), then:
- (a) the consideration payable or to be provided for that supply under this Contract will be increased by, and the Recipient will pay to the Supplier, an amount equal to the GST calculated according to the GST Law;
 - (b) the Recipient shall pay that additional GST amount at the same time and in the same manner as the GST-exclusive consideration is paid or provided; and
 - (c) a reference to the consideration payable for a supply includes the value of any non-monetary consideration for the supply.
- (4) If the Supplier is Registered or required to be Registered, the Supplier shall provide a GST compliant tax invoice in connection with any supply made by it under this Contract, failing which the Recipient will not be obliged to make any payment for that supply until the invoice is provided.

2.8 PAYMENT TERMS

- (1) Subject to clause 2.7(4), the City shall, within the Payment Terms stipulated in Item 12 of Schedule 1 for each invoice issued under this Contract by the Contractor, either:

- (a) pay to the Contractor the full amount contained in the invoice; or
 - (b) dispute all or part of the invoice in accordance with subclause (2).
- (2) If the City disputes all or any part of the amount claimed by the Contractor in an invoice then, within the Payment Terms stipulated in Item 12 of Schedule 1, the City shall:
 - (a) pay the Contractor that portion of the amount stated in the invoice which the City does not dispute; and
 - (b) for that portion of the invoice in dispute, comply with clause 5.14.
- (3) The City's Procurement Policy requires all purchases to be appropriately authorised before a Purchase Order can be placed with a Contractor. Goods and/or Services must not be supplied to the City unless it has been authorised.
- (4) A purchase is authorised when the City's Purchase Order has been provided to the Contractor. The Purchase Order reference is to be stated on all invoices issued.
- (5) Where the purchase has been awarded by a quote or tender process, Contractors are required to use the Purchase Order number supplied at the time of the award of the quote or tender process or contract number or any subsequent authorised Purchase Order number.
- (6) Goods and Services provided without a Purchase Order number may be deemed unauthorised and will result in non-payment by the City to the Contractor.

2.9 PRICE VARIATIONS

- (1) The Contract Price shall be fixed for the Term, unless otherwise stated in this Contract.
- (2) The Contract Price may be varied other than in the terms of a predetermined variation (**Variation Request**).
- (3) If the Contractor wishes to claim a variation to any Contract Price during the Term, the Contractor shall provide the City written details of the claim, including:
 - (a) the reason for the price variation;
 - (b) all relevant information as to the cost of materials, labour and overheads, and such other cost components as the City may require considering any claim for a variation; and
 - (c) the existing Contract Price, proposed price variation and the proposed new Contract Price on an item by item basis.
- (4) The Contractor shall attach to each Variation Request evidence and documents to support and justify the request for the price variation. The City may refuse to consider a Variation Request if inadequate documents or evidence is attached to the Variation Request.
- (5) The City may, in its absolute discretion, refuse, approve or approve subject to conditions, any Contract Price variation claimed in a Variation Request.
- (6) If a Variation Request is approved, the approved Contract Price shall, subject to subclause (7), immediately replace the previous corresponding Contract Price and this Contract shall continue to apply with the necessary changes automatically being made.
- (7) Any Contract Price varied under subclause (6) shall apply only to the Services or Goods supplied after the date the Variation Request has been approved, unless otherwise specified by the City in writing.
- (8) The Contractor shall immediately notify the City of any reductions affecting the Contract Price. The Contractor must repay to the City the full amount

of any overpayment made by the City within fourteen (14) days of the reduction being authorised by the City in writing.

3. SERVICES

3.1 SAMPLES

Where required under the Request, the Contractor shall supply samples of all or any of the Goods and Services outlined in the Request free of all charges. These samples may be retained and used by the City and, on the expiry of the Term (except for termination as a result of the Contractor's breach of any term of this Contract); the City shall return or pay for the samples, in accordance with the Request.

3.2 SUPPLY OF GOODS AND SERVICES

- (1) The Contractor shall supply the Goods and Services in accordance with the Request, Addendum or appendices attached to this Contract.
- (2) If a particular brand of Good is specified in the Request or this Contract, that particular brand of Good shall be supplied by the Contractor to the City, unless otherwise approved by the City in writing.
- (3) Subject to the City determining under subclause (1) that the Goods and Services must be supplied in accordance with the samples provided by the Contractor to the City, if no standards or specifications are stipulated in the Request or Addendum, the Goods and Services shall be supplied in accordance with the appropriate and current standards of the Standards Association of Australia for the Goods and Services, and if there is no standards of that type then with such other standards reasonably required by the City. In the case of Goods then they shall be:
 - (a) made of the most suitable material and be constructed or manufactured in accordance with reasonable standards of construction;
 - (b) reasonably fit for purpose for which they are required; and
 - (c) fully capable of the intended use for which they are put, to the satisfaction of the City.
- (4) In all cases, the Contractor shall ensure that the Goods and Services are provided to the highest standards and carried out properly with all due skill, care and diligence.
- (5) Subject to subclause (6), the Contractor must ensure that the Goods and Services are supplied only by persons:
 - (a) who are suitably skilled and experienced in their respective professions and trades;
 - (b) who hold all necessary licences, permits and authorities required by law; and
 - (c) whose standards of workmanship are entirely suitable, for the supply of the Goods and Services under the requirements of this Contract.
- (6) The City may require that only individuals who are a Nominated Service Provider supply the Goods and Services under this Contract, in that case, the Contractor shall comply with the requirement.
- (7) The Contractor must ensure that its employees, agents, subcontractors and any employees of such agents or subcontractors:
 - (a) conduct themselves towards members of the public in a positive, friendly, courteous and respectful manner which is in keeping with the City's public image;

- (b) use discretion when dealing with members of the public and at all times (whether provoked or not) refrain from aggressive, threatening and rude behaviour or gestures; and
 - (c) do not act in an unruly manner or use offensive language, while supplying the Goods and Services under the Contract.
- (8) In carrying out all work under this Contract, the Contractor shall observe, perform and comply in all material respects with all relevant industrial awards, industrial agreements and orders of courts or tribunals that apply to employees engaged by the Contractor to supply the Goods and Services under the Contract.

3.3 REMOVAL OF CONTRACTOR'S EMPLOYEES

- (1) Without limiting the generality of any other clause in this Contract or the rights of a party at law, the City may direct the Contractor to remove, within a stated time from any activity related to the Goods and Services, any person employed or engaged in supplying the Goods and Services who, in the City's opinion, does not meet any of the requirements set out in clauses 3.2(5) and 3.2(7).
- (2) If the Contractor is required to remove any persons in supplying the Goods and Services as set out in clause 3.3(1) above, the Contractor is required, if directed by the City, to replace the person removed within the time stipulated by the City.

3.4 SUBCONTRACTING

- (1) Unless clearly stated in the Contractor's Offer, the Contractor shall not, without the City's prior written approval:
 - (a) subcontract all or part of the supply of the Goods and Services;
 - (b) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest under a subcontract; or
 - (c) change subcontractors.
- (2) Where the Contractor wishes to subcontract all or part of the supply of the Goods and Services or change subcontractors, the Contractor shall give the City written particulars of:
 - (a) the work to be subcontracted;
 - (b) the name and address of the proposed subcontractor; and
 - (c) any other information that the City reasonably requests.
- (3) The City may, in its absolute discretion, refuse, approve or approve subject to conditions, any request by the Contractor under this Contract to subcontract the supply of all or part of the Goods and Services.
- (4) Except where the Contract otherwise provides, the Contractor shall be liable to the City for the acts, defaults and omissions of all subcontractors, and employees and agents of the subcontractors, as if they were those of the Contractor. Approval to subcontract shall not relieve the Contractor from any liability or obligation under this Contract.
- (5) The Contractor must pay when due all amounts payable to a subcontractor appointed by the Contractor, with the City's consent, in connection with the supply of the Goods or Services (**Subcontractor**).
- (6) Without limiting the Contractor's liability under this Contract, the City may, in its absolute discretion, pay an amount that is properly due and payable by the Contractor to a Subcontractor (**Subcontractor Payment**).
- (7) The Contractor acknowledges and agrees that the payment by the City of the Subcontractor Payment will be set off and deducted from the amounts

otherwise payable to the Contractor by the City under the Contract and will be treated as a payment by the City to the Contractor under this Contract.

