



Request for Tender

Request for Tender	Disposal of Frankland River Playground Equipment, Wingebellup Road, Frankland River
Deadline	2.00pm, Friday 30 September 2022
Address for Delivery	Chief Executive Officer Shire of Cranbrook PO Box 21 (19 Gathorne Street) Cranbrook WA 6321 <i>Electronic mail Tenders and Facsimile Tenders will not be accepted.</i>
RFT Number	06-22

1	Principal's Request	3
1.1	Contract Requirements in Brief	3
1.2	Definitions.....	3
1.3	Tender Documents	4
1.4	How to Prepare Your Tender	4
1.5	Contact Persons	4
1.6	Conditions of Tendering.....	4
1.7	Evaluation Process	7
1.8	Selection Criteria	8
2	Specification	9
2.1	Playground Photos	9
2.2	Additional Information	10
3	Tenderer's Offer.....	12
3.1	Offer Form	12
3.2	Price Schedule	13
3.3	Response to Selection Criteria	13

1 Principal's Request

1.1 Contract Requirements in Brief

The Shire of Cranbrook is seeking Tenders for the outright purchase of the existing playground equipment at Frankland River Playground Equipment, Wingebellup Road, Frankland River.

The playground equipment is supplied on an “as is, where is” basis. The Shire of Cranbrook makes no guarantees, expressed or implied, regarding the condition of the existing playground equipment.

1.2 Definitions

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

Attachments	The documents you attach as part of your Tender.
Deadline	The deadline for lodgement of your Tender as detailed on the front cover of this Request.
General Conditions	The general contract conditions attached as Annexure A.
Offer	Your offer to be selected to supply the Requirements.
Principal	Shire of Cranbrook.
Request OR RFT OR Request for Tender	This document.
Requirements	The services requested by the Principal.
Selection Criteria	The criteria used by the Principal in evaluating your Tender.
Special Conditions	The additional contract conditions attached as Annexure B.
Specification	The statement of Requirements that the Principal request you to provide if selected.
Tender	Completed Offer form, Response to the Selection Criteria and Attachments.
Tenderer	Person/s or corporation/s who has or intends to submit an Offer to the Principal.

1.3 Tender Documents

This Request for Tender is comprised of the following parts:

- Part 1 – Principal's Request (*read and keep this part*).
- Part 2 – Specifications (*read and keep this part*).
- Part 3 – Special Conditions of Contract (*read and keep this part*).
- Part 4 – Tenderer's Offer and Attachments (*complete and return this part*).

1.4 How to Prepare Your Tender

- a) Carefully read all parts of this document;
- b) Ensure you understand the Requirements;
- c) Complete and return the Offer (Part 4) in all respects and include all Attachments;
- d) Make sure you have signed the Offer form and responded to all of the Selection Criteria; and
- e) Lodge your Tender before the Deadline.

1.5 Contact Persons

Tenderers should not rely on any information provided by any person other than the person listed below:

Name	Samantha McLean
Telephone	(08) 9826 1008
Email	Samantha.mclean@cranbrook.wa.gov.au

1.6 Conditions of Tendering

1.6.1 Lodgement of Tenders and Delivery Method

The tender must be lodged by the Deadline. The Deadline for this request is 2.00pm, Friday 30 September 2022.

The Tender is to be placed in a sealed envelope clearly marked as confidential with the tender number and title as shown on the front cover of this Request and either;

- a) delivered by hand and placed in the Tender Box at the Shire of Cranbrook Administration Office at 19 Gathorne Street, Cranbrook (by the Tenderer or the Tenderer's private agent); or
- b) sent via post to the Chief Executive Officer, PO Box 21, Cranbrook WA 6321.

Tenders submitted by electronic mail or facsimile will not be accepted.

Tenderers must ensure that they have provided one signed copy of their Tender to be marked '**Original**' being clipped (not stapled or bound).

1.6.2 Rejection of Tenders

A Tender will be rejected without consideration of its merits in the event that:

- a) It is not submitted before the Deadline; or
- b) It is not submitted at the place specified in the Request; or
- c) It may be rejected if it fails to comply with any other requirements of the Request.

1.6.3 Acceptance of Tenders

The Principal is not bound to accept the lowest or the highest Tender and may reject any or all Tenders submitted. No late tenders will be accepted.