- (8) Payment of the Subcontractor Payment to the Subcontractor shall not:
- (a) be evidence of the value of work or an admission of liability or evidence that the work carried out by the Subcontractor has been executed satisfactorily but shall be a payment on account only; and
 - (b) prejudice the right of the City or the Contractor to dispute whether the amount of the Subcontractor Payment.

3.5 WARRANTY

The Contractor warrants that all Goods supplied under the Contract:

- (1) are of merchantable quality; and
- (2) are fit for the stated purpose;
- (3) are manufactured and delivered strictly in accordance with any drawings specification and other instructions of the City given for the purpose of this Contract;
- (4) are free from defects in design, materials and workmanship;
- (5) shall comply with the requirements of any relevant statutes, regulations or legally applicable standard;
- (6) shall be in accordance with and shall perform in accordance with the City's technical specifications; and
- (7) do not and will not infringe the Intellectual Property Rights of any third party.

3.6 SUPPLY BY PURCHASE ORDER

- (1) Where the Contract is for the supply of the Goods and Services by reference to a list of Goods and Services in a schedule to the Request, the City shall not be obliged to purchase any or all of the Goods and Services listed or any quantity. The City at its sole discretion can determine the supply of Goods and Services listed as may be required during the Term. In such circumstances the City may, in its absolute discretion, make a Purchase Order or Purchase Orders for the supply of some or all of the Goods and Services listed and any quantity of them.
- (2) The Contractor must fulfil any Purchase Order made by the City during the Term.
- (3) Where the quantity of Goods and Services required is set out or described in the Request as 'approximate', it shall be regarded only as an estimate of the quantity which may be required under this Contract, and the City shall not be required to take delivery of the whole of the approximate quantity of Goods and Services set out or described in the Request.
- (4) The City is entitled to make a Purchase Order for its requirements of any one line of the Goods and Services either at one time, in instalments or in such quantities as it may require from time to time.
- (5) If the sizes and dimensions of the Goods are not specified in the Request or Offer, the Contractor shall be deemed to have offered for the supply of any manufactured size or dimensions which may be specified by the City in writing or in a Purchase Order.
- (6) The City and the Contractor shall each retain copies of all Purchase Orders and maintain a register stating in respect of each Purchase Order:
 - (a) the date and time or receipt of the Purchase Order (as applicable); and
 - (b) details of when the Goods requested under the Purchase Order were delivered.

3.7 DELIVERY

- (1) The Contractor shall deliver the Goods:
 - (a) at the place specified in the Request or, if no place is specified, at the place notified to the Contractor by the City in writing; or
 - (b) if the Goods are to be supplied under a Purchase Order, at the place specified in the Purchase Order.
- (2) The City, at its sole discretion, may require that all Goods are to be supplied at the same time or in part from time to time.
- (3) The Contractor or its employee or agent shall hand a Delivery Note to the Officer (or his or her representative) receiving delivery of a consignment of Goods and retain a duplicate copy of the Delivery Note which has been signed by the Officer (or his or her representative) confirming proper delivery of the consignment of Goods.
- (4) The Contractor shall pack the Goods to ensure that no loss or damage results from weather or transportation.

3.8 TIME

- (1) Subject to subclause (2), the Contractor shall supply the Goods and Services punctually at or within the time stated in the Contract or in a Purchase Order, and in all cases time shall be of the essence.
- (2) Any extension of time must be approved by the City in writing. The City in its absolute discretion may withhold such approval.
- (3) Where no time is stated in the Contract for the Supply of any Goods and Services, the City shall provide the Contractor reasonable written notice of when the Goods and Services are to be supplied under this Contract.
- (4) If the City becomes aware that the Contractor is unable to supply any of the Goods and Services punctually at or within the time stated in the Contract or in a Purchase Order, or within an extension of time granted under subclause (2):
 - (a) the City may obtain an alternative service provider to supply those Goods and Services; and
 - (b) the Contractor shall have no rights against the City (for compensation or otherwise) in respect of the alternative supply of those Goods and Services.

3.9 CANCELLATION OF A PURCHASE ORDER

- (1) The City may cancel a Purchase Order in whole or in part by giving written notice (**Cancellation Notice**) to the Contractor indicating the date of cancellation of the Purchase Order, provided that it has not been performed.
- (2) Upon receipt of a Cancellation Notice, the Contractor must:
 - (a) cease all work related to the performance of the Purchase Order;
 - (b) not place any further orders or commitments in relation to the Purchase Order; and
 - (c) take all reasonable steps to effect the cancellation of the Purchase Order and to mitigate the costs and expenses incurred by the Contractor as a result of the cancellation.

3.10 WORKING HOURS

- (1) If the working hours and working days for the performance of the Services are not in the Contract, and if the City so requires, they shall be as notified by the Contractor to the City before commencement of the Services.
- (2) The working hours and working days shall not be varied without the City's prior written approval, except when, in the interests of safety of persons or property, the Contractor finds it necessary to perform the Services otherwise, and in that case the Contractor shall give the City written notice of those circumstances as soon as possible.

3.11 SECURITY

- (1) The Contractor must provide security to the City:
 - (a) in the form of Approved Security;
 - (b) in the amount set out at Item 11 of Schedule 1; and
 - (c) before issuing the first progress claim or invoice.
- (2) The City must release the balance of the security when:
 - (a) the Defect Liability Period has expired; and
 - (b) the Contractor has complied with all its obligations under the Contract.
- (3) The City is not obliged to pay the Contractor interest on:
 - (a) the Approved Security; or
 - (b) the proceeds of the Approved Security if it is converted into cash.
- (4) The City will not hold the proceeds or money on trust for the Contractor.
- (5) The City may have recourse to the Approved Security at any time it may be entitled to recover from, or be paid by or has a bona fide claim that it is entitled to, the Contractor an amount claimed as due under this Contract or otherwise than under this Contract.

3.12 INSURANCE

- (1) The Contractor must obtain a valid and enforceable **Public Liability Insurance** policy with an Australian Prudential Regulation Authority (**APRA**) authorised insurer which:
 - (a) provides coverage of at least the Insurance Amount for each occurrence (refer Schedule 1 for requirements);
 - (b) must be endorsed to note City's respective rights and interests in relation to this Contract;
 - (c) includes a cross liability endorsement;
 - (d) requires the Contractor to notify the City of any cancellation or non-renewal of the policy; and
 - (e) will cover the Contractor's liability to indemnify the City in accordance with this Contract.
- (2) The Contractor must obtain a valid and enforceable **Worker's Compensation Insurance** policy which complies with the provisions of the *Worker's Compensation and Injury Management Act 1981* in respect of all its employees supplying the Services under this Contract.
- (3) The Contractor must obtain a valid and enforceable **Professional Indemnity Insurance** policy (if required under the contract) with an APRA authorised insurer, which:
 - (a) provides coverage of at least the Insurance Amount for each occurrence (refer Schedule 1 for requirements);

- (b) is maintained for a period of not less than seven (7) years after the completion of the Contractor's obligations under this Contract; and
 - (c) will cover the Contractor's liability to indemnify the City in accordance with this Contract.
- All policies effected by consultants and subcontractors to the Contractor under this clause shall be maintained for a period of not less than seven (7) years after the completion of the Contractor's obligations under this Contract.
- (4) The Contractor must obtain a valid and enforceable **Motor Vehicle Insurance** policy (if required under the contract) with an APRA authorised insurer, which:
 - (a) provides cover against all loss and/or damage to the Contractor's vehicles for an amount of not less than the market value and otherwise for not less than the Insured Amount for any one claim or occurrence and unlimited in the number of occurrences; and
 - (b) provides cover for third party personal injury or death and third party property damage liability (and include bodily injury gap protection) involving the Contractor's vehicles;
- (5) The Contractor must obtain a valid and enforceable **Goods in Transit Insurance** policy with an APRA authorised insurer, which Provides coverage for the value of the goods purchase value (including freight and other charges), up until title and risk in the Goods pass to the City.
- (6) The Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any held insurance policy.
- (7) The Contractor must ensure that its consultants and subcontractors are insured as required by law, (including as to amounts of insurance and type of insurance) given the nature of work to be performed by the subcontractor, its employees, contractors or agents, as it they were the Contractor.
- (8) The Contractor must maintain the insurance policies referred to in this clause during the Term.
- (9) The Contractor agrees to be responsible for any excess payable under an insurance policy taken out under this Contract.
- (10) At any time during the Term, the City can request from the Contractor evidence that an insurance policy referred to in this clause is currently in effect. The Contractor must within forty eight (48) hours of the City's request provide for inspection a certificate of currency of the policy and, if requested by the City, a copy of the policy.
- (11) If, in the reasonable opinion of the City, the insurance of the Contractor referred to in this clause is inadequate, the City may require the Contractor to obtain and maintain further insurance, and the Contractor must comply with the requirement.
- (12) If the Contractor fails to procure and maintain the Insurance in accordance with this Contract, the City may, but is not obliged to procure and maintain any such insurance on behalf of the Client. The associated costs will be a debt due and immediately payable from the Contractor to the City.
- (13) The City may terminate or suspend this Contract if:
 - (a) Contractor's insurances, as required by this clause, is inadequate or unacceptable to the reasonable satisfaction of the City; or
 - (b) that insurance lapses, ceases, is suspended or prejudiced in the opinion of the City before or at any time during the Term.
- (14) The Contractor shall, as soon as practicable, inform the City in writing of any occurrence that may give rise to a claim under an insurance policy

required by this clause and shall keep the City informed of subsequent developments concerning the claim. The Contractor shall ensure that any subcontractors in respect of their operations similarly inform the parties.

- (15) The insurances are primary, and not secondary, to the indemnities referred to in this Contract. The City is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under the indemnities referred to in this Contract. In addition, the Parties acknowledge that if a claim is made under an Insurance policy by the City, it is their intention that the insurer cannot require the City to exhaust any indemnities referred to in this Contract before the insurer considers or meets the relevant claim.

3.13 PROTECTION OF PEOPLE AND PROPERTY

- (1) Subject to the terms of this Contract, the Contractor shall at all times when supplying the Goods and Services:
- (a) take measures necessary to protect people and property;
 - (b) avoid unnecessary interference with the passage of people and vehicles; and
 - (c) prevent nuisance and unreasonable noise and disturbance.
- (2) If the Contractor damages any property when supplying the Goods and Services under this Contract, the Contractor shall properly and promptly rectify the damage and pay all compensation that the law requires the Contractor to pay to the City.
- (3) If the Contractor fails to comply with an obligation under this clause, the City may give written notice to the Contractor requiring the Contractor to comply with its obligations. If the Contractor fails to comply with a written notice, in addition to its other rights and remedies under the Contract, the City may itself perform the obligation, or have the obligation performed by others, and the cost incurred by the City shall be payable by the Contractor to the City on demand.

3.14 NOTICE OF INJURY OR DEATH

Without affecting any other obligation in this Contract, the Contractor shall give notice in writing to the City of any personal injury or death occasioned by, or which occurred in the course of, the supply of the Goods and Services, as soon as practicable after that occurrence, in accordance with the *Worksafe and Occupational Safety and Health Act 1984*, as amended.

3.15 INDEMNITY

- (1) The Contractor shall indemnify the City and at all times keep the City indemnified from and against all Claims resulting from the Contractor, its employees, contractor's or agent's negligence or omissions, which may be commenced or brought against the City or the City may suffer or incur in connection with or arise directly or indirectly as a result of:
- (a) the loss of life, personal injury or damage to property arising from or out of any occurrence in connection with the supply of the Goods and Services;
 - (b) any breach or non-performance by the Contractor of any terms and conditions to be observed and performed by the Contractor under the Contract; and
 - (c) without limiting the generality of paragraphs (a) or (b) of this subclause, any act or omission on the part of the Contractor or its

- employees. Contractors or agents that leads, directly or indirectly, to the City incurring any liability to a third party on the grounds of public liability for negligence or contributory negligence.
- (2) The City is not liable to the Contractor for an Excluded Loss in relation to the Contract or the provision of the Contractor to the City.
- (a) The indemnity created under this Contract continues and remains in full force and effect until the date that the Contractor has fulfilled all of its obligations under this Contract.
- (b) For the purposes of subclause (b), the provisions of Part 1F of the *Civil Liability Act 2002 (WA)* are excluded.

3.16 TITLE, RISK AND ACCEPTANCE OF GOODS

- (1) Title and risk associated with the Goods shall pass to the City only on acceptance of the Goods by an Officer.
- (2) The City is not obliged to accept Deficient Goods where all or parts of the Goods are rejected by the City,:
- (a) the City shall give a written notice to the Contractor of the Deficient Goods; and
- (b) the City may give a written direction to the Contractor to remove and replace, or rectify, the Deficient Goods at the Contractor's expense within such reasonable time as the City may direct (**Rectification Notice**).
- (3) If the Contractor fails to comply with a Rectification Notice, the City may:
- (a) itself, or engage a third party to, undertake the works required to comply with the Rectification Notice. Such costs incurred by the City shall be payable by the Contractor to the City on demand;
- (b) exercise a general lien over the Deficient Goods and sell the Deficient Goods to recover any costs and expenses incurred by the City as a result of the Contractor failing to comply with a Rectification Notice; or
- (c) return the rejected Goods at the Contractor's expense to the Contractor's premises and, in such circumstances, the Contractor shall afford every facility to accept such delivery and the City shall not be liable in any manner whatsoever for any loss, damage, reduction in value or other Claim that may arise in relation to the Goods returned to the Contractor's premises.
- (4) Where:
- (a) Goods are rejected under this clause and the Contractor fails to replace the rejected Goods; or
- (b) the Contractor fails to deliver the Goods within the time as directed by the City,
- the City may purchase replacement Goods from another supplier and any additional expense incurred over and above the Contract Price for the replacement Goods shall be a debt due and payable by the Contractor to the City.
- (5) Where it is not practicable or possible for the City to purchase replacement Goods of an identical kind or quality to the Goods not properly supplied by the Contractor, the City shall be entitled to purchase substitute Goods which, in the opinion of the City, is a suitable alternative, and any additional expense incurred over and above the Contract Price for the Goods shall be a debt due and payable by the Contractor to the City.

- (6) If the City considers it necessary, it may refer to a technically qualified person any Goods that the City considers to not be in accordance with the Request, Purchase Order, Addendum, this Contract or not in accordance with the Samples provided by the Contractor to the City. That person shall act as an expert and his or her decision shall be final and binding on the parties. The costs in engaging the expert shall be paid by the party against whom the decision is given.
- (7) The City may exercise the rights in this clause in addition to and not in derogation of any other rights or remedies to which it is entitled under this Contract.

3.17 DEFECTS LIABILITY

- (1) The Contractor must carry out rectification of any defects in the Goods and Services during the Term and for the Defect Liability Period stipulated at Item 15 of Schedule 1.
- (2) If the work or rectification is not commenced or completed as required by the City, the City may have the work of rectification carried out at the Contractor's expense but (without prejudice to any other rights) the City may have, and the cost of rectification incurred by the City shall be a debt due and payable by the Contractor.
- (3) This clause survives the termination or expiry of this Contract.

3.18 DIRECTIONS FROM THE CITY

The Contractor must comply, as soon as practicable, with any written direction given by the City concerning the supply of the Goods and Services.

3.19 FAILURE TO PERFORM OBLIGATIONS

- (1) Without limiting the generality of any other clause in this Contract or the rights of a party at law, if:
 - (a) the Contractor defaults in the observance or performance of its obligations under this Contract; and
 - (b) the Contractor fails to remedy the default within fourteen (14) days after the City gives notice in writing to the Contractor specifying the default and requiring the default to be remedied,the City may perform the obligation itself or engage a third party to do so.
- (2) The Chief Executive Officer of the City may determine the cost to the City of the performance of the Contractor's obligations by the City or a third party and that determination shall be final and binding. The City shall give the Contractor written notice of the Chief Executive Officer's determination.
- (3) The Contractor must pay to the City within seven (7) days of receipt of the notice specified in subclause (2), the fees the City incurred to performing the Contractor's obligations .

3.20 SUSPENSION OF SERVICES

- (1) The City may direct the Contractor to suspend the supply of all or part of the Services for such time as the City thinks fit, including, if in the City's opinion that it is necessary:
 - (a) because of an act, default or omission of either party or a third party;
 - (b) for the protection or safety of any person or property; or
 - (c) to comply with a court order.