1.6.4 Disclosure of Contract Information

Documents and other information relevant to the contract may be disclosed when required by law under the *Freedom of Information Act 1992* or under a Court order.

All Tenderers will be given particulars of the successful Tenderer(s) upon request or be advised that no Tender was accepted.

1.6.5 Tender Validity Period

All Tenders will remain valid and open for acceptance for a minimum period of ninety (90) days from the Deadline or forty-five (45) days from the Principal's resolution for determining the Tender, whichever is the later unless extended on mutual agreement between the Principal and the Tenderer in writing.

1.6.6 Precedence of Documents

In the event of there being any conflict or inconsistency between the terms and conditions of any of the documents forming part of this Request and those in the General Conditions of Contract, the following order of precedence shall apply:

- a) Principal's Request;
- b) Special Conditions;
- c) General Conditions of Contract;

- d) Specification;
- e) Tenderer's Offer and Attachments.

In the event that the above order of precedence cannot be reasonably applied, or if that order of precedence is applied and some doubt arises as to the meaning, application or scope of works caused by two or more of the documents, then the Principal shall determine which provision or interpretation of the documents shall apply.

1.6.7 Tenderers to Inform Themselves

Tenderers will be deemed to have:

- a) Examined the Request and any other information available in writing to Tenderers for the purpose of tendering;
- b) Examined all further information relevant to the risks, contingencies and other circumstances having an effect on their Tender which is obtainable by the making of reasonable enquires;
- c) Satisfied themselves as to the correctness and sufficiency of their Tenders including tendered prices which will be deemed to cover the cost of complying with all the Conditions of Tendering and of all matters and things necessary for the due and proper performance and completion of the work described therein;
- d) Acknowledged that the Principal may enter into negotiations with any chosen Tenderer and that negotiations are to be carried out in good faith; and
- e) Satisfied themselves they have a full set of the Request documents and all relevant attachments.

1.6.8 Alterations

The Tenderer must not alter or add to the Request documents unless required by these Conditions of Tendering.

The Principal will issue an addendum to all registered Tenderers where matters of significance make it necessary to amend or supplement the issued Request documents before the Deadline.

1.6.9 Ownership of Tenders

All documents, materials, articles and information submitted by the Tenderer as part of or in support of the Tender will become the absolute property of the Principal upon submission and will not be returned to the Tenderer at the conclusion of the Tender process PROVIDED

that the Tenderer will be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

1.6.10 Canvassing of Officials

If the Tenderer, whether personally or by an agent, canvasses any of the Principal's Staff or Councillors (as the case may be) with a view to influencing the acceptance of any Tender made by it or any other Tenderer, then regardless of such canvassing having any influence on the acceptance of such Tender, the Principal may at its absolute discretion omit the Tenderer from consideration.

1.6.11 Identity of the Tenderer

The identity of the Tenderer is fundamental to the Principal. The Tenderer will be the person, persons, corporation or corporations named as the Tenderer and whose execution appears on the Offer Form in Part 4 of this Request.

1.6.12 Costs of Tendering

The Principal will not be liable for payment to the Tenderer for any costs, losses or expenses incurred by the Tenderer in preparing their Offer.

1.6.13 Tender Opening

Tenders will be opened in the Principal's offices, following the advertised Deadline.

1.6.14 In-House Tenders

The Principal will not submit an in-house Tender in respect of this Request.

1.7 Evaluation Process

This is a Request for Tender.

Your Tender will be evaluated using information provided in your Tender.

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

- (i) Tenders are checked for completeness and compliance. Tenders that do not contain all information requested (eg. completed Offer form and Attachments) may be excluded from evaluation.
- (ii) Tenders are assessed against the Selection Criteria. Contract costs are evaluated (eg tendered prices) and other relevant whole of life costs are considered.

1.8 Selection Criteria

The tender may be awarded to a Tenderer who best demonstrates the ability to purchase the nominated playground equipment at a competitive price. The tendered prices may be assessed together with compliance criteria and price basis to determine the most advantageous outcome to the Principal.

1.8.1 Compliance Criteria

These criteria will not be point scored. Each Tender will be assessed on a Yes/No basis as to whether the criterion is satisfactorily met. An assessment of 'No' against any criterion may eliminate the Tender from consideration.