- (2) If the Contractor wishes to suspend the performance of the whole or part of the Services, the Contractor must obtain the City's prior written approval. The City may approve, refuse or impose conditions of approval on the suspension.
- (3) As soon as the City becomes aware that the reason for any suspension no longer exists, the City shall direct the Contractor to recommence the suspended Services as soon as reasonably practical.

3.21 VARIATION

- (1) A variation to the Supply of Goods and Services can only be varied in writing and approved by each party.
- (2) The variation takes effect on the date specified in the written variation.

4. RECORD KEEPING AND AUDIT

4.1 RECORDS

- (1) The Contractor must at its principal place of business keep true, accurate and complete records of all supply of Goods and Services to the City at its principal place of business, sufficient to enable the Contractor to comply with its obligations under this Contract.
- (2) The Contractor must permit or procure that the City or its representative (including its auditors) have full and free access at all reasonable times to all of the records, reports, invoices, statements and other documents relating to this agreement or the supply of Goods and Services under it as required by the City from time to time (**Records**).
- (3) The Contractor must supply to the City, within [14] days of receiving a request from the City, copies of all Records that the City deems necessary for the purpose of auditing the Contractor's compliance with this Contract
- (4) The Contractor warrants that all Records provided by it to the City will be true and correct and not misleading.

5. MISCELLANEOUS

5.1 CONTRACTOR TO PROVIDE ACCESS

The Contractor shall, at any time when requested by the City, provide to the City any information relating to the Goods and Services in a form directed by the City and assistance as the City may require enabling it to perform its functions, including its obligations under the *State Records Act 2000* and the *Freedom of Information Act 1982*.

5.2 CONFIDENTIALITY

- (1) Subject to the *Freedom of Information Act 1992 (WA)*, the Contractor:
 - (a) must immediately return the City's confidential information on the request of the City and at the end of the Term.
 - (b) may only disclose confidential information:
 - i. to a professional adviser, on the understanding that the professional adviser keeps the confidential information confidential;
 - ii. to comply with a law or regulator requirement;
 - iii. to a third party to enable that to perform this Contract or a proposed assignee of the benefit of this Contract; or
 - iv. to enforce its rights or to defend a claim or action under this Contract.

- (2) If the Contractor breaches this clause, then the remedy of damages may be inadequate to protect the interests of the City and the City may seek and obtain relief, including injunctive relief.
- (3) This clause survives the termination or expiry of this Contract.

5.3 CYBER SECURITY

- (1) The Contractor must:
 - (a) do all things that a reasonable and prudent entity would do to ensure that all Contractor Data is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person;
 - (b) provide protective measures for the Contractor Data that are no less than accepted industry standards [for local government];
 - (c) without limiting clauses 5.3, (1)(a) or (1)(b), comply with all security regulations or procedures or directions as are specified by the City from time to time regarding any the security of, or access to, the Contractor Data.
- (2) If the Contractor becomes aware if any actual or suspected action taken through the use of computer networks that result in an actual or potentially adverse effect on the Contractor's information system and/or Contractor Data residing on the system any other unauthorised access or use of Contractor Data by a third party or misuse, damage or destruction of Contractor Data by any person (**Cyber Incident**), the Contractor must:
 - (a) notify the City in writing immediately (and no longer than 12 hours after becoming aware of the Cyber Incident); and
 - (b) comply with any directions issued by the City in connection with the Cyber Incident, including in relation to:
 - i. notifying the Australian Cyber Security Centre, or any other relevant body, as required by the City;
 - ii. obtaining evidence about how, when and by whom the Contractor's information system and/or the Contractor Data has or may have been compromised, providing it to the City on request, and preserving and protecting that evidence for a period of up to 12 months;
 - iii. implementing any mitigation strategies to reduce the impact of the Cyber Incident or the likelihood or impact of any future similar incident; and
 - iv. preserving and protecting the Contractor Data (including as necessary reverting to any backup or alternative site or taking other action to recover Contractor Data).
- (3) The Contractor must, take out and maintain insurance to protect against the risks of a Cyber Incident.
- (4) The Contractor must ensure that:
 - (a) all subcontracts and other supply chain arrangements, which may allow or cause access to Contractor Data, contain no provisions that are inconsistent with clauses 5.3(1) – (4); and
 - (b) all personnel and any subcontractors who have access to Contractor Data comply with clauses 5.3(2) and 5.3(3).

5.4 MEDIA

The Contractor shall not disclose any information concerning the Goods and Services for distribution through any communications media (including through Social Media) without the City's prior written approval (which shall not be

unreasonably withheld). The Contractor shall refer to the City any enquiries from any communications media and Social Media concerning the Services.

5.5 INTELLECTUAL PROPERTY RIGHTS

- (1) The Contractor acknowledges and agrees that:
 - (a) all Contract IP vests in the City upon its creation; and
 - (b) the Contractor assigns its right, title and interest in the Contract IP created during the Term to the City.
- (2) On the City's request, the Contractor must execute a formal assignment or other document required to give effect to the assignment. The City grants a non-exclusive, non-transferable, irrevocable and royalty free licence to the Contractor to use the intellectual property for:
 - (a) the Term; and
 - (b) for the sole purpose of providing the Services.
- (3) The obligations under this clause survives the termination or expiry of this Contract.

5.6 MORAL RIGHTS

To the extent permitted by law and for the benefit of the City, the Contractor consents, and must use its best endeavours to ensure that each author of a work, consents in writing, to the use by the City of that work even if the use may otherwise be an infringement of their Moral Right.

5.7 PATENT RIGHTS

- (1) The Contractor shall indemnify the City, its employees, agents and Officers and at all times keep the City, its employees, agents and Officers indemnified from and against any Claim arising from or incurred by reason of any infringement or alleged infringement of any letters patent, design, trade mark or name, copyright or other protected right in respect of any goods, articles, services, equipment, machinery, plant or thing, system or method of performing, using, fixing, working or supply by the Contractor when supplying the Goods and Services under this Contract.
- (2) All payments and royalties payable in respect of any letters patent, design, trade mark or name, copyright or other protected right referred to in subclause (1), shall be deemed to have been included by the Contractor in the Contract Price and shall be paid by the Contractor to the person or body to whom they may be due or payable.
- (3) The City shall immediately notify the Contractor of any Claim being made or brought against the City in respect of any of the matters stated in subclauses (1) and (2). The Contractor shall, with the assistance of the City if it so desires, but at the Contractor's sole expense, conduct all negotiations for the settlement of the Claim. In the event the Contractor fails to do so, the City shall have the power to suspend payment of any money due to the Contractor under this Contract until the Claim has been settled or withdrawn.
- (4) If any Claim referred to in subclause (3) has not been settled or withdrawn at the date when this Contract is terminated, the balance outstanding in respect of the Claim shall be a debt due by the Contractor to the City.
- (5) For the purposes of subclause (1), the provisions of Part 1F of the *Civil Liability Act 2002 (WA)* are excluded.

5.8 PATTERNS, JIGS, DIES AND DRAWINGS

If, for the purpose of performing the Contractor's obligations under this Contract, it is necessary for the Contractor to make, purchase or otherwise acquire any pattern, jig, die, drawing or other aid to manufacture or production, and the cost of the making, purchase or acquisition is included in the Contract Price, then where the Contract provides that the pattern, jig, die, drawing or other aid to manufacture or production is to become the property of the City, the Contractor shall deliver it properly packed and labelled to a point of delivery nominated by the City before the expiry of the Term.

5.9 DISCRETION NOT FETTERED

Nothing in this Contract shall fetter or shall be construed as an attempt to fetter the discretion or the powers of the City or the Council of the City under any Written Law.

5.10 RELATIONSHIP BETWEEN THE CITY AND THE CONTRACTOR

- (1) Nothing contained in this Contract shall be deemed to constitute a relationship between the City and the Contractor other than the relationship of principal and independent contractor and, without limiting the generality of the foregoing, this Contract shall not be construed so as to constitute a relationship of master and servant or principal and agent as between the City and the Contractor, or any relationship of employment or trust between the City and the Contractor.
- (2) The Contractor shall not hold itself or its employees or agents out to be employees or agents of the City, and the Contractor shall indemnify the City and keep the City at all times indemnified against any Claim incurred as a result of doing so.
- (3) For the purposes of subclause (2), the provisions of Part 1F of the *Civil Liability Act 2002* are excluded.

5.11 ENTIRE AGREEMENT – NO WARRANTY

- (1) The Contractor acknowledges that it has entered into this Contract in full reliance on its own enquiries, investigations, examinations and advice and not in reliance on or as a result of any statement, claim, representation or warranty (expressed or implied) made or given by the City or any employee, agent or other person on behalf of the City in respect of any matter whatsoever affecting the Contract.
- (2) The parties agree that this Contract constitutes the whole and entire agreement between them and supersedes all previous negotiations and agreements written or oral.

5.12 ASSIGNMENT

- (1) The City shall be entitled to assign, novate or otherwise transfer the benefit of this Contract on giving notice to the Contractor.
- (2) The Contractor shall not assign, novate or otherwise transfer the supply of any of the Goods and Services or any of its rights under this Contract without the prior written consent of the City.
- (3) Any consent by the City to an assignment referred to in subclause (2) shall:
 - (a) be subject to the assignee executing a deed undertaking to be bound by all duties and obligations imposed on the Contractor

- under the Contract as if the assignee were named in lieu of the Contractor;
 - (b) not discharge the Contractor from any liability in respect of the performance of the duties and obligations under this Contract as at the date of assignment;
 - (c) be subject to the payment by the Contractor of all expenses incurred by the City in relation to the assignment request including all legal fees; and
 - (d) shall extend only to the consent actually given, and shall not prevent the exercise of any of the rights under this Contract with respect to any subsequent breach of this clause.
- (4) The Contractor shall not mortgage or encumber any of its rights under this Contract.

5.13 NOTICES

- (1) A notice, demand, consent, approval or communication under this Contract (**Notice**) must be:
- (a) in writing, in English and signed by a person duly authorised by the sender; and
 - (b) hand delivered or sent by prepaid post or email to the recipient's address for Notices specified in this Contract, as varied by any Notice given by the recipient to the sender.
- (2) A Notice is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh (7th) Business Day after the date of posting if posted to or from a place outside of Australia); or
 - (c) if sent by email, within eight (8) Business Hours of the time recorded in the email properties as the time at which the email was transferred from the sender's network, unless:
 - i. the sender receives an automatically generated electronic notification indicating the email has not been delivered; or
 - ii. within eight (8) Business Hours after the time recorded in the email properties as the time at which the email was transferred from the sender's network, the recipient informs the sender that it has not received the entire Notice,but if the delivery, receipt or transmission is not on a Business Day or is after 5:00 PM on a Business Day, the Notice is taken to be received at 8:30 AM on the next Business Day.

5.14 DISPUTE RESOLUTION

- (1) If a dispute arises between the parties in connection with this Contract, then a party must give written notice of the dispute to the other party identifying the dispute and providing details of it (**Dispute Notice**).
- (2) If a dispute is not resolved between the parties within fourteen (14) days of the Dispute Notice being given, the parties shall endeavour to settle the dispute by mediation to be conducted by a mediator independent of the parties, appointed by agreement of the parties within thirty five (35) days of the Dispute Notice being given or, failing agreement, by a person appointed by the chair of the Resolution Institute or the chair's nominee.
- (3) The mediation rules of the Resolution Institute shall apply to the mediation.
- (4) The mediation:

- (a) must be confidential and subject to without prejudice privilege;
 - (b) costs must be borne equally by the parties, with each party bearing its own cost of the mediation;
 - (c) must take place at an agreed mediation venue at the times and on the date specified by the Mediator from time to time.
- (5) A party cannot commence any legal proceedings or arbitration, unless it has complied with the mediation process in accordance with this clause.
 - (6) A party may be represented by a qualified legal practitioner or other representative in any mediation proceedings.
 - (7) The parties must continue to comply with their obligations under this Contract despite any dispute being referred to mediation, unless agreed otherwise by the parties in writing.
 - (8) This clause 5.14 does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.

5.15 FORCE MAJEURE

- (1) Should a party be delayed in the performance of this Contract by an event which that party concerned considers (acting reasonably) is a Force Majeure occurrence, then the party delayed shall:
 - (a) give written notice to the other party immediately giving the full particulars of the event and why it is considered a Force Majeure occurrence; and
 - (b) use its best efforts to remedy the situation.
- (2) On giving a notification under subclause (1), the performance or compliance by either party of or with any of the responsibilities or obligations under this Contract shall be suspended. The suspension shall continue as long as the performance or compliance with that responsibility or obligation under this Contract is so prevented or hindered. During the suspension, the parties shall consult with each other without delay as to the measures to be taken regarding the continuation of the supply of the Goods and Services and the implementation of this Contract.
- (3) On Force Majeure event occurring, the Contractor shall take all reasonable measures necessary to minimise the effects of the delay.
- (4) Subject to clause 5.14(5), if the Force Majeure continues for more than fifteen (15) consecutive days, either party may terminate this Contract with immediate effect by giving the other party written notice of termination,
- (5) If the City wishes for the Contractor to continue to implement this Contract, the Contractor shall continue to supply the Goods and Services under the terms and conditions of this Contract.
- (6) In the event of termination of this Contract under subclause (4), the Contractor shall be paid in accordance with clause 2.5 for the Goods and Services supplied up to and including the date of termination and any other amounts due under this Contract, or as otherwise agreed in writing between the parties.
- (7) Neither party shall be liable for any delay or failure of performance of the terms and conditions of this Contract to the extent such delay or failure is attributable to events of Force Majeure which has been notified in accordance with this clause.
- (8) Force Majeure may not be invoked by a party if, and to the extent that, any prior default under this Contract of the party concerned caused or

contributed to the prevention or impediment of the due performance of the obligations under this Contract.

5.16 DEFAULT AND TERMINATION

- (1) If:
- (a) the Contractor defaults in the observance or performance of any term or condition of this Contract to be observed or performed by the Contractor, and the Contractor fails to remedy such default (if it is capable of remedy) within fourteen (14) days after the City gives notice in writing to the Contractor specifying the default and requiring the default to be remedied;
 - (b) the Contractor goes into liquidation whether compulsory or voluntary, or a receiver or manager is appointed;
 - (c) the Contractor calls a meeting of the Contractor's creditors or makes any composition or arrangement with or assignment for the benefit of its creditors, or suffers any execution under any legal process be issued or be levied on or against any of its goods or chattels;
 - (d) the City ceases to be a local government for the purposes of the *Local Government Act 1995*;
 - (e) the Contractor knowingly maintains or gives the City information under this Contract that is false;
 - (f) there is a change in the Contractor's directors, shareholders or unit holders which leads to a change in the ownership or control of the Contractor; or
 - (g) the Contractor or a director of the Contractor (**Offender**) commits a criminal offence the subject of a final conviction which has not been overturned or stayed pending an appeal and the Offender is sentenced to imprisonment of at least one year or the criminal offence involves serious dishonesty or moral turpitude in connection with the dealings by the Offender,
- then, in any of these cases subject to law, the City may, by notice in writing given to the Contractor, without prejudice to any other powers, rights, authorities or remedies against the Contractor under this Contract or otherwise, terminate this Contract. However, the Contractor is not released from its liability for any previous breach or failure to observe or perform any term or condition of this Contract.
- (2) If this Contract is terminated:
- (a) unless terminated by the City, the Contractor must complete all Purchase Orders received prior to the termination or expiry of this Contract;
 - (b) subject to clause 5.16(3), the City must pay all unpaid amounts for the Goods and Services supplied by the Contractor prior to the termination or expiry of this Contract;
 - (c) each party must return the other party's confidential information and Intellectual Property Rights to the respective party who owns it;
 - (d) this Contract ends and does not have any further effect, save to the extent expressly stated otherwise; and
 - (e) termination of this Contract is without prejudice to the City's right to enforce a claim against the Contractor which arises before the date of termination.

- (3) In the case of Goods or Services determined by an Officer to not be in accordance with this Contract ("**Deficient Goods**" or "**Deficient Services**") after the City has accepted the Deficient Goods or Deficient Services, without prejudice to any other powers, rights, authorities or remedies against the Contractor under this Contract, the City may:
 - (a) demand the refund of any payment made to the Contractor for the Deficient Goods or Deficient Services; or
 - (b) require the Contractor to rectify the Deficient Goods or Deficient Services at the Contractor's expense within such reasonable time as may be appropriate,and any loss or expense incurred by the City as a result of the supply of the Deficient Goods or Deficient Services shall be payable by the Contractor to the City on demand.
- (4) The parties' rights and obligations under clauses 3.8(3), 5.7(1) and 5.10(2) shall survive the termination of this Contract.