Description of Compliance Criteria	Yes/No
(a) Compliance with the Conditions of Tendering specified in this Request.	Yes / No
(b) Compliance with and completion of the Tenderer's Offer	Yes / No

1.8.2 Price Basis

The Evaluation Panel will determine the most advantageous Tender based on Price. Tendered prices must be stated excluding and including Goods and Services Tax (GST).

2 Specification

2.1 Playground Photos

Please see below for recent photographs of the existing playground equipment.





2.2 Additional Information

- a) To arrange an inspection or ask any questions relating to the playground equipment please contact Samantha McLean by telephone (08) 9826 1008 or email Samantha.mclean@cranbrook.wa.gov.au
- b) It is the Tenderer's responsibility to satisfy themselves as to the condition and the value of the playground equipment.

- c) The Gazebo, barbeque, fencing and artificial turf are not included in this Tender. These will be removed by the Shire of Cranbrook prior to the removal of the playground equipment.

- d) There is to be no damage caused by the successful tenderer to the site when removing the playground, including trees, tree roots etc.

3 Tenderer's Offer

3.1 Offer Form

The Chief Executive Officer
Shire of Cranbrook
PO Box 21 (19 Gathorne Street)
CRANBROOK WA 6321

I/We (*Registered Entity Name*) _____

of _____ (*Registered street address*)

ABN _____ ACN (*if any*) _____

Telephone No _____ Facsimile No _____

E-mail _____

In response to RFT 0622 - Tender Document - Disposal of Frankland River Playground, Wingebellup Road, Frankland River:

I / We agree that I am / We are bound by, and will comply with this Request and its associated schedules, attachments, all in accordance with the Conditions of Tendering contained in this Request signed and completed.

I/We agree that there will be no cost payable by the Principal towards the preparation or submission of this Tender irrespective of its outcome.

The tendered price is valid up to ninety (90) calendar days from the date of the Tender closing or forty-five (45) days from the Council's resolution for determining the Tender, whichever is the later unless extended on mutual agreement between the Principal and the Tenderer in writing.

In accordance with the Request supplied to me/us for the purpose of tendering hereby offer the price schedules attached.

Dated this _____ day of _____ 20 _____

Signature of authorised signatory of Tenderer _____

Name of authorised signatory _____

Telephone No. _____ Email Address _____

Postal Address _____

3.2 Price Schedule

Tenderers must complete the following Price Schedule. Before completing the Price Schedule, Tenderers should ensure they have read this entire Request.

Item	Price excluding GST	GST	Price including GST
Playground equipment			

3.3 Response to Selection Criteria

Have you complied with the Conditions of Tendering contained in this Request?	Yes <input type="checkbox"/>
	No <input type="checkbox"/>
Have you complied with and completed the Selection Criteria?	Yes <input type="checkbox"/>
	No <input type="checkbox"/>

End of Tender Documents.

ANNEXURE A

CONTRACT CONDITIONS FOR THE SALE OF PLAYGROUND EQUIPMENT

BETWEEN

SHIRE OF CRANBROOK

AND

[REDACTED]

PARTIES:

SHIRE OF CRANBROOK of 19 Gathorne Street, Cranbrook, Western Australia (**Shire**)

-and-

[] of [] (**Purchaser**)

RECITALS

A The Shire is the owner of the Playground Equipment.

B The Shire has agreed to sell and the Purchaser has agreed to buy the Playground Equipment.

OPERATIVE PROVISIONS:

1. DEFINITIONS & INTERPRETATION

1.1 In this Contract:

Act means the *Local Government Act 1995* (WA);

Contract means this Contract, including its schedules;

Encumbrance means any mortgage, pledge, charge, lien, assignment, hypothecation, security interest, title retention, preferential right or trust arrangement and any other security arrangement or arrangements of any kind given by way of security;

GST means the goods and services tax under the GST Act;

GST Act means *A New Tax System (Goods and Services) Tax Act 1999*;

Party means a party to this Contract;

Playground Equipment means the playground equipment owned by the Shire and identified in Schedule 2;

Purchase Price means the purchase price payable for the Playground Equipment, being the amount specified in item 1 of Schedule 1;

Schedule means a schedule to this Contract;

Settlement means the settlement and completion of all the matters set out in this Contract to be performed by the Shire and the Purchaser in accordance with this Contract;

Settlement Date means the date for Settlement, being the date specified in item 2 of Schedule 1;

Special Conditions means the additional conditions of this Contract set out in Schedule 3; and

“Taxable Supply” has the same meaning as in the GST Act.

1.2 Interpretation

In this Contract except to the extent that the context otherwise requires:

- (a) words denoting:
 - (i) the singular include the plural and vice versa; and
 - (ii) any gender includes the other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (i) a covenant or obligation on the part of two or more persons binds them jointly and severally;
 - (ii) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (iii) a person includes its legal personal representatives, successors and assigns;
 - (iv) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (v) a right includes a benefit, remedy, discretion, authority or power;
 - (vi) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vii) provisions or terms of this document or another document, contract understanding or arrangement include a reference to both express and implied provisions and terms;
 - (viii) time is to local time in Perth;
 - (ix) “\$” or “dollars” is a reference to the lawful currency of Australia;
 - (x) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
 - (xi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission; and
 - (xii) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.

1.3 Headings

Headings do not affect the interpretation of this document.

1.4 Parties

- (a) If a party consists of more than one person, this Contract binds each of them separately and any two or more of them jointly.
- (b) An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- (c) A party which is a trustee is bound both personally and in its capacity as a trustee.

2. SALE AND PURCHASE

- 2.1 The Shire agrees to sell and the Purchaser agrees to purchase the Playground Equipment, for the Purchase Price, free from any Encumbrances upon and subject to the terms and conditions set out in this Contract.
- 2.2 In consideration of the Shire selling the Playground Equipment, the Purchaser agrees to pay the Shire the Purchase Price.

3. DELIVERY OF PLAYGROUND EQUIPMENT

- 3.1 The Shire shall not be required to deliver the Playground Equipment to the Purchaser.
- 3.2 The Purchaser will be responsible for the delivery of the Playground Equipment as otherwise provided in this Contract.

4. SETTLEMENT

- 4.1 Settlement shall occur on the Settlement Date at a place to be determined by the Shire.
- 4.2 At Settlement, the Purchaser must pay the Shire the Purchase Price by bank cheque or as otherwise directed by the Shire.

5. RISK AND PROPERTY

- 5.1 The title in and right to possession of the Playground Equipment, and all risk in the Playground Equipment, shall pass to the Purchaser on the Settlement Date.
- 5.2 Without limiting the generality of clause 5.1, the dismantling, removal, condition and use of the Playground Equipment as and from the Settlement Date will be at the Purchaser's own risk.

6. NOTICES

Any notice, agreement or other written communication under this Contract

- (a) must be given to the Purchaser in accordance with section 9.50 of the Act; and
- (b) must be given to the Shire in accordance with section 9.51 of the Act; and

(c) may be signed by the party giving the notice or a solicitor or agent of that party.

7. GST

- 7.1 If any of the matters in this Contract give rise to or constitute a Taxable Supply for the purposes of the GST Act, and a party becomes liable to pay GST on that Taxable Supply any amounts payable by a party for the Taxable Supply, except where this Contract provides otherwise, shall be exclusive of GST.
- 7.2 Subject to clause 7.3, the party liable to pay for a Taxable Supply must also pay the amount of any GST payable on that Taxable Supply at the time that payment for the Taxable Supply is due.
- 7.3 If the GST payable by a party making a Taxable Supply is attributable to a tax period which ends before the date that payment for the Taxable Supply is due, the party liable to pay for the Taxable Supply must pay the GST payable on that Taxable Supply on the earlier date.
- 7.4 A party shall not be obliged to pay the GST under clause 7.2 until a valid tax invoice has been given with respect to the Taxable Supply.

8. COSTS

Each party will pay its own costs (including legal costs) of and incidental to the preparation, execution and settlement of this Contract.

9. SPECIAL CONDITIONS

The Special Conditions shall be deemed to be incorporated into and form part of this Contract as if fully set out in the body of this Contract.

10. ENTIRE AGREEMENT

- 10.1 This Contract comprises the documents listed in clause 1.6.6(a) - (e) of the Shire's Request for Tender document (RFT No. 11-20) in the order of precedence specified therein, and constitutes the entire agreement between the Shire and the Purchaser relating to the subject matter of this Contract.
- 10.2 There is no oral understanding, agreement, warranty or representation whether express or implied in any way extending, defining or otherwise relating to the provisions hereof or binding on the parties with respect to any of the matters to which this Contract relates.