5.17 SEVERABILITY

If any part of this Contract is or becomes void or unenforceable then that part shall be severed from this Contract with the intention that the balance of the Contract shall remain in full force and effect, unaffected by the severance.

5.18 MODIFICATION AND WAIVER

- (1) This Contract may not be modified, amended or varied except by a document in writing signed by or on behalf of each of the parties.
- (2) Any modification to a term or condition of this Contract, or waiver or relinquishment of the performance of any term or condition of this Contract, will only be effective if made in writing and executed by or on behalf on the party granting the waiver.
- (3) No waiver of any one breach of any term or condition of this Contract shall operate as a waiver of any other breach of the same or other term or condition of this Contract.

5.19 LAWS OF WESTERN AUSTRALIA APPLY

This Contract shall be construed and interpreted in accordance with the laws of the State of Western Australia and the parties agree to submit to the jurisdiction of the courts of that State and of courts competent to hear appeals from them.

5.20 LEGAL COSTS

- (1) Each party shall pay its own costs and expenses (including legal costs) of and incidental to the preparation, negotiations, completion and signing of this Contract.
- (2) The Contractor shall pay all duty payable with respect to this Contract and all copies of it.

5.21 ENVIRONMENTAL MANAGEMENT/FLORA CONSERVATION

In performance of the work under this Contract, the Contractor shall:

- (1) comply with all applicable Environmental Laws, industry standards and City policies;
- (2) use appropriate methods in carrying out the works under the contract that will reduce to the greatest extent practicable, disruption or damage to the environment;

- (3) give effect to and maintain all approvals, licenses, permits, authorisations, safeguards and standards applicable for environmental protection and required under Environmental Law and shall take all measures necessary to prevent contamination of the environment or destruction or impairment of native fauna and flora;
- (4) exercise care carrying out the works under this Contract to avoid unnecessary destruction of native flora and comply with requirements of the *Biodiversity Conservation Act 2016 (WA)*;
- (5) ensure that it obtains the information available to the City of any sites known to contain rare flora and be advised of the protective measures to be taken.
- (6) if the Contractor in the course of carrying out the works finds any further sites that may contain rare flora, the Contractor shall cease work in the area and inform the City's or the Officer as soon as practicable.

5.22 STATEMENT OF BUSINESS ETHICS

The Contractor must comply with the City's Statement of Business Ethics.

5.23 PAYMENT OF BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND LEVY

- (1) The Contractor is deemed to be the project owner under the Building and Construction Industry Training Fund and Levy Collection Act 1990.
- (2) The Contractor shall be responsible for the payment of any fees and charges applicable under this Act if applicable to any works performed.

SCHEDULE 1 – CONTRACT DETAILS

ITEM	HEADING	DETAIL
1.	Request Number:	RFQ222320
2.	Request Description:	PHAZE Urban Art Project 2022-2024
3.	Option Periods (clauses 1.1 and 2.3):	Not Applicable
4.	Contractor:	Legal Entity Name: [insert] ABN: [insert] ACN: [insert]
5.	Contractor's Notice Details:	Physical Address: [insert] Postal Address: [insert] Email Address: [insert]
6.	Contractor Contact Person:	Name: Telephone:
7.	Commencement Date: (clauses 1.1 and 2.2)	23 rd September 2022
8.	Expiry Date: (clauses 1.1 and 2.2)	30 th June 2024
9.	Security: (clauses 1.1 and 3.11)	Not Applicable
10.	Contract Price: (clauses 1.1 and 2.5)	Refer to Schedule 3
11.	Nominated Service Provider (i.e. consented to by the City): (clause 1.1)	Not Applicable
12.	Payment Terms: (clauses 1.1 and 2.8)	30 days from receipt of Invoice after delivery of Goods or Services
13.	Instalments: (clauses 1.1 and 2.5)	Payment at completion of each PHAZE session (one eighth of annual quote)
14.	Insurance Amount: (clauses 1.1 and 3.12)	Public Liability Insurance covering the legal liability of the Contractor and the Contractor's Personnel arising out of the Goods and Services for an amount of not less than \$20 million for any one occurrence and unlimited in the number of occurrences happening in the period of insurance. Workers' Compensation Insurance in accordance with the provisions of the <i>Workers' Compensation and Injury Management Act 1981</i> (WA), including cover for common law liability for an amount of not less than \$50 million for any one occurrence in respect of workers of the Contractor. The insurance policy must be extended to cover any claims and

City of Melville
PHAZE Urban Art Project 2022-2024

ITEM	HEADING	DETAIL
		liability that may arise with an indemnity under section 175(2) of the <i>Workers' Compensation and Injury Management Act 1981</i> . Professional Indemnity Insurance covering the legal liability of the Contractor and the Contractor's Personnel arising out of the Goods and Services for an amount of not less than \$10 million for any one occurrence and unlimited in the number of occurrences happening in the period of insurance.
15.	Defect Liability Period: (clauses 1.1 and 3.17)	Not Applicable
16.	Price Variations: (clause 2.9)	The price is fixed for the Term unless agreed to in writing by the City and the Contractor.

SCHEDULE 2 – SPECIFICATIONS / STATEMENT OF WORK AND SPECIAL CONDITIONS

1.1 BACKGROUND

The City of Melville ("City") or its successor in title, is seeking a suitably qualified and experienced professional urban artist to undertake the PHAZE Urban Art Project ("PHAZE") to facilitate, supervise and support young people (12 – 25 year olds) to create their own artwork on City skate park bowls (Melville Skate Park, John Creaney Skate Park and Leeming Skate Park) and public walls, as well as small canvases.

In 2007, two young people approached City of Melville's Youth Development team with a petition of 250 signatures for a legal writing wall in Leeming. After consulting with the City of Melville, PHAZE was developed. Aimed at ages 12 to 25, the PHAZE project has been running for the last fourteen (14) years.

PHAZE is a successful and popular project with both young people and the community within the City of Melville. PHAZE is a progressive and inspirational project for all involved and has a good reputation all over Perth.

1.2 SCOPE OF SERVICES

Artwork is to be created over a series of eight (8) sessions per year over a term of two (2) years; commencing September 2022 and concluding in June 2024, with sessions scheduled to be held on the last Sunday of the month in the following months and any postponements to be rescheduled in May to June:

- September 2022;
- October 2022;
- November 2022;
- December 2022;
- January 2023;
- February 2023;
- March 2023;
- April 2023;
- September 2023;
- October 2023;
- November 2023;
- December 2023;
- January 2024;
- February 2024;
- March 2024; and
- April 2024.

1.2.1 Locations

The City has allocated three skate parks, one wall and additionally may allocate further public walls to be used for the conduct of this project:

- Leeming Skate Park – Farrington Road, Leeming (next to 'The Rec').
- Bull Creek Skate Park – John Creaney Reserve, Parry Avenue, Bull Creek.
- Melville Skate Park – Corner Stock Road and Canning Highway, Melville.

- Hometown Melville wall – Robert Crawford Park, Leach Highway Myaree.

Sessions conducted at each skate park or public wall will need to vary in the number of participants allowed due to capacity limits (see location sizes further in this document). Any additional locations identified during this contract period will be within the size range of current locations detailed in this request.

The Contractor is to make themselves familiar with the environmental factors and limitations associated with each of the skate parks prior to submitting any quote for this work.

These services generally include but are not limited to the supply of all labour, equipment, tools and materials to undertake the whole of services under contract.

1.2.2 Determine Dates

The Contractor is to liaise with the City's Representative to finalise exact dates for sessions to be held. All dates will be agreed prior to commencement of sessions. The City will liaise with internal maintenance teams to ensure access to facilities is available for all sessions.

1.2.3 Advertising and Promotions

The City will advertise the project through online media and project contact lists. Each session will be promoted individually to encourage multiple participants across the project.

The Contractor will be required to display City of Melville advertising materials (such as signage) as requested and supplied by the City's Representative.

1.2.4 Registrations

Participants will need to register for each session. The City will collect the Registration Forms and email these to the Contractor prior to commencement of each session. The City will ensure that capacity of sessions is not exceeded prior to sending details through to the Contractor.