11. FURTHER ASSURANCES

The Shire will do all acts and things reasonably necessary to effectively vest the beneficial and legal title in the Playground Equipment in the Purchaser free from Encumbrances and enable the Purchaser to have the full benefit of this Contract.

12. MISCELLANEOUS

12.1 Waiver

- (a) No waiver by a party of any provision of or right, remedy or power of that party under this Contract shall be effective unless it is in writing signed by a person

authorised by that party and such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

- (b) No failure or delay by that party to exercise any right, remedy or power under this Contract or to insist on strict compliance by the other party with any obligation under this Contract, and no custom or practice of the parties at variance with the terms of this Contract, shall constitute a waiver of that party's right to demand exact compliance with this Contract.

12.2 Trust Provisions

If any party is the trustee of a trust:

- (a) all references to that party are to the party in its own right and also as trustee of the trust;
- (b) each party represents to the other party that it is:
 - (i) the sole trustee of the trust; and
 - (ii) entitled to be indemnified out of the assets of the trust and have recourse to the assets of the trust to discharge the liabilities of the trust;
- (c) each party agrees with the other party that:
 - (i) it will not alter the trust deed of the trust or permit it to be altered so that the other party's right to indemnity out of the assets of the trust or its right of recourse to the assets of the trust is limited in any way; and
 - (ii) it will not cease to be the trustee of the trust without the other party's prior written approval.

12.3 Severance

Any provision of this Contract which is or becomes prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent thereof without invalidating any other provision of this Contract, and any such prohibition or unenforceability shall not invalidate such provision in any other jurisdiction.

12.4 Variation

This Contract may be amended only by an instrument in writing executed by the parties.

12.5 Counterparts

This Contract may be signed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

12.6 Rights

The rights, remedies and powers of each party contained in this Contract are cumulative and not exclusive of any rights, remedies or powers provided to such party at law. No single or partial exercise by such party of any right, remedy or power under this Contract shall preclude any other or further exercise thereof or the exercise of any other right, remedy or power.

12.7 Successors

This Contract shall be binding upon and inure to the benefit of the parties and their respective successors, executors, trustees and permitted assigns.

12.8 Governing Law

This Contract shall be governed by, and take effect, in accordance with the laws in force in the State of Western Australia from time to time and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

Schedule 1 – Items

Item 1 – Purchase Price

[REDACTED]

Item 2 – Settlement Date

[REDACTED]

Schedule 2 – Playground Equipment







ANNEXURE B

Schedule 3 – Special Conditions

SPECIAL CONDITIONS OF CONTRACT

1 DEFINITIONS

1.1 For the purpose of these Special Conditions:

Claim means any claim, demand, action or proceeding of any nature, whether actual or threatened and whether in an action in contract, tort (including negligence), in equity, product liability, under statute or any other basis.

Government Agency means any government, parliament, governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, government minister, agency or entity of any kind.

Law means:

- (a) Commonwealth, state and local government legislation, including regulations and by-laws;
- (b) legislation of any other jurisdiction with which the relevant party must comply;
- (c) any law or legal requirement at common law or in equity;
- (d) Government Agency requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- (e) any decision, rule, ruling, binding order, interpretative decision, directive, guideline, request or requirement of any Government Agency or other authority with which the relevant party is legally required to comply.

Liability means:

- (a) any cost, expense, liability, claim, charge, loss, outgoing or payment of any kind, including legal fees and disbursements (on a full indemnity basis) and interest; and
- (b) any diminution in value or deficiency of any kind or character that a party pays, suffers or incurs or is liable for,

and, if the context permits also includes any claim or demand for the payment of money, whether liquidated or not.

Personnel means the directors, officers, employees, agents, contractors and licensees of a party.

Purchaser's Works means the works required to be performed by the Purchaser under this Contract, which are more particularly described in clause 2.1 of these Special Conditions.

Site means the land on which the Playground Equipment is situated, being the land at Frederick Square, Glover Street, Cranbrook as more particularly shown on the site plan attached to this Contract.

Term means the term of any licence over the Site which the Shire grants to the Purchaser, which shall:

- (a) commence from the date of commencement of the Purchaser's Works (as notified by the Purchaser in writing to the Shire); and
- (b) expire on the date of completion of the Purchaser's Works (as notified by the Purchaser in writing to the Shire) or the date that the Purchaser's Works are required to be completed under this Contract, whichever occurs first.

Wilful Default means any act or failure to act which was a deliberate and wrongful act or omission, or involved reckless disregard or wanton indifference to the likely consequences, including an intentional breach of this Contract.

- 1.2 Any other terms used but not defined in this Schedule have the meaning given to them elsewhere in this Contract.

2 REMOVAL OF PLAYGROUND EQUIPMENT

Carrying out the Purchaser's Works

- 2.1 The Purchaser is required, at its sole cost, to dismantle and remove the Playground Equipment from the Site.
- 2.2 Without limiting in any way the generality of clause 2.1, the Purchaser is required to excavate and remove all of the playground footings that are above and below the ground.
- 2.3 The Purchaser must fill any holes in the ground and repair any damage caused to the Site through the execution of the Purchaser's Works.
- 2.4 The Purchaser's Works must be carried out in accordance with the requirements of the Shire and any Government Agency and all Laws and standards in any way affecting or applicable to those works or the performance of this Contract.
- 2.5 Prior to commencing any digging work at the Site, the Purchaser must lodge a "dial before you dig" enquiry with the Department of Infrastructure, Transport, Regional Development and Communications.

Completion of the Purchaser's Works

- 2.6 The Purchaser must complete the Purchaser's Works to the satisfaction of the Shire by no later than Friday 4 December 2020.
- 2.7 After completion of the Purchaser's Works and demobilisation of the Site, the Purchaser must leave the Site:
 - (a) clean, orderly and free of any equipment, materials or other property of the Purchaser; and
 - (b) fit for immediate use by the Shire having regard to the condition of the Site immediately prior to the commencement of the Purchaser's Works.
- 2.8 Without limiting in any way the generality of clause 2.7, the Purchaser must make good to the satisfaction of the Shire any damage to the turf, fencing or other assets of the Shire on the Site to the extent that the Purchaser or its Personnel has caused or contributed to that damage.

Inspection

- 2.9 The Purchaser must, as soon as practicable, but in any event, with seven (7) days, notify the Shire in writing of the completion of the Purchaser's Works.
- 2.10 The Shire may inspect the Site any time after receiving such notice from the Purchaser.

Shire may rectify

- 2.11 The Shire may without notice and any time after inspecting the Site do anything which should have been done by the Purchaser under this Contract but which has not been done or which, in the Shire's opinion, has not been done properly.
- 2.12 The Purchaser shall reimburse the Shire in full, upon receiving a written demand from the Shire, in respect of the costs associated with the exercise of the Shire's rights under clause 2.11 of these Special Conditions.

Licence

- 2.13 The Site will be made available by the Shire to the Purchaser for the purposes of executing the Purchaser's Works in accordance with this Contract.
- 2.14 The licence granted to the Purchaser under clause 2.13 shall be for the Term and shall be on the terms and conditions set out in these Special Conditions.
- 2.15 The rights granted to the Purchaser under this Contract are contractual rights only and not tenancy rights. The Purchaser shall not have any tenancy or other interest in the Site.
- 2.16 The Purchaser acknowledges that:
- (a) it will be the occupier of the Site for the purposes of the *Occupier's Liability Act 1985* during the Term; and
 - (b) to the extent permitted by Law, the Purchaser accepts the legal liability which applies to it as the occupier of the Site during the Term.

Protection of people and property

- 2.17 In executing the Purchaser's Works, the Purchaser must ensure the health, safety and welfare of the following people when they are on, or immediately adjacent to, the Site:
- (a) the Shire and the Shire's Personnel;
 - (b) the Purchaser's Personnel; and
 - (c) members of the public.
- 2.18 During the Term, the Purchaser shall be responsible for compliance by its Personnel with any construction safety Laws applicable to the Site and shall ensure that:
- (a) the Site is used in a safe and proper manner;