The Contractor will ensure each participant in attendance at a session has a valid Registration Form.

In the event that participants turn up at sessions without having had their Registration Form processed by the City, it is the responsibility of the Contractor to either allow or reject their participation based on capacity.

1.2.5 Assistant Artists

To meet with legislative requirements for working with groups of young people, the Contractor must employ an Assistant Artist to assist with delivering the sessions. The costs associated with employing an Assistant Artists are the responsibility of the Contractor.

The Assistant Artist must meet all the same clearance and check requirements as the Contractor.

1.2.6 Supplies

The Contractor shall be required to purchase, store and transport all supplies for each session throughout the project; with the exception of any supplies provided by the City which only need to be stored and transported.

Prior to commencement of the project, the City will supply the following equipment:

- Sun cream;
- Outdoor broom;
- Rubbish bags;
- Spare medical and registration forms; and
- First aid kit.

The Contractor may require additional supplies on the day, such as ice, water, food, etc. Supplies determined to be essential can be added to monthly invoicing to the City with a copy of the tax invoice for those purchases. The City will not reimburse for non-essential supplies or any supplies listed without a tax invoice.

The Contractor shall be required to supply all other supplies which should include but not be limited to at least the following items:

- paints (including aerosols and others suitable for canvas and skate park / wall surfaces) adequate for the participants for each session;
- paint pens, paint brushes and canvasses adequate for the participants for each session; and
- all Personal Protective Equipment (PPE) i.e. respirators, masks, etc.

1.2.7 Catering

The City's Representative shall organise and pay for catering for each session and advise the Contractor of any details requiring the collection/delivery.

The Contractor must retain any tax invoices from the delivery/collection of catering and provide to the City within five (5) working days of the completion of the session.

1.2.8 Removal of Existing Art/Graffiti and Base Coating

The City shall organise all removal of existing artwork and graffiti and add base coating to the scheduled skate park for any upcoming sessions.

The Contractor will not be required to undertake any of these services but will be required to liaise with the Contractor undertaking the base coating. The City's Representative shall provide contact details to the Contractor on award of Contract.

1.2.9 Size Of Session

Session sizes shall be determined based on the location of the session:

- Leeming Skate Park – maximum of sixteen (16) participants in the bowl and a maximum of four (4) additional participants using canvasses.
- Bull Creek Stake Park – maximum of twelve (12) participants in the bowl and a maximum of eight (8) additional participants using canvasses.
- Melville Skate Park – maximum of twelve (10) participants in the bowl and a maximum of eight (10) additional participants using canvasses.
- Public wall locations – maximum of twenty (20) participants across the wall or additional canvasses.

Any additional locations identified for inclusion in the program will accommodate 20 total participants across wall surfaces and canvases, in line with the above locations.

1.2.10 Number of Location Sessions

- Leeming Skate Park – two (2) sessions per year.

- Bull Creek Stake Park – two (2) sessions per year.
- Melville Skate Park – two (2) sessions per year
- Public walls – two (2) sessions per year

These committed sessions may be flexible upon the inclusion of any newly identified locations. The session roster is to be administrated by the responsible officer.

1.2.11 Paintable Areas

Leeming skate park – Farrington Rd, Leeming
Paintable area: 220sqm

Melville skate park – cnr of Canning Highway and Stock Rd, Melville – located behind Leisurefit Melville
Paintable area: 120sqm

Bull Creek (John Creany) skate park, Parry Ave, Bull Creek
Paintable area: 150sqm

Public walls will have a paintable area similar to the previously used Hometown Melville wall.

Hometown Melville wall – Leach Hwy, Melville – eastern side of shopping complex which houses JB Hifi.
Paintable area: 310sqm

Any additional locations identified for inclusion in the program will be at minimum 120sqm and not exceeding 310sqm, in line with the above locations.

Session Times

Each session shall be held on the last Sunday of the scheduled month. The sessions shall run from 10:30 AM to 4:00 PM; weather permitting.
Where weather is forecast to be unsuitable to hold a session, the Contractor shall liaise with the City's Representative to reschedule.

1.2.12 Session Responsibilities

The Contractor is to

- be in attendance thirty (30) minutes prior to commencement of each session to set up;
- ensure each participant has a valid Registration Form;
- preview each participant's design, determining the appropriateness of the design, i.e. use of tags, inappropriate words, inappropriate images, copyrighted material;
- ensure the appropriate use of PPE;
- monitor the supplies and allocate them to participants to ensure they are not used for any purpose other than painting the skate park bowl or canvasses;
- encourage and inspire participants which may include painting alongside them; and
- ensure all supplies are returned on completion of the session and any waste is disposed of appropriately.

1.3 SPECIAL CONDITIONS

1.3.1 Incident Reporting

The Contractor shall promptly notify the City of any accident, injury, property or environmental damage which occurs during the carrying out of the Works. All lost time incidents shall be immediately reported to the City's Representative. The Contractor shall within three days of any such incident provide a complete report detailing the incident, including results of investigations into the cause, and any recommendations or strategies for prevention in the future.

1.3.2 Community Communications

The Contractor is encouraged to liaise with the community by talking to and interacting with interested people on the day.

1.3.3 Reporting

The following will be required to be sent via email to the City's Representative within seven (7) days of the completion of each session:

- general feedback on how the session went;
- number of participants; and
- photographs of the sessions which will then be uploaded to the City's website and/or social media.

1.3.4 Invoicing

The Contractor is to send via email to the City's Representative within seven (7) days, a copy of any invoices to be paid.

The invoice must include a valid City Purchase Order Number and the Project Name as a minimum.

1.3.5 Clearances and Checks

The Contractor and Assistant Artist are required to hold a current Working with Children Check and National Police Clearance Certificate. These must be provided to the City with this quote. These will be checked annually by the City's Representatives to ensure validity.

1.3.6 Environment

The Contractor is to consider the following environmental factors when procuring and disposing of supplies:

- Toxicity of paints – low Volatile Organic Compound (VOC) paints are preferable in terms of health impacts, greenhouse gas emissions and ozone depletion. More information on types of low VOC paint is available at: <https://greenpainters.org.au/Consumer-Information/Low-VOC-Paints.htm>.
- Waste spray paint cans may contain residual paint and therefore need to be treated as hazardous waste. Any disposal must be performed in accordance with legislation for hazardous waste handling.
- Aerosol and hazardous goods can be disposed of for free at City e-waste and recycling drop off days. The contractor is entitled to access these free events in the operation of duties related to this contract, regardless of if they are a City of Melville resident. Communication with the responsible officer and waste recovery team may be necessary prior to attending the drop off days. For information

including upcoming collection dates refer to:
<https://www.melvillecity.com.au/waste-and-environment/waste-recycling-fogo>

1.3.7 Smoke/Drug & Alcohol Free

The Contractor must ensure participants comply with the requirements of this project to be Smoke and Drug & Alcohol free. To achieve this, nobody is to be permitted to participate under the influence of drugs or alcohol and these requirements are to be expressed to participants. The Contractor and Assistant Artist are also to comply and be consistent and positive role models in this regard.

1.3.8 City Visits

Representatives from the City may attend any of the sessions throughout the project as part of their Community Development role.
These visits are not a review and will be unscheduled and not requiring input from the Contractor.

1.3.9 Contractor's Ongoing Performance

The Contractor's performance will be considered unsatisfactory if any complaint is received or multiple notices of non-compliance issued. In the case of the Contractor's performance being considered unsatisfactory, the City reserves the right to terminate the agreement at its own discretion.

Any non-compliance notice needs to be remedied as soon as possible. Failure to take remedial actions following the receipt of a non-compliance notice might result in additional notices of non-compliance being issued.

Non-compliance notices can be issued for any breach, including but not limited to failure to comply with the specifications and special conditions.

1.3.10 Performance Review

The City may undertake stakeholder meetings with the Contractor a minimum of once every 12 months. These meetings will be carried out on Site if required.

The Contractor performance will be measured against the requirements set out in this specification.

The Contractor may be required to discuss any problems or issues at this time and to implement any improvements where required. In the event of any problems, issues or breaches additional meetings may be required.

Further to a 12 month review the City may record the performance of a Contractor on a regular basis for future use.

The City may conduct stakeholder surveying and seek to gather alternate feedback from program participants in order to assess outcomes related to the program delivery. Results of any stakeholder engagement will inform future recommendations and may be discussed with the Contractor.

1.3.11 Safety Induction

The City shall arrange a start-up meeting, prior to the commencement of any contracted works. The purpose of this meeting is to familiarise the Contractor with the City of Melville requirements and provide an Occupational Safety, Health, Environment and Quality Induction.

All Contractor staff and sub-contractors, where applicable, must be formally inducted in the City of Melville Occupational Safety, Health, Environment and Quality procedures, before being allowed to commence any of the contracted works. Once inducted, it is the Contractor's responsibility to ensure that all Contractor staff and subcontractors are inducted.

The Contractor shall promptly notify the City of any accident, injury, property or environmental damage which occurs during the carrying out of the contracted works. The Contractor shall within three days of any such incident provide a complete report detailing the incident, including results of investigations into the cause, and any recommendations or strategies for prevention in the future.

1.3.12 Diversity and Accessibility

The City of Melville aims to be as accessible and inclusive of all young people as possible. We acknowledge the valuable contributions that are made by people of all backgrounds and experiences to our community. Therefore the program will be most successful when reaching a broad demographic of young participants.

Workshops need to be accessible and welcoming of young people of diverse gender, race & ethnicity, ability, religion, sexuality, and socio-economic status. It is the Contractor's responsibility to ensure that the workshops have an inclusive atmosphere and foster this attitude amongst participants, including responding to behaviours that do not support this approach.

It is recommended that assisting artists contribute to diversity; for example having artists of diverse backgrounds or genders for workshops. Registrations from young people will be given preference by the Responsible Officer in a manner supporting diversity among the participants.

1.3.13 Use of Social Media

The City acknowledges that social media can be an important platform for the promotion of artists' work and for success with professional business. To that aim, the following is to be understood by the Contractor and the Responsible Officer:

- Use of social media by young people to promote their art and PHAZE is beneficial to the young person and the program outcomes and should be encouraged.
- Where consent is given, young people's PHAZE art may be posted on the City's social media pages.
- Contractors representing the City will not bring themselves, the City or PHAZE into disrepute by associating their personal social media pages with the promotion of illegal graffiti vandalism. Doing so would be harmful to the success of PHAZE.
- Young people can benefit from education around safe use of social media, in particular around sharing appropriate content on their accounts or maintaining privacy settings. Inappropriate content in the context of

PHAZE may include content that glorifies or promotes illegal graffiti vandalism.

1.3.14 Association with Illegal Graffiti Vandalism

As PHAZE is intended to reduce instances of graffiti vandalism and associated risk-taking activities, it would be harmful to the program for there to be any association (actual or perceived) between PHAZE and instances of illegal graffiti. To that end, it would be counter-productive for the PHAZE artist to be known within street art communities as actively engaging with illegal graffiti activities. The City recognises that experience with a graffiti art community is valuable to facilitating street art workshops, however the PHAZE project cannot be perceived to be promoting or condoning illegal activity. The Contractor must be seen as a positive role model in this capacity. Applicants will be assessed with this in mind.

Young people are to be encouraged away from engaging with illegal graffiti vandalism. Young people at PHAZE should be made aware of the potential harms associated with spray paint art and graffiti vandalism, including the potential legal repercussions. This includes PHAZE artwork associated with graffiti vandalism (such as recurring tags) which may attract legal repercussions if individuals can be identified because of their involvement in the program.

1.3.15 Objectives and Outcomes

These services generally include but are not limited to the supply of all labour, equipment, tools and materials to undertake the whole of services under contract.

The program objectives are to:

- Provide young people with the opportunity to express themselves creatively and develop their skills.
- Help to create a more positive perception of young people within the City by engaging them with their local community.
- Develop and implement community development initiatives that engage the community in reducing graffiti.
- Positively engage local young people with local community groups, the City of Melville and other key stakeholders.
- Raise awareness of the impact illegal graffiti has within the community.
- Provide young people with alternate pathways to illegal graffiti through positive program participation, education, mentoring, and community engagement.

PHAZE aligns with goals in the Directions from Young People Strategy 2022-2025, notably focus area 1: Youth focus:

1. Young people can access and engage in a variety of youth-friendly spaces in the City of Melville
2. Young people have the opportunity to participate in youth-focused programs, activities and events in their areas of interest
3. Young people can contribute to the design and implementation of youth projects, events and facilities

1.3.16 Youth co-design

Co-design is a way young people can contribute to the program, additional to providing their feedback such as through surveys.

To best align with the Directions from Young People Strategy, PHAZE will incorporate opportunities for youth led or co-designed initiatives within the program. This could be themed workshops, collaborative designs, other complementary art skills such as photography, youth led workshops / activities, or other as identified by young people.

The contractor's role includes encouraging young people's ideas and creating opportunities for their input into the program. The City will support this by ensuring any additional PHAZE programs such as off-shoot murals include co-design and youth leadership.

1.3.17 Keys and Access Cards

Contractors issued with City Swipe/Access/Air cards (cards) or keys to the City's facilities/buildings/assets (including access gates) in order to perform specified services, shall comply with the following conditions:

- (1) Cards and keys will be issued by the City's nominated Officer or Representative at completion of the Contractor Induction process and will include details of the access area and any applicable time restrictions.
- (2) The Contractor shall ensure that cards and keys are kept secure at all times.
- (3) Where more than one card is issued to the Contractor, records are to be securely maintained by the Contractor of the cardholder and card number. The Contractor is responsible for notifying the City's Officer or Representative immediately if a cardholder ceases to be employed or is unable to work. The card should be returned to the City at the earliest opportunity or on termination of the Works.
- (4) Where it is necessary for keys or master keys to be provided to the Contractor to enable it to complete its obligations, a written acknowledgement of receiving those keys will be signed by the Contractor.
- (5) At the end of the period for which those keys were issued the Contractor shall return all keys. If any key issued is not returned as required, the cost of replacing the key or keys, or any security system or part of a system, will be borne by the Contractor.
- (6) Lost or stolen cards must be reported to the nominated City Officer or Representative immediately on discovery. If unable to make contact (within one hour) or if after hours, Contractors must ring the City's Community Safety Service (CSS) on 1300 653 643 and provide the following details:
 - Contractors name
 - Name of business
 - Name of contact at the City
 - Areas of access
- (7) Contractors must return all cards and keys at the completion of the services to the City's Representative. Failure to do so will result in the following charges being deducted from final invoice claims or charged to the Contractor directly by invoice.
 - Keys - \$50
 - Swipe/Access Card - \$50
 - Air Key \$100

APPENDICES REGISTER

NIL

SCHEDULE 3 – PRICING

1.1 PRICING REQUIREMENTS

- (1) The Contract Price will be deemed to include the cost of complying with:
- (a) this Contract including:
 - i. Attachment B – Draft Contract and any associated Schedules; and
 - ii. any Addendum available, if issued.
 - (b) all matters and things necessary or relevant for the due and proper performance of this Contract (if awarded),

Any charge not stated as being additional to the Contract Price will not be payable by the City.

- (1) If the Contract Price is consideration for a taxable supply under the GST Act, the Contract Price will be deemed to be exclusive of all GST applicable to the taxable supply at the rate in force for the time being.

Role	Description	Yearly Price ex GST
Artist	<ul style="list-style-type: none">Eight (8) x Six (6) hour sessionsEight (8) x One (1) hour reporting timeFourteen (14) hours to purchase, store, transport and dispose of suppliesFour (4) hours to liaise with cleaning contractors Totalling seventy seven (77) hours	
Artist Assistant	Eight (8) x Six (6) hour sessions Totalling forty eight (48) hours	
	Equipment Purchase Based on one hundred and sixty (160) participants per year across eight (8) sessions *Please attach list of equipment and supplies included in this price	
Total		

Signing Page

DO NOT COMPLETE AT THIS STAGE

IT IS AGREED that this Formal Instrument of Agreement shall **CONSTITUTE THE CONTRACT** between the parties.

Contractor

in accordance with s 127 of the *Corporations Act 2001*

Signature:	
Position: (Company Secretary / Director / Sole Company Secretary / Director)	
Signature:	
Position: (Company Secretary / Director / Sole Company Secretary / Director)	
On behalf of:	

City

in accordance with section 9.49A of the Local Government Act 1995

Signature:	
Position:	
On behalf of:	City of Melville