- (b) all measures that are reasonably necessary to protect people and property on the Site are taken;
- (c) all construction equipment used in executing the Purchaser's Works:
 - (i) is suitably designed for safe operation;
 - (ii) is erected and maintained in a safe and serviceable condition; and
 - (iii) is used and operated safely and competently for its prescribed purpose;
- (d) protection is provided for members of the public on or near the Site;
- (e) the Shire is notified immediately if the Purchaser becomes aware of any threat to any person or property on or near the Site and all of the Shire's directions given for the purpose of protecting property or persons in relation to the Site are complied with;
- (f) warning signs relating to safety are placed on or near the outside of the Site;
- (g) all debris, spoil, rubbish, materials or equipment are suitably contained and covered in vehicles during transportation to or from the Site to prevent spillage onto adjacent streets or other areas;
- (h) vehicles, wheels and tracks are kept in a suitable clean condition to prevent transfer of mud onto adjacent streets or other areas; and
- (i) such other safeguards are provided and such other safety measures are taken as are reasonable or prescribed.

Fencing undertakings

- 2.19 The Purchaser must, at its own cost, erect fences on any boundary of the Site and within the Site:
 - (a) if necessary for safety reasons given the nature of the Purchaser's Works; or
 - (b) if directed by the Shire to do so.
- 2.20 All fencing must be:
 - (a) of a type and quality and erected in the manner and location approved by the Shire; and
 - (b) padlocked and secure when the Site is not occupied to prevent access to the Site by the general public.

Occupational safety & health

- 2.21 The Purchaser shall ensure that they, their plant, equipment and Personnel comply with any Laws relating to workplace safety and health, including but not limited to the *Occupational Safety and Health Act 1984*, the *Occupational Safety and Health Regulations* of 1996 or the *Work Health and Safety Act 2020*, as the case may be.
- 2.22 The Purchaser shall avail itself of any site specific safety issues from the Shire, as necessary to perform the Purchaser's Works at the Site.

2.23 The Purchaser must comply with any local site rules and regulations.

Purchaser's insurance undertakings

2.24 The Purchaser must, at its own cost, procure and maintain at all times during the Term and on terms and conditions satisfactory to the Shire (acting reasonably):

- (a) public liability insurance which covers the liability of the Purchaser and its Personnel to any person arising in any way out of or in connection with this Contract with a sum insured of not less than \$20,000,000 for any one occurrence or series of occurrences arising from one originating cause and having an excess set at a reasonably acceptable level having regard to what is commercially available in the then current insurance market;
- (b) workers' compensation insurance and employer's indemnity insurance which complies with the relevant Laws against all Claims in respect of any personal injury to, or death of, any person employed or engaged by the Purchaser which arises out of, or is caused or contributed to by, the performance or non-performance of this Contract by the Purchaser and the Purchaser must ensure that each of its subcontractors and consultants also effects and maintains insurance under any applicable workers' compensation Laws; and
- (c) insurance adequately covering loss of or damage to the Shire's property which arises out of, or is caused or contributed to by, the performance or non-performance of this Contract by the Purchaser; and

(each, an **Insurance Policy**) and each such Insurance Policy must be placed with an insurance company or companies authorised to underwrite insurance business in Australia.

2.25 The Purchaser must:

- (a) pay each premium due under the Insurance Policies before the due date;
- (b) when reasonably requested by the Shire, provide copies of certificates of currency for each Insurance Policy certified by the insurer;
- (c) immediately notify the Shire if:
 - (i) an event occurs which:
 - (A) may give rise to a claim under any Insurance Policy; or
 - (B) could materially affect the Shire's position in any way;
 - (ii) an Insurance Policy is cancelled;
- (d) if required by the Shire, make and pursue a claim under any Insurance Policy; and
- (e) if required by the Shire, ensure that the Shire's interests are noted on the policy of public liability insurance.

2.26 Unless the Shire consents, the Purchaser must not do or allow anything to be done which could adversely affect any insurance taken out by the Shire in connection with the Site or which could increase the cost of obtaining that insurance.

Failure to produce proof of insurance

- 2.27 If the Purchaser fails to promptly produce evidence of compliance with the insurance obligations under these Special Conditions to the satisfaction and approval of the Shire, the Shire may affect the insurance and pay the premiums. The amount paid shall be a debt due from the Purchaser to the Shire.

3 CONDITION OF PLAYGROUND EQUIPMENT

Inspection of equipment

- 3.1 The Purchaser admits that the Purchaser has inspected or has had the opportunity to inspect the Playground Equipment and buys it in an “as is” condition as at the date of this Contract.

Purchaser’s own enquiries

- 3.2 The Purchaser acknowledges that prior to entering into this Contract, the Purchaser or its Personnel has satisfied itself:

- (a) as to the state of repair, maintenance and condition of the Playground Equipment and each and every part of it;
- (b) as to the use to which the Playground Equipment may be put;
- (c) as to the value of the Playground Equipment;
- (d) as to the fitness and suitability of the Playground Equipment for any particular purpose;

and that the Purchaser is taken to enter into this Contract in reliance solely upon its own examinations, enquiries and perusals and not on any (or any alleged) statement, warranty, condition or representation whatsoever made (or alleged to have been made) to the Purchaser by the Shire or any Personnel of, or other person authorised by, the Shire.

- 3.3 The Shire shall not be liable under any circumstances to make any allowance, compensation or payment in any way to the Purchaser or any other person or legal entity for any faults or defects in the Playground Equipment whether the same are apparent or ascertainable from the Purchaser’s own enquiries or not.

No warranty by the Shire

- 3.4 The Shire does not give any warranty of any kind in relation to the condition of the Playground Equipment or the suitability of the Playground Equipment for any purpose for which the Purchaser intends to use it.
- 3.5 Any warranty in relation to the Playground Equipment which is implied by Law is excluded to the extent that the Law permits the warranty to be excluded.
- 3.6 The Purchaser acknowledges and agrees that the Shire is not obliged to repair or improve any part of the Playground Equipment after entering into this Contract.

4 INDEMNITY AND LIABILITY

Indemnity by Purchaser

- 4.1 Subject to the other provisions of this clause, the Purchaser must promptly on demand, indemnify and hold harmless the Shire and keep the Shire fully indemnified from and against all Claims and Liabilities suffered or incurred by, or made, brought or threatened against, the Shire in respect of:
- (a) the death of or injury to any person; or
 - (b) any loss of, or damage to or destruction of any real or personal property; or
 - (c) financial loss or damage or consequential loss or damage of any kind as a result of or arising out of the sale or provision of the Playground Equipment the subject of this Contract in any way whatsoever,

arising out of or as a consequence of:
 - (d) any failure by the Purchaser to comply with the requirements of any Law or a Government Agency in so far as they relate to this Contract, including but not limited to the Purchaser's Works; or
 - (e) a breach or non-performance of any of the obligations of the Purchaser under this Contract or any reasonable action properly taken by the Shire to remedy that failure; or
 - (f) any negligent act or omission, fraud or Wilful Default of the Purchaser or its Personnel; or
 - (g) the condition of the Playground Equipment (including any faults or defects in the said equipment that may exist whether the same are apparent or ascertainable from the Purchaser's own enquiries or not); or
 - (h) the use to which the Playground Equipment may be put by the Purchaser or the Purchaser's Personnel.

Shire not liable

- 4.2 The Purchaser acknowledges that, to the fullest extent permitted by law, neither the Shire nor any of its Personnel shall be liable in any way for any Claims or Liabilities suffered or incurred by, or made or brought against, the Shire or any of its Personnel by the Purchaser, the Purchaser's Personnel or any third party in respect of any of the matters referred to in clause 4.1.

Execution Page

EXECUTED on the [] day of [] 2020

Shire:

The common seal of the **SHIRE OF CRANBROOK** was affixed by authority of a resolution of the Council in the presence of:

Shire President - signature

Chief Executive Officer

Shire President
(BLOCK LETTERS)

Chief Executive Officer
(BLOCK LETTERS)

Purchaser:

(If a company)

Executed for an on behalf of
[]
in accordance with section 127 of
the *Corporations Act 2001 (Cth)*::

Director - signature

Director / Company Secretary -
signature

Director – signature
(BLOCK LETTERS)

Director / Company Secretary –
signature
(BLOCK LETTERS)

(If individual/s)

Signed by _____)
Name of Purchaser

Signature of Purchaser

in the presence of:

Witness Signature:

Witness Name:

Signed by _____)
Name of Purchaser

Signature of Purchaser

in the presence of:

Witness Signature:

Witness Name:
