



ACT
Government

CONSTRUCTION RELATED CONSULTANCY AGREEMENT

Date

21 November 2022

Parties

AUSTRALIAN CAPITAL TERRITORY

**GUIDA MOSELEY BROWN PTY LTD
ACN 101 197 246**

**NEW RSPCA FACILITY PIALLIGO –
PRINCIPAL DESIGN CONSULTANT
SERVICES**

CONTRACT NUMBER: 38364-NCT-001

Prepared by

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PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Transport Canberra and City Services Directorate.

GUIDA MOSELEY BROWN PTY LTD, ACN 101 197 246 of Deakin in the Australian Capital Territory 2600 (**Consultant**).

BACKGROUND

- A. The Territory has undertaken a procurement process and has selected the Consultant to provide the Services.
- B. The Territory has agreed to purchase and the Consultant has agreed to provide the Services in accordance with the provisions of this Agreement.

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

The following definitions apply in this Agreement, unless the context otherwise requires.

Business Day	any day other than a Saturday, Sunday, public holiday in the Australian Capital Territory or the 27th, 28th, 29th, 30th or 31st December.
Confidential Text	any text of this Agreement that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified in Item 7 Schedule 1 .
Consultant Material	all material owned by the Consultant and used for the purpose of providing the Services, including documents, information and data stored by any means.
Contract Material	all material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services including all reports (whether in draft or final form), documents, information and data stored by any means.
Contract Officers	in relation to each party, the representatives whose names and contact details are specified in Item 1 Schedule 1 , or as notified from time to time by one party to the other.

Contract Price the amounts specified in, or calculated in accordance with, **Item 3 Schedule 1**.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Information Privacy Act the *Information Privacy Act 2014* (ACT).

Insolvency Event

- (1) in respect of a natural person:
 - (a) any orders, agreements or arrangements are made in respect of the affairs of the person in accordance with the *Bankruptcy Act 1966* (Cth); or
 - (b) in the reasonable opinion of the Territory the person is likely to be declared bankrupt or lose control of the management of their financial affairs; or
- (2) in respect of all other entities:
 - (a) any of the events listed in sub-sections 459C(2)(a) to (f) of the *Corporations Act 2001* (Cth) occur in respect of the entity; or
 - (b) any other event occurs which, in the reasonable opinion of the Territory is likely to result, or has resulted, in the:
 - (i) insolvency;
 - (ii) winding up; or
 - (iii) appointment of a controller (as that term is defined in the *Corporations Act 2001* (Cth)) in respect of part or all of the property,

of the entity.

For the purpose of subparagraph (2)(b), subsections 459C(2)(a) to (f) *Corporations Act 2001*(Cth) are to be read as if applying to all incorporated entities.

Invoice an invoice that:

(1) if GST is payable in respect of the provision of the Services, is a valid tax invoice for the

purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

- (2) clearly sets out details of the Services provided and of the amount that is due for payment, is correctly calculated and is in respect of Services that have been performed in accordance with this Agreement;
- (3) is accompanied by any other details or reports required under this Agreement; and
- (4) is rendered at the times specified in **Item 3 Schedule 1** (if any) and addressed to the Territory's Contract Officer.

Personal Information

is personal information as defined in section 8 of the Information Privacy Act, namely, information or an opinion about an identified individual or an individual who is reasonably identifiable:

- (1) whether the information is true or not; and
- (2) whether the information or opinion is recorded in a material form or not,

but does not include personal health information (as defined in the *Health Records (Privacy and Access) Act 1997* (ACT)) about the individual.

Prescribed Insurer

an insurer that is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia and rated at AA or better by Standard & Poor's.

Procurement Act

the *Government Procurement Act 2001* (ACT).

Program

a program for the performance and completion of the Services required to be submitted by the Consultant under **clause 2.2**.

Services

the services described in **Schedule 2**.

Special Condition

any provision set out in **Schedule 3**.

Specified Personnel

any person named in **Item 4 Schedule 1**, or any other employee or agent of the Consultant, who is approved by the Territory from time to time for the purpose of **clause 6**.

Term	the term specified in Item 2 Schedule 1 , and if extended, the initial term and the extended term.
Territory	when used: (1) in a geographical sense, the Australian Capital Territory; and (2) in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).
Territory Information	the kind of information that: (1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Territory which are by their nature confidential; (2) is notified (whether in writing or not) by the Territory to the Consultant as being confidential; (3) is specified in Item 6 Schedule 1; or (4) is Personal Information, but does not include information that: (5) is or becomes public knowledge other than by breach of this Agreement; (6) has been independently developed or acquired by the Consultant; or (7) has been notified by the Territory to the Consultant as not being confidential.
Territory Material	any material provided by the Territory to the Consultant for the purposes of this Agreement including documents, equipment, information and data stored by any means.
TPPs	the Territory Privacy Principles provided for in section 13 and set out in Schedule 1 of the Information Privacy Act.
TPP Code	a code of practice about information privacy which, having regard to section 21(1) and (3) of the Information Privacy Act, binds an agency that engages

the Consultant in the provision of the Services.

Variation

any change to the Services.

WHS Legislation

- (1) the *Work Health and Safety Act 2011* (ACT);
- (2) the *Work Health and Safety Regulation 2011* (ACT);
- (3) all instruments issued under the *Work Health and Safety Act 2011* or the *Work Health and Safety Regulation 2011*;
- (4) all laws that replace the above laws; and
- (5) all other laws applicable in the Australian Capital Territory dealing with work health and safety matters.

1.2 General

In this Agreement, unless a contrary intention is expressed:

- (1) references to "Consultant" include any employees, agents or subcontractors of the Consultant;
- (2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (3) words in the singular include the plural and vice versa;
- (4) headings are for convenience only and do not affect the construction or interpretation of this Agreement;
- (5) an obligation imposed on more than one person binds them jointly and severally; and
- (6) the word "include" and any derivation is not to be construed as a word of limitation.

2. Services

2.1 Standard of care

The Consultant must perform the Services in accordance with the provisions of this Agreement and to a standard of care, skill and diligence expected of a person who regularly acts in the capacity in which the Consultant is engaged.

2.2 Program

The Consultant must, if required under **Item 10 Schedule 1**, within the time specified in **Item 10 Schedule 1**, submit to the Territory (in electronic and/or hard copy form as requested by the Territory) a Program that at a minimum complies with the requirements in **Item 1 Schedule 2**.

2.3 Alterations to approved documents

The Consultant must not make any substantial alteration to, addition to, or omission from the plans, drawings, layouts, design, specifications or other material without the prior written consent of the Territory.

2.4 Approvals

The Consultant must obtain all approvals, authorities, licences and permits which are required for the lawful implementation and completion of the Services, unless the Territory otherwise agrees in writing.

2.5 Knowledge requirements

The Consultant must use all reasonable efforts to inform itself of the requirements of the Territory and must regularly consult with the Territory during the performance of the Services.

2.6 Discrepancies in information

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

3. Term

This Agreement is for the Term unless terminated under the provisions of this Agreement.

4. Contract Price

4.1 Invoice

The Territory must pay the Consultant the Contract Price following its receipt of an Invoice and otherwise in accordance with **Item 3 Schedule 1**.

4.2 Incorrect payments

If, after payment, an invoice is found to have been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Consultant, as the case may be, and, without limiting recourse to other available remedies, may be offset against any amount subsequently due by the Territory to the Consultant under this Agreement.

4.3 Right of set-off

If the Territory claims a sum under or arising out of this Agreement, or any other Agreement between the parties or between the Consultant and any other Territory entity as defined in section 3(1) of the *Government Procurement Act 2001* (ACT), the Territory may withhold, deduct or set-off the claimed sum against any sum to which the Consultant is otherwise entitled under or arising out of this Agreement.

4.4 Effect of payment

Payment, in part or in total, of the Contract Price does not constitute an acceptance by the Territory of the Services and does not amount to a waiver of any right or action which the Territory may have at any time against the Consultant.

5. Ownership and use of material

5.1 Ownership of material

Ownership of:

- (1) all Contract Material, including any intellectual property rights, vests on its creation in the Territory;
- (2) all Territory Material, including any intellectual property rights, remains with the Territory; and
- (3) all Consultant Material, including any intellectual property rights, remains with the Consultant.

5.2 Licence of material

- (1) The Territory grants to the Consultant a royalty-free, limited licence to use the Contract Material and Territory Material for the Term.
- (2) The Consultant grants to the Territory a royalty-free, perpetual, limited licence to use the Consultant Material.
- (3) For the purpose of this clause, "use" includes:
 - (a) such uses as are reasonably necessary for the Territory to obtain the full benefit of the Services, including use of the Contract Material, and
 - (b) such uses as are reasonably necessary for the Consultant to undertake the Services or as otherwise agreed by the Territory,

and may include supply, reproduce, publish, perform, communicate, broadcast, adapt and copy as the context requires.

5.3 Third party rights

The Consultant must ensure:

- (1) the use of any Contract Material will not infringe the intellectual property rights of any third party; and
- (2) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Territory's (or its agents') use of any Contract Material.

5.4 Moral rights

The Consultant must, in relation to the authors of any work that comprises or forms part of the Contract Material:

- (1) use its best endeavours to include in the Contract Material an attribution of those authors; and
- (2) procure from those authors their genuine written consent for the Territory to:
 - (a) attribute the authorship of the work to the Territory or a third party where that attribution was inadvertent,
 - (b) not attribute the authorship of the author when using the work (including exhibiting or performing the work in or to the public), and
 - (c) materially alter the work in any way.

5.5 Safekeeping and preservation of material

The Consultant must ensure the safe-keeping and proper preservation of Contract Material and Territory Material in its possession or control and deliver to the Territory all Contract Material and Territory Material on the expiration or termination of this Agreement (other than copies of material that the Territory has authorised the Consultant to retain).

5.6 Territory access to records relating to Services

Without limiting the powers of the Territory's Auditor-General under the *Auditor-General Act 1996* (ACT) the Territory (or its nominated representative) may, at its cost, inspect records kept by the Consultant and conduct audits and other checks, to monitor the Consultant's:

- (1) delivery of the Services and compliance with this Agreement; and
- (2) financial position, resources and their ability to otherwise continue to deliver the Services for the term,

and the Consultant must act reasonably to cooperate with persons authorised to conduct an audit or checks and allow the Territory (at the Territory's expense) to take copies of all relevant records.

6. Consultant's personnel

The Consultant must:

- (1) in performing the Services, engage only persons who have the skills, training and expertise appropriate for the Services;
- (2) comply with all reasonable requirements notified by the Territory regarding the suitability and fitness of persons engaged by the Consultant for the performance of Services;
- (3) ensure the services are performed by Specified Personnel (if any) and provide replacement personnel acceptable to the Territory at no additional charge and at the earliest opportunity if the Specified Personnel are unable to perform any of the Services; and
- (4) if the Territory requires, ensure that each person engaged in the performance of the Services executes a deed of confidentiality in a form acceptable to the Territory (including with respect to not accessing or otherwise safeguarding Personal Information as applicable), and provide those executed deeds to the Territory in accordance with any requirements that the Territory notifies.

7. Non-disclosure of Territory Information

7.1 Consultant's use of Territory Information

The Consultant must:

- (1) use Territory Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (2) not transfer Territory Information held in connection with this Agreement outside the Territory, or allow any person (other than its authorised personnel) outside the Territory to have access to it, without the prior approval of the Territory; and
- (3) notify the Territory immediately if the Consultant becomes aware that a disclosure of Territory Information is required by law, or an unauthorised disclosure of Territory Information has occurred; and
- (4) in respect of any Personal Information held in connection with this Agreement:
 - (a) comply with the TPPs and any applicable TPP Code and must not (and procure that any subcontractor engaged by the

Consultant under this Agreement does not) act or engage in a practice that breaches a TPP or a TPP Code; and

- (b) co-operate with any reasonable requests or directions of the Territory arising directly from, or in connection with, the exercise of the functions of the information privacy commissioner under the Information Privacy Act.

7.2 Consultant to protect Territory Information

- (1) Except as provided in this Agreement, the Consultant must not disclose Territory Information to any person without the prior written consent of the Territory except to the extent that the Territory Information is:
 - (a) required or authorised to be disclosed by law,
 - (b) disclosed to the Consultant's solicitors, auditors, insurers or advisers,
 - (c) generally available to the public, or
 - (d) in the possession of the Consultant without restriction in relation to disclosure before the date of receipt from the Territory.
- (2) The Consultant must take all reasonable measures to ensure that Territory Information accessed or held by it in connection with this Agreement is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose and that only its authorised personnel have access to Territory Information.
- (3) The Consultant must do all things necessary to ensure that Territory Information accessible to the Consultant and the Consultant's personnel by virtue of the performance of this Agreement is not accessed, published or communicated in any way, including imposing upon the Consultant's personnel obligations of confidentiality with respect to Territory Information.

7.3 Acknowledgement of effect of Crimes Act

The Consultant acknowledges that the publication or communication of any fact or document by a person which has come to its knowledge or into its possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Consultant is authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900* (ACT).

8. Confidential Text under Procurement Act

8.1 Territory may make Agreement publicly available

In giving effect to the principles of open and accountable government, the Territory may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this Agreement may be a notifiable contract under the Procurement Act and, if so, the Territory will be required to make the text of this Agreement available to the public, including by publication on a public contracts register.

8.2 Confidential Text

If **Item 7 Schedule 1** states that this Agreement is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in **Item 8 Schedule 1**, and **clause 8.3** applies.

8.3 Territory must not disclose Confidential Text

Except as provided in this Agreement, the Territory must not disclose Confidential Text to any person without the prior written consent of the Consultant (which consent will not be unreasonably withheld) except to the extent that Confidential Text:

- (1) is required or authorised to be disclosed under law;
- (2) is reasonably necessary for the enforcement of the criminal law;
- (3) is disclosed to the Territory's solicitors, auditors, insurers or advisers;
- (4) is generally available to the public;
- (5) is in the possession of the Territory without restriction in relation to disclosure before the date of receipt from the Consultant;
- (6) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
- (7) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.

9. Secure Local Jobs

9.1 Definitions for this clause

- (1) In this clause 9:
 - (a) **Adverse Ruling** means a ruling by any court, tribunal, board, commission or other entity (including but not limited to the Fair Work Commission) with jurisdiction to determine the matter,

that the Consultant or one of its Associated Entities has contravened an Industrial Law;

- (b) **Approved Auditor** has the meaning as set out in the Procurement Act;
- (c) **Associated Entity** has the meaning given by section 50AAA of the *Corporations Act 2001* (Cth);
- (d) **Code** means the Secure Local Jobs Code;
- (e) **Full Details** means:
 - (i) the nature of the Adverse Ruling;
 - (ii) any conviction recorded or adverse finding made in respect of the Adverse Ruling;
 - (iii) any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the Adverse Ruling and the maximum penalty that could have been imposed under the relevant Industrial Law;
 - (iv) the name of the court, tribunal, board, commission or other entity, the jurisdiction in which the proceeding or prosecution was brought, the date on which the proceeding or prosecution commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity;
 - (v) the name of the entity against which the Adverse Ruling was made; and
 - (vi) any other relevant information that the Consultant may rely on as grounds for not terminating this Agreement as a result of the Adverse Ruling;
- (f) **Industrial Law** means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;
- (g) **Labour Relations, Training and Workplace Equity Plan** has the meaning as set out in the Procurement Act;
- (h) **Registrar** has the meaning as set out in the Procurement Act;
- (i) **Secure Local Jobs Code** has the meaning as set out in the Procurement Act;

- (j) **Secure Local Jobs Code Certificate** has the meaning as set out in the Procurement Act;
 - (k) **Territory Entity** has the meaning as set out in the Procurement Act; and
 - (l) **Territory-Funded Work** has the meaning as set out in the Procurement Act.
- (2) For the purposes of **clause 9.2(2)** and **clause 9.3(6)** the form set out in **Attachment C** is approved unless otherwise advised by the Territory.

9.2 Subcontractors performing Territory-Funded Work

- (1) The Consultant must, in relation to any subcontractors engaged to perform Territory-Funded Work:
 - (a) ensure terms are included in the agreement with the subcontractor:
 - (i) requiring the subcontractor to comply with the Code; and
 - (ii) imposing obligations on the subcontractor in the same form as those set out in **clause 9** and imposed on the Consultant (subject to any necessary variation to reflect the different parties);
 - (b) ensure:
 - (i) the subcontractor holds a Secure Local Jobs Code Certificate; and
 - (ii) maintains a Secure Local Jobs Code Certificate during the term of their agreement; and
 - (iii) the obligations in **clause 9.2(1)(b)(i)** and **clause 9.2(1)(b)(ii)** are included in the relevant agreement with the subcontractor.
- (2) The Territory may by written notice request the Consultant obtain a statutory declaration from a subcontractor engaged to perform Territory-Funded Work regarding its compliance with the Code and provide it to the Territory within 15 Business Days of the date of the written notice. The Consultant must use its reasonable endeavours to ensure the subcontractor supplies the declaration to enable the Consultant to comply with this **clause 9.2(2)**.
- (3) Without limiting **clause 5.6**, the Territory (or nominated representative) and Approved Auditors may, at the Territory's cost, access records kept by subcontractors engaged to perform Territory-Funded Work and

conduct audits and other reviews and checks, to monitor compliance with this clause and the Code, except in circumstances where a nomination would result in a conflict with Commonwealth laws.

9.3 Consultant's Secure Local Jobs responsibilities

- (1) This **clause 9.3** applies to the extent that this Agreement provides for the performance of Territory-Funded Work by the Consultant.
- (2) The Consultant must comply with all of its obligations under the Code.
- (3) The Consultant must maintain a valid Secure Local Jobs Code Certificate during the term of the Agreement.
- (4) Failure of the Consultant to maintain a valid Secure Local Jobs Certificate will constitute a breach of an essential term of this Agreement entitling the Territory to terminate the Agreement on written notice to the Consultant.
- (5) If at any time during the term of the Agreement an Adverse Ruling is made, the Consultant must, within 7 Business Days of the making of the Adverse Ruling, provide a statutory declaration by an authorised representative of the Consultant setting out the Full Details of the Adverse Ruling and (if applicable) any existing or planned remedial measures taken or to be taken to prevent a contravention, breach or offence similar to the contravention, breach or offence on which the Adverse Ruling is based from recurring.
- (6) The Consultant must provide the Territory with a statutory declaration in a form approved by the Territory regarding its compliance with the Code:
 - (a) within 5 working days of a written request from the Territory; and
 - (b) if requested in writing by the Territory, at the time the Consultant provides an Invoice.
- (7) Failure of the Consultant to provide a statutory declaration in accordance with **clause 9.3(6)** or the making of a false statement in a statutory declaration by the Consultant or its representative will constitute a breach of this Agreement.
- (8) If the Consultant fails to provide a statutory declaration in accordance with **clause 9.3(6)(b)** the Territory may withhold payment of monies otherwise due to the Consultant in respect of the relevant Invoice until the statutory declaration is received.
- (9) The Territory may require that Consultant conduct face-to-face induction sessions with employees at the commencement of Territory-

Funded Work or commencement of employment in relation to Territory-Funded Work.

- (10) The Territory may require a union workplace delegate or employee representative to attend staff induction sessions held by the Consultant except in circumstances where attendance would result in a conflict with Commonwealth laws.
- (11) The Consultant must, at all reasonable times, allow the Territory, Registrar or person nominated by the Territory or Registrar to enter the Consultant's worksite where the Territory-Funded Work is being performed in order to undertake education and awareness raising activities in relation to the Code. A person may not be nominated by the Territory or Registrar under this **clause 9.3(11)** in circumstances where entry would result in a conflict with Commonwealth laws.
- (12) Without limiting **clause 5.6**, the Territory (or nominated representative) and Approved Auditors may, at the Territory's cost, access records kept by the Consultant and conduct audits and other reviews and checks, to monitor compliance with this clause and the Code, except in circumstances where a nomination would result in a conflict with Commonwealth laws.
- (13) If the Consultant was required to submit a Labour Relations, Training and Workplace Equity Plan (if any) submitted as part of its tender for the Services:
 - (a) the Consultant must implement its commitments set out in its Labour Relations, Training and Workplace Equity Plan;
 - (b) the Consultant must report to the Territory on its compliance with **clause 9.3(13)(a)** quarterly during the term of this Agreement;
 - (c) the Consultant must attend any meetings scheduled by the Territory to review its progress in implementing its commitments set out in the Labour Relations, Training and Workplace Equity Plan; and
 - (d) failure to comply, in whole or in part, with the commitments contained in any Labour Relations, Training and Workplace Equity Plan may be taken into account in the award of future contracts for Territory Entities and/or the granting of future Secure Local Jobs Code Certificates by the Registrar.

10. Insurance and indemnity

10.1 Consultant's insurance

The Consultant must effect and maintain for the Term all insurance coverage required to be effected by it by law, public liability insurance and professional

indemnity insurance in amounts not less than the amounts (if any) specified by **Item 5 Schedule 1**, and any other insurance specified in **Item 5 Schedule 1** with a Prescribed Insurer.

10.2 Indemnity

The Consultant indemnifies the Territory, its employees and agents against liability in respect of all claims, costs and expenses in relation to all loss, damage, injury or death to persons or property caused by the Consultant, in connection with the provision of the Services, except to the extent that the Territory caused the relevant loss, damage or injury.

10.3 Claims to be made good

The Consultant must, at its expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in **clause 10.2** and the Territory may deduct the amount, or any part of it, from any moneys due or becoming due to the Consultant under this Agreement.

11. Variations

11.1 Change of scope or timing

As soon as practicable after becoming aware of any matter which is likely to change or has changed the scope and/or timing of the Services, the Consultant must give written notice to the Territory detailing the circumstances and extent or likely extent of the change of scope and/or timing and whether the Consultant will be proposing a Variation in accordance with **clause 11.2(9)**.

11.2 Proposed Variations

- (1) The Territory may instruct Variations in writing and the Consultant must comply with these instructions.
- (2) The Consultant must take all reasonable steps to minimise the effects of Variation work on the time to complete the Services.
- (3) Unless the Territory instructs the Consultant to proceed, the Consultant must not begin to carry out the Variation until the parties have resolved price and time implications (including delay costs, if any).
- (4) When requested by the Territory, the Consultant must, within the time specified in the request, advise the Territory of its price (including reasonable delay costs, if any, but not including any amount on account of loss of profits) for a proposed Variation and its effect on the time to complete the Services, or on any other matter specified in the request.
- (5) Unless otherwise agreed, the price of a Variation will be determined using the hourly rates set out in **Item 9 Schedule 1** (if any). If hourly rates are not included in **Item 9 Schedule 1**, reasonable rates and prices apply.

- (6) If the parties are unable to reach agreement as to whether a Variation applies **clause 13** will apply.
- (7) If the parties agree that a Variation applies they must endeavour to agree in writing on its price and effect on the time to complete the Services. Failing agreement on price or time **clause 13** will apply.
- (8) The Contract Price must be adjusted to account for the price of a Variation.
- (9) If the Consultant considers that a Variation applies but the Territory has not instructed a Variation, the Consultant must make its claim for a Variation in writing to the Territory within 5 Business Days from the start of the event giving rise to the Variation, or from the time when the event should have become known to the Consultant with reasonable diligence on its part.
- (10) Variations instructed by the Territory must be generally consistent with or of a similar nature to the type of work included in the Services.
- (11) To the extent a Variation has reduced the scope of Services, the Territory may thereafter carry out that omitted or deleted work either itself or by engaging other contractors.
- (12) Any Variations agreed or determined under **clause 13** including the resultant adjustment to the Contract Price should be documented by the parties in writing.
- (13) For the avoidance of doubt, where a Variation results in a reduction of Services the Consultant will have no claim for loss of profits.

12. Novation

12.1 Territory may novate this Agreement

The Territory may at any time, without the consent of the Consultant, novate this Agreement to a contractor ("**Contractor**") engaged or to be engaged by the Territory to construct or design and construct the works the subject of the Services.

12.2 Consultant to execute deeds

- (1) If the Territory elects to novate this Agreement under **clause 12.1**, the Consultant must:
 - (a) execute a consultant deed of novation in the form set out in **Attachment A** (if any) to give effect to the novation within 7 days of receipt of the consultant deed of novation from the Territory; and

- (b) if requested by the Territory, execute a consultant deed of covenant in the form set out in **Attachment B** (if any), duly completed with all relevant particulars, within the period specified by the Territory in such request and deliver the executed consultant deed of covenant to the Territory.
- (2) No consultant deed of covenant will be construed in any way to modify or limit any rights, powers or remedies of the Territory against the Consultant whether under this Agreement or otherwise.

13. Dispute resolution

- (1) If a difference or dispute (**Dispute**) arises in relation to this Agreement either party may give notice to the other that a Dispute exists, which specifies details of the Dispute, and the parties agree that they will endeavour to resolve the Dispute by negotiations, or, if the Dispute has not been resolved within 28 days of the issue of the notice, refer to matter to appropriate senior executives with authority to finally resolve the matter.
- (2) Nothing in this **clause 13** will prejudice the rights of either party to institute proceedings to enforce this Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

14. Termination

14.1 Default

The Territory may terminate this Agreement, at any time by notice to the Consultant, if the Consultant:

- (1) is the subject of an Insolvency Event;
- (2) fails to commence timely provision of the Services or to meet any timeframes specified in this Agreement; or
- (3) is in breach of a provision of this Agreement, where that breach:
 - (a) if capable of being remedied, is not remedied within the period specified in a notice by the Territory, or
 - (b) is not capable of being remedied.

14.2 Termination for any reason

The Territory may, at any time by notice to the Consultant, terminate this Agreement, and in that event:

- (1) the Territory will be liable only for:

- (a) payments under this Agreement for Services rendered before the date of termination, and
 - (b) subject to **clauses 14.2(2)**, any reasonable costs incurred by the Consultant and directly attributable to the termination, but not in respect of loss prospective profits;
- (2) on receipt of a notice of termination, the Consultant must:
 - (a) stop work as specified in the notice, and
 - (b) take all available steps to minimise loss resulting from that termination.

14.3 No prejudice

Nothing in this **clause 14** prejudices any other rights or remedies of the Territory in respect of any breach of this Agreement.

15. Work Health and Safety

- (1) The Consultant must comply with the WHS Legislation and ensure all Services are carried out safely and in a manner that does not put the health and safety of persons at risk.
- (2) The Consultant must comply with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all persons who have a work health and safety duty in relation to the same matter.
- (3) The Consultant must exercise a duty of utmost good faith to the Territory in carrying out the Services to enable the Territory to discharge the Territory's duties under the WHS Legislation.
- (4) The obligations set out in this Agreement do not detract from the Consultant's obligations under the WHS Legislation. If there is an inconsistency between this Agreement and the WHS Legislation, the Consultant must comply with the WHS Legislation.

16. General

16.1 General responsibilities of parties

Each party will fully cooperate with each other to ensure timely progress and fulfilment of the Agreement.

16.2 Conflict of interest

The Consultant warrants that no conflict of interest exists or is likely to arise in the performance of the Services and its other obligations under this Agreement

and must, if a conflict or risk of conflict arises, notify the Territory and comply with any requirement of the Territory to eliminate or deal with that conflict or risk.

16.3 No employment, partnership or agency relationship

Nothing in this Agreement constitutes the Consultant, or its employees, agents or subcontractors as employees, partners or agents of the Territory or creates any employment, partnership or agency for any purpose and the Consultant must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Territory.

16.4 No assignment or subcontracting

- (1) The Consultant must not subcontract the performance of the Services or assign the whole or part of this Agreement without the prior written consent of the Territory. If the Territory gives its consent, the Territory may impose any conditions.
- (2) A change in the control of the Consultant or a company that controls the Consultant (except a company listed on an Australian stock exchange) is taken to be an assignment, the term "control" including the direct or indirect holding of more than 50% of the share capital of a corporation.
- (3) If the Consultant breaches **clause 16.4(1)**, the Territory reserves its rights, including requiring the Consultant to provide information regarding the proposed subcontractor's or assignee's capability to continue performing this Agreement or to provide security to ensure the proper performance of this Agreement.

16.5 Entire agreement

This Agreement comprises the entire agreement between the parties in relation to the Services and supersedes any prior representations, negotiations, writings, memoranda and agreements.

16.6 Severability

Any provision of this Agreement that is illegal, void or unenforceable will not form part of this Agreement to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Agreement will not be invalidated by an illegal, void or unenforceable provision.

16.7 Variation

Subject to **clause 11** with respect to Variations, this Agreement may be varied or the Term extended only by the written agreement of the parties prior to the expiration of this Agreement.

16.8 No waiver

Failure or omission by the Territory at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights and remedies that the Territory may have in respect of that provision.

16.9 Governing law and compliance with the law

This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory. The Consultant must comply with the laws from time to time in force in the Territory in performing the Services.

16.10 Notices

Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and given to the relevant Contract Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (4) if sent by electronic mail, on whichever of the following occurs first:
 - (a) the other party's acknowledgment of receipt by any means,
 - (b) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address, or
 - (c) expiration of two business days after the date on which it was sent without receipt of a notification that the delivery failed,

and if given in two or more ways, on the first of paragraphs (1) to (4) occurring.

16.11 Special Conditions

In the event of any inconsistency between any Special Condition and any other provision of this Agreement then, to the extent of any inconsistency, the Special Condition will prevail.

16.12 Survival of clauses

Clauses 7, 10.2 and 10.3 will survive the expiration or earlier termination of this Agreement.

SCHEDULE 1

CONTRACT DETAILS

Item 1. Contract Officers

See clauses 1.1 and 16.10

For the Territory:

Peter Parry-Fielder
Project Officer
Infrastructure Delivery Partners
Major Projects Canberra
Level 3, Callam Offices
50 Easty Street
PHILLIP ACT 2606

Phone: (02) 6207 7962

Email: Peter.Parry-Fielder@act.gov.au

For the Consultant:

John Guida
Partner
Guida Moseley Brown Pty Ltd
6 Pirie Street
FYSHWICK ACT 2609

Phone: (02) 6280 7080

Email: gmb@gmbarchitects.com

Item 2. Term

See clause 3

From the Date of award of this Agreement until 30 November 2023.

Item 3. Contract Price

See clause 4

- (1) Contract Price: \$770,891.00 (GST is included) for Part A, Phase 1 and Part A, Phase 2A only. A breakdown of the Contract Price is incorporated into this Agreement at **Attachment D**.
- (2) The Contract Price is payable by monthly instalments. Invoices may only be rendered on a monthly basis in arrears.
- (3) Except if otherwise stated in this Agreement, the Contract Price is:
 - (a) payable within 30 days of receipt by the Territory of an Invoice;
 - (b) inclusive of GST and all other taxes, duties and charges; and

- (c) inclusive of all disbursements, including out-of-pocket expenses incurred by the Consultant.

(4) Except if otherwise stated in this Agreement, Payment Claims are to be:

- (a) submitted through PMARS; and
- (b) to be made in favour of the represented Directorate of the Principal being Transport Canberra and City Services Directorate and is to be provided to the Principal's Authorised Person. Payment Claims are to be addressed as follows:

Transport Canberra and City
Services Directorate
Nivad Nafisi
Level 2, Cotter
480 Northbourne Avenue
DICKSON ACT 2602

Item 4. Specified Personnel
See clause 6

Personal information

Item 5. Other amounts and insurance
See clause 10.1

- (1) Public liability insurance: \$20 million (in respect of each claim).
- (2) Professional indemnity insurance: \$5 million (in respect of each claim) and \$5 million (in the annual aggregate).

The Consultant must maintain the professional indemnity insurance coverage required under this **Item 5** for an additional period of 6 years from the expiration of the Term. This Item survives the expiration or earlier termination of this Agreement.

Item 6. Territory

Item 6 not used.

Information
See clauses 1.1 and 7

- Item 7. Confidential Text**
See clauses 1.1 and 8
- This Agreement is a “notifiable contract” under the Procurement Act and the financial and personnel information and the Statement of Requirements is Confidential Text.
- Item 8. Grounds for confidentiality of Confidential Text**
See clause 8
- The Procurement Act, part 3 (Notifiable Contracts) applies to this Agreement. The Territory is satisfied that the Confidential Text is “confidential information” for the purposes of that Act because disclosure of the text would:
- (1) be an unreasonable disclosure of Personal Information about a person; or
 - (2) be an unreasonable disclosure of information about the business affairs of a person.
- Item 9. Hourly rates for variations**
See clause 11.2(5)
- Additional work will be costed using the hourly rates that are included at **Attachment D**.
- Note: Additional work outside the scope of the Brief may only be undertaken with the prior written consent of the Territory’s Contract Officer.*
- Item 10. Program**
See clause 2.2
- A Program lodged with Tender is to be updated as requested by the Contract Officer.

SCHEDULE 2

THE SERVICES

The Consultant must provide the Services within any specified timeframes and in accordance with the terms and conditions of this Agreement as well as those specified in the Statement of Requirements which is incorporated into this Agreement at **Attachment E**.

SCHEDULE 3

SPECIAL CONDITIONS

See clause 15.11

Item 1. Complaints in relation to interference with privacy

Not Used

Item 2. Changes in control of Consultant

Not Used

Item 3. Work Health and Safety

Not Used

Item 4. Audit

Without limiting the powers of the Territory's Auditor-General under the *Auditor-General Act 1996* (ACT) the Territory (or its nominated representative) may, at its cost, inspect records kept by the Consultant and conduct audits and other checks, to monitor the Consultant's delivery of the Services and compliance with this Agreement. The Consultant must act reasonably to cooperate with persons authorised to conduct an audits or checks.

Item 5. Local Industry Participation

- 5.1 The Consultant must implement its commitments set out in its local industry participation plan ("**IPP Plan**") submitted as part of its tender for the Services.
- 5.2 The Consultant must provide a local industry participation report ("**IPP Report**") on its compliance with this clause in a format and addressing matters reasonably required by the Territory within 6 months of the date of this Agreement and on or before the first, and each subsequent, anniversary of this Agreement.
- 5.3 Before or concurrently with the Consultant's submission to the Territory of its final Invoice for payment under this Agreement, the Consultant must provide to the Territory a final IPP Report ("**Final IPP Report**") that sets out its level of compliance with the commitments provided for in the IPP Plan throughout the Term and which is accompanied by a statutory declaration stating the information provided in the Final IPP Report is true and correct.
- 5.4 The Territory may withhold payment of the final Invoice until submission of a satisfactory Final IPP Report by the Consultant.

- 5.5 The Consultant must attend any meeting scheduled by the Territory to review how its IPP Plan is being implemented and advanced, and for this purpose, the Consultant must provide all information reasonably requested by the Territory.
- 5.6 The Consultant's failure to comply, in whole or in part, with the commitments contained within the IPP Plan may be a factor taken into account in the award of future contracts for the Territory.

Item 6. Agency

Not Used

Item 7. Development Application

Not Used

Item 8. Standards

Not Used

Item 9. Sub-consultants

The Territory accepts the use of the following sub-consultants in the delivery of the Services. The Consultant must ensure that the Territory's interests are protected at all times by making sure that all sub-consultants effect and maintain all appropriate insurances.

- ACOR
- Northrop
- Scott D McNiven Associates
- ESBS Consultants
- Therian
- Place Laboratory
- Turner & Townsend
- Past Traces
- Traditional Owners
- D&N Geotechnical
- Canberra Town Planning
- Steve Watson Partners
- Milsearch
- WSP
- Harris Environmental

SCHEDULE 4

PAYMENT SCHEDULE RECOMMENDATION

See description of Services – Schedule 2

Not Used

DATE OF THIS AGREEMENT 21-11-2022

SIGNED for and on behalf of the
AUSTRALIAN CAPITAL TERRITORY
in the presence of:



.....
Signature of witness

Ivan Sukloski

.....
Print name

SIGNED by or for and on behalf of
GUIDA MOSELEY BROWN PTY LTD
ACN 101 197 246
in the presence of:

.....
Personal information

.....
Signature of ~~director/ secretary/~~ witness*
* (see note below)

.....
Personal information

.....
Print name

) *Matt O'Rourke*

)
Signature of Territory delegate

Matt O'Rourke

.....
Print name

.....
Personal information

)
)
) Signature of director/ ~~authorised~~
~~officer/ individual*~~
* (see note below)

.....
Personal information

.....
Print name

.....
Personal information

.....
Signature of second authorised officer*
* (see note below)

.....
Personal information

.....
Print name

Affix common seal
if required under
constitution

Note:

- Date: Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement are exchanged, the date of exchange. Also date the cover page.
- Company: Must be signed in accordance with **either section 126 or section 127** of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Consultant's constitution.
- Individual: Must be signed by the individual Consultant and witnessed.
- Incorporated Association: Must be signed in accordance with the Consultant's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

ATTACHMENT A

CONSULTANT DEED OF NOVATION

Deed made at on, 20.....

Parties

AUSTRALIAN CAPITAL TERRITORY, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the [INSERT name of Directorate / Agency].

[INSERT FULL NAME, INCLUDING ACN FOR A COMPANY OR ABN FOR OTHER ORGANISATION AND CHECK IT IS A LEGAL ENTITY] of [INSERT address (of registered office if for a company)] (**Contractor**).

[INSERT FULL NAME, INCLUDING ACN FOR A COMPANY OR ABN FOR OTHER ORGANISATION AND CHECK IT IS A LEGAL ENTITY] of [INSERT address (of registered office if for a company)] (**Consultant**).

Recitals

- A. The Territory has engaged the Contractor under the contract described in **Item 1 of the Schedule ("Works Contract")** to effect certain works ("Works").
- B. The Territory and the Consultant have entered into the contract described in **Item 2 of the Schedule ("Services Contract")** to effect certain work ("Services"), which work forms part of the Contractor's obligations under the Works Contract.
- C. The Works Contract and the Services Contract require the Contractor and the Consultant to enter into this Deed for the purpose of effecting a novation of the Services Contract from the Territory to the Contractor.

This Deed provides

1. INTERPRETATION

1.2 Definitions

In this Deed, terms defined in the Works Contract and not otherwise defined in this Deed have the same meanings, unless the context otherwise requires.

1.3 General

In this Deed, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;

- (b) headings are for convenience only and do not affect the interpretation of this Deed;
- (c) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (d) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (e) references to any document (including this Deed) include any amendment to or substitute for such document; and
- (f) references to any party to or in this Deed or any other document include its successors or permitted assigns.

1.4 This Deed Prevails

To the extent of any inconsistency between this Deed, the Works Contract or the Services Contract, this Deed prevails unless the parties expressly agree otherwise.

2. NOVATION

In accordance with the terms of the Works Contract and the Services Contract:

- (a) the Territory and the Consultant mutually agree:
 - (i) to terminate the Services Contract and (subject to **clause 2(a)(ii)**) to release each other from all obligations and liabilities under the Services Contract; and
 - (ii) that the amount set out in **Item 3 of the Schedule** is payable by the Territory to the Consultant in full and final settlement of all claims under the Services Contract prior to the termination under **clause 2(a)(i)**; and
- (b) the Contractor and the Consultant will be deemed to have entered into a new contract on the same terms and conditions as the Services Contract, subject to the following:
 - (i) the Contractor will be named in the new contract in lieu of the Territory;
 - (ii) the rights, obligations and liabilities of the Contractor and the Consultant will be as if the Contractor had executed the Services Contract in lieu of the Territory;
 - (iii) the amount set out in **Item 4 of the Schedule** is the balance payable by the Contractor to the Consultant for the Services under the new contract; and
 - (iv) the Consultant will indemnify the Contractor against all claims, costs, expenses, losses or damages suffered or incurred by the Contractor arising out of or incidental to any failure by the

Consultant to perform its obligations under the Services Contract with the Territory prior to its termination.

3. ASSIGNMENT

Except as expressly contemplated by this Deed, neither the Contractor nor the Consultant may assign or transfer any of its rights or obligations under this Deed or the Services Contract.

4. FURTHER ASSURANCES

The Contractor and the Consultant undertake upon request by the Territory to execute all documents and do all things necessary to vest in the Contractor the Services Contract or otherwise to give effect to the terms of this Deed.

5. GOVERNING LAW AND JURISDICTION

This Deed will be governed by and construed in accordance with the law applicable to the Works Contract.

7. NOTICES

Any notice, including any other communication, required to be given or sent to either party under this Deed must be in writing and given to the relevant contact officer set out in **Item 5 of the Schedule**. A notice will be deemed to have been given:

- (a) if delivered by hand, on delivery;
- (b) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
- (c) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (d) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.

8. COUNTERPARTS

This Deed may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

9. WAIVERS, REMEDIES CUMULATIVE

9.1 No waiver

No failure to exercise and no delay in exercising, on the part of the Territory, any right or remedy under this Deed will operate as a waiver, nor will any single or partial exercise of any right or remedy preclude any other or further exercise, of that or any other right or remedy.

9.2 Remedies cumulative

The rights and remedies provided in this Deed are cumulative and are not exclusive of any rights or remedies provided by law or any other such right or remedy.

INFORMATION ONLY

Schedule

Item 1 (Recital A)	Works Contract:	[Head / Managing Contractor] Contract number [INSERT] dated on or about [INSERT] for [INSERT BRIEF DESCRIPTION]
Item 2 (Recital B)	Services Contract:	Services contract number [INSERT] dated on or about [INSERT] for [INSERT BRIEF DESCRIPTION]
Item 3 (Clause 2(a)(ii))	Amount payable:	[INSERT AMOUNT] (GST inclusive)
Item 4 (Clause 2(b)(iii))	Balance payable:	[INSERT AMOUNT] (GST inclusive)
Item 5 (Clause 6.1(b)(i))	Notices:	[INSERT CONTRACT OFFICER NAME, ADDRESS, EMAIL ADDRESS & FAX NUMBER FOR EACH PARTY]

EXECUTED AS A DEED ON

SIGNED, SEALED AND DELIVERED)

for and on behalf of the)

AUSTRALIAN CAPITAL TERRITORY)

in the presence of:

Signature of Territory delegate

.....
Signature of witness

.....
Print name

.....
Print name

SIGNED, SEALED AND DELIVERED)

by or for and on behalf of)

[NAME & ACN OF CONSULTANT])

in the presence of:

Signature of director/ authorised officer/ individual*

*DELETE whichever is not applicable (see note below)

.....
Signature of director/ secretary/ witness*

*DELETE whichever is not applicable (see note below)

.....
Print name

.....
Print name

.....
Signature of second authorised officer*

*only use if Incorporated Association (see note below)

.....
Print name

Affix common seal
if required under
constitution

SIGNED, SEALED AND DELIVERED)

by or for and on behalf of)

[NAME & ACN OF CONTRACTOR])

in the presence of:

.....
Signature of director/ authorised
officer/ individual*

*DELETE whichever is not applicable (see note below)

.....
Signature of director/ secretary/ witness*

*DELETE whichever is not applicable (see note below)

.....
Print name

.....
Print name

.....
Signature of second authorised officer*

*only use if Incorporated Association (see note below)

.....
Print name

Affix common seal
if required under
constitution

Note:

Date: Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement are exchanged, the date of exchange. Also date the front page.

Company: Must be signed in accordance with **either section 126 or section 127** of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the entity's constitution.

Individual: Must be signed by the individual person and witnessed.

Incorporated Association: Must be signed in accordance with the entity's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

ATTACHMENT B

CONSULTANT DEED OF COVENANT

Deed made at on, 20.....

Parties **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the [INSERT name of Directorate / Agency].

[INSERT FULL NAME, INCLUDING ACN FOR A COMPANY OR ABN FOR OTHER ORGANISATION AND CHECK IT IS A LEGAL ENTITY] of [INSERT address (of registered office if for a company)] (**Consultant**).

Recitals

- A. The Territory engaged the Consultant under the contract described in **Item 1 of the Schedule ("Services Contract")** to effect certain work ("**Services**").
- B. The Territory has engaged the contractor described in **Item 2 of the Schedule ("Contractor")** under the contract described in **Item 3 of the Schedule ("Works Contract")** to effect certain works ("**Works**").
- C. The Services Contract has been novated to the Contractor and the Consultant is required to execute this Deed under the Services Contract.

This Deed provides

1. INTERPRETATION

1.1 Definitions

In this Deed, terms defined in the Services Contract and not otherwise defined in this Deed have the same meanings and the following term has the following meaning unless the context otherwise requires.

Services Subcontract means the contract between the Consultant and the Contractor.

1.2 General

In this Deed, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) headings are for convenience only and do not affect the interpretation of this Deed;
- (c) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;

- (d) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (e) references to any document (including this Deed) include any amendment to or substitute for such document; and
- (f) references to any party to or in this Deed or any other document include its successors or permitted assigns.

1.3 This Deed Prevails

To the extent of any inconsistency between this Deed, the Services Contract, or the Works Contract, this Deed prevails unless the parties expressly agree otherwise.

2. NOVATION

If the Territory gives a notice under the Terms of the Works Contract requiring novation of the Services Subcontract in accordance with this **clause 2** and (where applicable) of the name of the person, firm or corporation (if any) which is to be a party to the new contract referred to in paragraph (b) ("**Nominee**") then:

- (a) the Services Subcontract is immediately terminated on and from the date of the notice;
- (b) the Territory or the Nominee (as the case may be) and the Consultant will be deemed to have immediately on and from the date of the notice entered into a new contract on the same terms and conditions as the Services Subcontract, subject to the following:
 - (i) the Territory or the Nominee (as the case may be) will be named in the new contract in lieu of the Contractor; and
 - (ii) the rights, obligations and liabilities of the Territory or the Nominee (as the case may be) and the Consultant will be as if the Territory or the Nominee (as the case may be) had executed the Services Subcontract in lieu of the Contractor; and
- (c) the Consultant will indemnify the Territory against all claims, costs, expenses, losses or damages suffered or incurred by the Territory arising out of or incidental to any failure by the Consultant to perform its obligations under the Services Subcontract with the Contractor prior to its termination.

3. DUTY OF CARE

The Consultant:

- (a) warrants to the Territory that it will exercise the standard of skill, care and diligence in the performance of the Services that would be expected of expected of a person who regularly acts in the capacity in which the Consultant is engaged;
- (b) must:

- (i) ensure that it complies with the requirements of the Services Subcontract; and
 - (ii) use its best endeavours to ensure that any designs, plans, documentation and the like required to be produced by it under the Services Subcontract will be fit for its intended purpose;
- (c) must ensure that the Services are provided economically and in accordance with any budgetary requirements of the Territory notified to the Consultant; and
- (d) must exercise the utmost good faith in the best interests of the Territory and keep the Territory fully and regularly informed about all matters affecting or relating to the Services and the Services Contract or otherwise.

4. ASSIGNMENT

Except as expressly contemplated by this Deed, the Consultant may not assign or transfer any of its rights or obligations under this Deed or the Services Contract.

5. FURTHER ASSURANCES

The Consultant undertakes upon request by the Territory to execute all documents and do all things necessary to vest in the Territory or the Contractor the Services Contract or otherwise to give effect to the terms of this Deed.

6. GOVERNING LAW AND JURISDICTION

This Deed will be governed by and construed in accordance with the law applicable to the Services Contract.

7. NOTICES

Any notice, including any other communication, required to be given or sent to a party under this Deed must be in writing and given to the relevant contact officer set out in **Item 4 of the Schedule**. A notice will be deemed to have been given:

- (a) if delivered by hand, on delivery;
- (b) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
- (c) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (d) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.

8. COUNTERPARTS

This Deed may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

9. WAIVERS, REMEDIES CUMULATIVE

9.1 No waiver

No failure to exercise and no delay in exercising, on the part of the Territory, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise, of that or any other right or remedy.

9.2 Remedies cumulative

The rights and remedies provided in this Deed are cumulative and are not exclusive of any rights or remedies provided by law or any other such right or remedy.

Schedule

Item 1 (Recital A)	Services Contract:	Contract number [INSERT] for [INSERT BRIEF DESCRIPTION] dated on or about [INSERT]
Item 2 (Recital B)	Contractor:	[INSERT NAME AND ACN OF CONTRACTOR IF A COMPANY, OR ABN]
Item 3 (Recital B)	Works Contract:	Contract number [INSERT] for [INSERT BRIEF DESCRIPTION] dated on or about [INSERT]
Item 4 (Clause 1.1(a)(i))	Notices:	[INSERT NAME OF CONTACT OFFICER, ADDRESS, EMAIL & FAX NUMBER FOR EACH PARTY]

EXECUTED AS A DEED ON

SIGNED, SEALED AND DELIVERED)
for and on behalf of the)
AUSTRALIAN CAPITAL TERRITORY) Signature of Territory delegate
in the presence of:

.....
Signature of witness

.....
Print name

.....
Print name

SIGNED, SEALED AND DELIVERED)
by or for and on behalf of)
[NAME & ACN OR ABN OF)
CONSULTANT]
in the presence of:

.....
Signature of director/ authorised
officer/ individual*

*DELETE whichever is not applicable (see note below)

.....
Signature of director/ secretary/ witness*

*DELETE whichever is not applicable (see note below)

.....
Print name

.....
Signature of second authorised officer*

*only use if Incorporated Association (see note below)

.....
Print name

.....
Print name

Affix common seal
if required under
constitution

Note:

Date: Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement are exchanged, the date of exchange. Also date the front page.

Company: Must be signed in accordance with **either section 126 or section 127** of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the entity's constitution.

Individual: Must be signed by the individual person and witnessed.

Incorporated Association: Must be signed in accordance with the entity's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

ATTACHMENT C

ETHICAL SUPPLIERS DECLARATION

See clause 9

Statutory Declarations Act 1959 (Cth)

I, [Name, address and occupation of person making declaration] make the following declaration under the Statutory Declarations Act 1959 (Cth),

1. In this declaration a reference to:

"Adverse Ruling" means a ruling, order, notice (including without limitation any improvement notice or prohibition notice), conviction or finding made or issued by any Authorised Entity.

"Authorised Entity" means any court, tribunal, board, commission, regulatory agency (including without limitation the director-general, commissioner, regulator or any inspector referred to in the Prescribed Legislation) or other entity with jurisdiction to determine employee and industrial relations matters or work health and safety matters to the effect that the Contractor has contravened the Prescribed Legislation.

"Consultant" means a consultant engaged by the Contractor to design parts of the Works or to provide other professional services. It includes a consultant whose contract with the Principal is novated to one with the Contractor.

"Contract" means an agreement which has or will shortly be entered into between the Australian Capital Territory and the Contractor for the provision of works in respect of the Project.

"Contractor" means [insert full legal name of Contractor including the ACN/ABN as per that identified on the Contract];

"Employee" means a natural person who is employed under a contract of service (excluding professional or information technology services) to provide the Contractor or a Subcontractor with his or her labour.

"Industrial Instruments" means an award or agreement, however designated, that:

- (a) is made under or recognised by an industrial law; or
- (b) concerns the relationship of an employer and the employer's employees.

"Prescribed Legislation" means all applicable Acts and subordinate instruments of the Commonwealth and the Territory, which deal with matters relating to industrial relations, employment and/or workplace safety obligations that apply to an entity including (as amended or replaced from time to time) but not limited to:

- (a) *Fair Work Act 2009 (Cth)*;
- (b) *Fair Work (Building Industry) Act 2012 (Cth)*;
- (c) *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*;
- (d) *Income Tax Assessment Act 1997 (Cth)*;
- (e) *Independent Contractors Act 2006 (Cth)*;
- (f) *Industry Research and Development Act 1986 (Cth)*;
- (g) *Long Service Leave Act 1976 (ACT)*;
- (h) *Long Service Leave (Portable Schemes) Act 2009 (ACT)*;
- (i) *Migration Act 1958 (Cth)*;
- (j) *Paid Parental Leave Act 2010 (Cth)*;
- (k) *Payroll Tax Act 2011 (ACT)*;
- (l) *Safety, Rehabilitation and Compensation Act 1988 (Cth)*;
- (m) *Superannuation Guarantee (Administration) Act 1992 (Cth)*;
- (n) *Superannuation Guarantee Charge Act 1992 (Cth)*;
- (o) *Work Health and Safety Act 2011 (ACT)*;
- (p) *Workers' Compensation Act 1951 (ACT)*;
- (q) *Workplace Gender Equality Act 2012 (Cth)*.

"Project" means Project No [insert ACT Government Project no] for [insert sufficient details to identify nature of project];

"Prescribed Works or Services" means works or services that require the exertion of labour by Employees;

"Secure Local Jobs Code Certificate" has the meaning given by the *Government Procurement Act 2001*;

"Subcontractor" includes a sub-subcontractor; and

"Supplier" means an entity engaged by the Contractor to supply part of the Project.

all other capitalised words or terms have the same meaning as defined in the Contract.

2. I am authorised on behalf of the Contractor to make this declaration.
3. All Employees of the Contractor who have at any time been employed by the Contractor in respect of the Project have, at the date of this statutory declaration, been paid all moneys due and payable to them in respect of their employment on the work under the Contract.
4. The Contractor has made provision for all other benefits (as required by Prescribed Legislation and any Industrial Instruments) accrued in respect of its Employees as at the date of this statutory declaration.
5. All Subcontractors, Suppliers and Consultants have been paid all amounts payable to each of them by the Contractor as at the date of this statutory declaration with respect to engagement by each of them

for the performance of Work or the supply of materials for or in connection with the Contract.

6. All workers compensation insurance premiums payable by the Contractor to the date of this statutory declaration in respect of the Work done in connection with the Contract have been paid.

7. All payroll tax payable by the Contractor in respect of wages paid or payable to the relevant Employees of the Contractor for Work done in connection with the Contract to the date of this statutory declaration has been paid.

8. The Contractor holds a current Secure Local Jobs Code Certificate.

9. The Contractor has in the preceding 24 months of the date of this declaration complied with all applicable Industrial Instruments.

☐ True (delete 9A and initial) ☐ Not true (answer 9A)

9A. The Contractor has not complied with the following Industrial Instruments in the following respects.

[Insert full details of failure to comply with Industrial Instruments]

10. The Contractor has in the preceding 24 months of the date of this declaration complied with all Prescribed Legislation

☐ True (delete 10A and initial) ☐ Not true (answer 10A)

10A. The Contractor has not complied with the following Prescribed Legislation.

[Insert Full Details of the failure to comply with Prescribed Legislation]

11. The Contractor has in the preceding 24 months of the date of this declaration recognised the rights of its Employees to union membership and representation.

☐ True (delete 11A and initial) ☐ Not true (answer 11A)

11A. The Contractor has not recognised the rights of Employees to union membership and representation in the following respects.

[Insert Full Details of how the Contractor has not recognised the rights of Employees to union membership and representation]

12. The Contractor has in the preceding 24 months of the date of this declaration complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency.

☐ True (delete 12A and initial) ☐ Not true (answer 12A)

- 12A. The Contractor has not complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency in the following respects:

[Insert Full Details of how the Contractor has failed to comply with all amendments to wages and conditions of employment]

13. In the preceding 24 months of the date of this declaration there have been no findings against the Contractor by any Authorised Entity, including a finding of a breach in a non-confidential consent order.

☐ True (delete 13A and initial) ☐ Not true (answer 13A)

- 13A. There have been the following findings (Full Details of which are provided) against the Contractor by an Authorised Entity:

[Set out Full Details of findings]

14. In the preceding 24 months of the date of this declaration there have been no Adverse Rulings under the Prescribed Legislation against the Contractor.

☐ True (delete 14A and initial) ☐ Not true (answer 14A)

- 14A. There have been the following Adverse Rulings under the Prescribed Legislation against the Contractor:

[Set out Full Details of convictions]

15. There are currently no proceedings or prosecutions against the Contractor in respect of a breach of any Prescribed Legislation.

☐ True (delete 15A and initial) ☐ Not true (answer 15A)

- 15A. There are currently the following proceedings or prosecutions against the Contractor in respect of a breach of Prescribed Legislation.

[Set out Full Details of proceedings or prosecutions]

16. The Contractor has not been required to implement any remedial measures to ensure future compliance with the Prescribed Legislation.

☐ True (delete 16A and initial) ☐ Not true (answer 16A)

- 16A. The Contractor has been required to implement the following remedial measures to ensure future compliance with the Prescribed Legislation:

[Set out Full Details of the remedial measures implemented]

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

[Signature of person making the declaration]]

[Print name of person making the declaration]

Declared at [place] on [day] of [month] [year]

Before me:

[Signature of person before whom the declaration is made]

[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 – see section 5A of the Statutory Declarations Act 1959.

A statutory declaration under the Statutory Declarations Act 1959 may be made before--

- (1) A person who is currently licensed or registered under a law to practise in one of the following occupations:

Chiropractor	Dentist	Legal practitioner
Medical practitioner	Nurse	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trade marks attorney	Veterinary surgeon
- (2) A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (3) A person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)
Bailliff
Bank officer with 5 or more continuous years of service
Building society officer with 5 or more years of continuous service
Chief executive officer of a Commonwealth court
Clerk of a court
Commissioner for Affidavits
Commissioner for Declarations

Credit union officer with 5 or more years of continuous service

Employee of the Australian Trade Commission who is:

- (a) in a country or place outside Australia; and
- (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
- (c) exercising his or her function in that place

Employee of the Commonwealth who is:

- (a) in a country or place outside Australia; and
- (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
- (c) exercising his or her function in that place

Fellow of the National Tax Accountants' Association

Finance company officer with 5 or more years of continuous service

Holder of a statutory office not specified in another item in this list

Judge of a court

Justice of the Peace

Magistrate

Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961

Master of a court

Member of Chartered Secretaries Australia

Member of Engineers Australia, other than at the grade of student

Member of the Association of Taxation and Management Accountants

Member of the Australasian Institute of Mining and Metallurgy

Member of the Australian Defence Force who is:

- (a) an officer; or
- (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
- (c) a warrant officer within the meaning of that Act

Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants

Member of:

- (a) the Parliament of the Commonwealth; or
- (b) the Parliament of a State; or
- (c) a Territory legislature; or
- (d) a local government authority of a State or Territory

Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961

Notary public

Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public

Permanent employee of:

- (a) the Commonwealth or a Commonwealth authority; or
- (b) a State or Territory or a State or Territory authority; or
- (c) a local government authority;

with 5 or more years of continuous service who is not specified in another item in this list

Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made

Police officer

Registrar, or Deputy Registrar, of a court

Senior Executive Service employee of:

- (a) the Commonwealth or a Commonwealth authority; or
- (b) a State or Territory or a State or Territory authority

Sheriff

Sheriff's officer

Teacher employed on a full-time basis at a school or tertiary education institution

ATTACHMENT D

FINANCIAL

Form of Tender

NEW RSPCA FACILITY PIALIGO, PRINCIPAL DESIGN CONSULTANT SERVICES	
Part A: Phase 1 and Phase 2A services only	
Seven Hundred and Seventy Thousand, Eight Hundred and Ninety One Dollars, Zero Cents.	
	\$770,891.00 including GST

Role	Company	Part A: Phase 1 Concept Design Review	Part A: Phase 2A: PSP Design
Architect	Guida Moseley Brown Architects	\$	\$
Specialist Animal Architect	Therian	\$	\$
Landscape Architect	Place Laboratory	\$	\$
Cost Planner	Turner and Townsend	\$	\$
Unexploded Ordinances	Milsearch	\$	\$
Town Planner	Canberra Town Planning	\$	\$
NCC Compliance / DDA	Steve Watson Partner	\$	\$
Bushfire Hazard	Harris Environmental	\$	\$
Heritage	Past Traces	\$	\$
Geotechnical Survey	D&N Geotechnical	\$	\$
Land Survey	Scott D McNiven Associates	\$	\$
Building Engineering Services Review	ESBS Consulting	\$	\$
Engineering - Civil	Northrop	\$	\$
Engineering - Traffic	Northrop	\$	\$
Engineering - Mechanical	ACOR	\$	\$
Engineering - Elect/Comms/Lighting	ACOR	\$	\$
Engineering - Fire Protection	ACOR	\$	\$
Engineering - Hydraulic	ACOR	\$	\$
Engineering - Security	ACOR	\$	\$
Engineering - Structural	ACOR	\$	\$
Engineering - Acoustics	ACOR	\$	\$
Environment - Site Contamination	WSP	\$	\$
Environment - Ecology	WSP	\$	\$
Environment - Air Quality	WSP	\$	\$
Environment - Waste	WSP	\$	\$
Environment - ESD	WSP	\$	\$
Environment - Fire Safety	WSP	\$	\$
Indigenous Interpretation	Traditional Owners Aboriginal Corporation	\$	\$
TOTAL (EX GST)		\$ 214,815.50	\$ 485,994.50
GST		\$ 21,481.55	\$ 48,599.45
TOTAL (INC GST)		\$ 236,297.05	\$ 534,593.95

ATTACHMENT E
STATEMENT OF REQUIREMENTS



STATEMENT OF REQUIREMENTS

**New RSPCA Facility Pialligo, Principal Design
Services Consultant (38364-RFT-001)**

**On behalf of
Transport Canberra City Services
Infrastructure Delivery**

Major Projects Canberra
Infrastructure Delivery Partners

Date July 2022 version 4

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1 INTRODUCTION

RSPCA ACT has been at its current facility in Block 1173 Section 122 Weston since 1955. RSPCA ACT's objective is to help, protect and advocate for better welfare for animals in our local community and each year thousands of animals call RSPCA ACT home. RSPCA ACT has an extraordinary team of staff, volunteers and supporters that ensure they locally have one of the best animal welfare statistics in the country, with no animals euthanised due to space constraints. The facility and their staff answer cruelty complaints, prepare meals, clean kennels, and cages, desex and microchip companion animals and exercise dogs every day.

Ageing infrastructure and limited ability for future growth at the current Weston premises has presented challenges for RSPCA ACT and therefore development of a new facility has been flagged. Funding has been approved to engage a Principal Design Services Consultant to review the existing concept plan and develop further documentation to inform a Business Case for subsequent funding and provide design documentation for further construction procurements.

2. PURPOSE

Major Projects Canberra – Infrastructure Delivery Partners on behalf of TCCS seeks to engage a Principal Design Services Consultant (DSC) to continue progressing the project design work from the initial masterplan through to the completion of the Preliminary Sketch Plan design report and drawing milestones. It is anticipated that all works under the contract (Part A) will be completed by June 2023.

The Principal Design Services Consultant work will support business case development for construction funding and be used to inform any future construction head contractor tender including all works outlined under Part A below. Tenderers are to provide pricing for the optional works included as Part B (optional) and Part C (optional) described in section 5: Parts B and C (Optional). Works under Part B and Part C will be approved at the discretion of the Territory and subject to subsequent funding approval.

Part A - The Principal DSC will be responsible for reviewing the information provided within this RFT including all Principals Documents and initial concept planning documentation (attached) and undertaking all investigations, documentation and design work required for project design delivery milestones. See Attachment 1 – Design Delivery Milestones v1 and all attachments listed under section 8 of this document.

The project scope will include design for the development of Approx. 4.0 Ha of the site to provide the following sections required for the delivery of RSPCA services in the ACT. The planned facility life will be 50 years and include the following functional areas:

- Welcome and adoption
- Vet clinic
- Admin org support / offices
- Education
- Support areas
- Cattery
- Tangos Boarding (Cats)
- Dogs
- Domestic / other
- Inspectorate
- Carparking
- Site development and landscaping

A draft Space Brief is provided in Attachment 2 RSPCA ACT Revised space brief June 2021 v2, and shall be finalised in consultation with MPC, TCCS and the RSPCA.

The site will be fenced to in part to maintain control of animals accommodated at the facility and also include exercise and other fenced areas for animal exercise and wellbeing.

An initial outline of planned accommodation and site features is provided in Attachment 3 RSPCA FINAL Concept Plan Rev D.

The DSC will be responsible for engaging any other consultants required to complete the design requirements including (not limited to):

- Acoustic Engineering
- Accessibility design (DDA)
- Architectural Design (including staging, constructability and specialist advisors as required)
- Quantity Surveying / Cost advisor
- Building Certification Advisor
- Civil Engineering
- Building Engineering Services Advisor / Independent Commissioning Agent
- Utilities and Services Engineering
- Electrical Engineering, ICT and Communications (including lighting design, fixed communications, and ICT infrastructure)
- Environmental (including Environmentally Sustainable Design (ESD) and bushfire assessment considerations)
- Land Surveyor
- Geotechnical Surveyor
- Site Contamination Consultant
- Unexploded Ordnance (UXO) Consultant
- Fire Engineering and Fire Protection Services
- Heritage design (including indigenous heritage) considerations
- Hydraulic Engineering
- Landscape and urban design (including soft and hard landscaping)
- Mechanical Engineering
- Security (including access controls and alarms)
- Town Planning
- Structural Engineering
- Traffic Management, Transport/Signals (including road, buses, and active travel)

NOTE: Hourly rates to be provided for all consultant services identified as part of tenderers response to this RFT.

The successful DSC will be expected to submit the required design documentation and reports for each requirement under Attachment 1 – Design Delivery Milestones v1; in line with the delivery timetable shown below at Table 1.

Tenderers are to propose a draft program to meet the delivery dates shown in Table 1. The timing for delivery of each component is to be shown, as well as dependencies and critical path. Key deliverables are to be clearly identified with line items for consultation, workshop, client review and approvals in relation to each task (where appropriate).

The successful tenderer will provide a statused monthly program to track progress against the key delivery timetable.

Table 1:

Part A Key Delivery Timetable	Target Date
Start – up meeting	Oct 2022
Review background info, concept plan, and site investigation	Oct 2022
Commence detailed site investigation	Oct 2022
Visit current RSPCA facility in Weston	Oct 2022
Consult 1 – work group – Discuss findings/gather additional info (1 workshop)	Oct 2022
Concept Design Review Report- Assessment of Concept design including opportunities for innovation, Risk Register, estimates.	Nov 2022
Commence Draft PSP including Masterplan based on outcome of concept design review report.	Nov 2022
TCCS to commence Business Case (Consultant to inform as required)	Nov 2022
Consult 1 – Meet with Duntroon Agistees, Territory Agistment and ACTEA to better understand their concerns (1 Meetings)	Nov 2022
Consult 2 - Workshops with RSPCA staff and volunteers (2 workshops)	Nov 2022
Finish detailed site investigation	Dec 2022
Continue draft PSP documentation. Cost estimate to be finalised and provided to MPC/TCCS to inform Business Case	Dec 2022
Finalise Business Case (TCCS activity)	Jan 2022
Consult 3 – Gov Stakeholders - comment on draft PSP (1 Meetings)	Feb 2023
Consult 3 – RSPCA - comment on draft PSP (1 Meeting)	Feb 2023
Consult 3 – Meet with Territory Agistment to discuss impacts of design, ways to minimise the impact and address their concerns (1 Meeting)	Feb 2023
Consult 3 – Meet with Duntroon Agisters, and ACTEA to discuss impacts of design, ways to minimise the impact and address their concerns (1 Meeting)	Feb 2023
Consult 3 – Other external stakeholders as needed (Couple of Meetings)	Feb 2023

Consult 3 – circulate draft plans to stakeholders as needed – Any additional Comments provided	Feb - Mar 2023
Finalise PSP	Mar 2023
DA submission	Apr 2023
Prepare Stage 2 procurement documentation	Mar/May 2023
Territory Budget 2023-24	May 2023
DA Approved	Jun 2023
Consult 4 – Gov Stakeholders - present final PSP - For information (1 Meetings)	Jun 2023
Consult 4 – RSPCA - present final PSP - For information (1 Meetings)	Jun 2023
Consult 4 – Inform ACTEA of the outcome (Email update)	Jun 2023

Meeting 1: Work Group workshop - Preliminary review and update information – 1.0 hour minimum

Meeting 2: Draft Preliminary design review – 1.5 hours minimum

Meeting 3: Final Preliminary design presentation – 1.0 hour minimum

The above meetings may be face-to-face or virtual as circumstances allow.

Public notification of the DA will form part of the community engagement.

Note: WHS. Consultation formats and arrangements must ensure current Covid-19 precautionary measures are in place as these apply at the time of the consultations.

3. BACKGROUND

The Territory has identified a preferred site located on Block 2 Section 14 Pialligo for the new RSPCA facility. The preferred site is a part of Block 2 Section 14 Pialligo - located on the corner of Fairbairn Avenue and Addison Road and bounded by the Australian Defence Force Academy and Royal Military College Duntroon to the west, and Majura Parkway and Canberra Airport to the east. The site is located on the route 54 bus service from the City - through to Majura Park.

Refer to the Territory Plan to confirm the most current Block and Section details and land custodianship. The site is zoned as Broadacre which already allows for animal care facilities, like the RSPCA.

The ownership and operating model for the facility is currently being considered by the ACT Government. It is expected that the ACT Government will retain ownership of the land; the maintenance and operating arrangements for the facility will be determined as the project progresses.

Site preference has been driven by many factors including:

- public transport links and ease of road access given RSPCA's operating model is reliant on volunteers.

- A large site that provides potential for adaptability and future growth is preferred. Remain centrally located on major access roads.
- Block of land correctly sized to accommodate building requirements and potential growth.

Significant due diligence has been undertaken on the site including a range of preliminary heritage, environmental and planning studies as well as discussions with nearby stakeholders about the site. Additional studies as part of the Services will be required to confirm approval requirements and inform the design.

Seasonal environmental surveys were undertaken at the end of 2021 and found two Matters of National Environmental Significance (MNES) in the study area. The report suggested that this will trigger the need for a referral under the EPBC Act. As a result, an EPBC referral has been prepared and submitted for the site. Refer to Attachment 3 RSPCA FINAL Concept Plan Rev D, Attachment 4 Site Investigation Report Rev F.



4. ADDITIONAL INFORMATION

General requirements - Meetings

The DSC is required to coordinate, manage, and attend project progress meetings including relevant sub-consultants, MPC, TCCS and other stakeholders as appropriate. All meeting documentation including reports, agenda, previous minutes to be reviewed by MPC/TCCS prior to being circulated; two working days prior to the meeting date. Subsequent minutes and records are to be distributed within two days following the meeting.

The successful DSC will be required to develop a Stakeholder Engagement and Consultation Plan within 1 week of the contract being awarded. This plan must align with the programme and will need to outline the Consultant's stakeholder engagement approach, activities, and timeframes to progress the development of designs and associated materials. **NOTE** -All documents submitted to the Territory must meet the Web Content Accessibility Guidelines. PDFs must pass Adobe Acrobat's inbuilt accessibility check and Microsoft Word documents must pass Microsoft Word's inbuilt accessibility check.

Table 2 is a guide for required meetings throughout the DSC's engagement. This table may be adjusted as required but is to be allowed for as a minimum in conjunction with Table 1, Part A; in the Tenderers response to this RFT.

Table 2:

Meeting	Part A	Frequency	
		Part B (optional)	Part C (optional)
Overall Project			
Project start up meeting		Once	
Project Initiation Workshop		Once	
Project Control Group Meetings (TCCS and MPC – Consultant only as required)	As needed	Nil	Nil
Construction Control Group Meeting (TCCS, MPC, D&C Contractor – Consultant as required)	Nil	As needed	As needed
Project Progress Meetings (Consultant, TCCS and MPC)	Fortnightly	Nil	Nil
Ad-hoc Meetings with Executive Stakeholders (where required)	As needed	Nil	Nil
Presentations to Indigenous Community Groups	Allow for up to 4 presentations/ meetings	Allow for 1 meeting	Nil
Stakeholder Design and Technical Meetings/Workshops	Allow for 12 meetings/presentations and 3 Workshops	Nil	Nil
Additional technical meetings as needed	As needed	Nil	Nil
Post completion meetings	Nil	Nil	3 Monthly

General requirements - Reporting

Table 3 lists the following reports are to be provided during the lifecycle of the project for Part A, and for Parts B and C (if awarded).

Table 3:

Report	Description	Frequency
Status Reports	Email format focusing on – Key current activities, key planned activities, financial items and key issues / risks and associated management.	Weekly
Progress Report	5-page report providing an overview of key monthly activities, budget, program, changes, risks and WHS updated.	Monthly
Financial Report	Detailed finance/budget report including budgets, committed, uncommitted and forecast costs for works and services including variations and claims, commitment against provisional sums, expenditure and forecast final cost for the project. This will be provided as an appendix to the Progress Report.	Monthly
Consultation Summary Register	Register various stakeholder consultation sessions/correspondence, key comments, response, and any actions required	Monthly
Change Register	Register of brief, design, scope changes including item number and description, forecast and actual costs and foreseen risks and management, which will be an appendix to the Progress Report.	Monthly
Options Register Value Management Registers	Register of design options and sub-options identified during Parts A, including description and summary of in progress analysis. Value Management Register could be considered as separate tab	Monthly
Risk Registers	Responsibility for Project Risk Register, to be updated and circulated monthly.	Monthly

General requirements – Survey and Utilities

Survey is to be undertaken by a registered surveyor and to the level of detail necessary to inform detailed design, ensure constructability; manage uncertainty in high-risk locations and minimise risk of scope change during future stages for project. Survey to include but not be limited to identifying:

- Underground services and sub-surface conditions as accurately as possible.
- Locations where drainage may be an issue.
- Site investigations to support the survey

Survey to be available in dwg. and pdf. formats. Sub-surface utilities and services anticipated to be impacted in and around the areas of the RSPCA site (including the surrounding road network) include, at a high level:

- Gas Network Lines;
- Government Fibre Network;
- Telecommunications Lines (including NBN Networks);
- Water Network
- Sewer Network; and
- Electrical Network.

No utility surveys have been undertaken to date and will be undertaken by the Consultant during Part A to support the development of the Concept design, Functional Brief, Technical Specification and Preliminary Design. These utility surveys include Utility and Statutory Authority document surveys, Dial Before You Dig surveys, topographic surveys, and geotechnical surveys. Copies of these surveys shall be compiled by the Consultant into a consolidated Report for subsequent procurement of the D&C Contractor.

In addition, further investigation, including potholing and slit trenching may be required and shall be arranged by the Consultant and paid for against the Provisional Sum. These further investigations will support the completion of documentation readiness for Part A. Written in principal agreement for any utility works is to be secured by the Consultant in Part A. Copies of these further investigations will be provided to the successful D&C Contractor upon engagement. It is expected that further utility investigations will be required to be undertaken by the D&C Contractor for the preparation of the D&C design outputs.

No consultations have commenced with utility service providers who have assets and service lines in and near the vicinity of the project site. The Consultant will be required to undertake engagement with relevant utility providers throughout the development of Parts A and where necessary (and awarded) under Parts B and C.

General requirements – Guidelines and Standards

Unless otherwise specified in the project brief, this project must be completed in accordance with the latest versions of the following guidelines and standards:

- AS/NZS www.standards.com
- Municipal Infrastructure Standards (ACT)
- Municipal Infrastructure Technical Specifications (ACT)
- Municipal Design Standard Drawings (ACT)
- TCCS Drafting Standard
- TCCS Reference Document
- Standard Technical Exception Clauses Land Development
- Roads ACT Noise Management Guidelines
- Active Living Principles
- Universal Design Principles
- Water Sensitive Urban Design (WSUD) guidelines

- Crime Prevention Through Environment Design (CPTED) principles
- ACT Crime Prevention & Urban Design Resource manual 2000
- National Security Requirements in line with Australia's Strategy for Protecting Crowded Places from Terrorism
- National Construction Code
- ACT Planning Guidelines for Access and Mobility - ACT Government 2008
- Best Practice Project Management Principles
- Web Content Accessibility Guidelines
- All other relevant Standards and Guidelines currently in force on the ACT

The TCCS Municipal Infrastructure Standards reference other standards and guidelines. The TCCS-ID project manager is to be advised if an alternative to a Standard is recommended for acceptance and justification provided before this is agreed.

General Requirements – Policy and Legislation

- Animal Welfare Act 1992
- Domestic Animals Act 2000
- Livestock Management Act 2010
- Relevant Australian animal welfare guidelines and standards
- ACT Crime Prevention and Urban Design Resource Manual 2000
- ACT Climate Change Adaptation Strategy 2016
- Work Health and Safety Act 2011
- Government Procurement Act 2001
- Environment Protection Act 1997
- Public Unleased Land Act 2013
- Planning and Development Act 2007
- Environmental Protection and Biological Diversity Conservation Act, 1999 (Commonwealth)
- Land (Planning and Environment) Act, 1991 (ACT Government)
- Tree Protection Act 2001 (ACT Government)
- ACT Climate Change Adaptation Strategy 2016
- The Territory Plan and Codes
- Other relevant policy and legislation currently in force in the ACT

Key considerations

The following key considerations will form part of the project:

- Site environmental considerations - Implications of the seasonal ecological surveys undertaken in late 2021 and outcome of EPBC Referral. Targeted seasonal surveys for MNES have been conducted, with the identification of Striped Legless Lizard within the footprint of the preferred RSPCA future site. As a result, TCCS has commenced an EPBC referral application process for the site to confirm the current assumption that the project will not have a significant impact on a MNES. The results of the EPBC referral are expected around August 2022.

A key priority for the Project is to deliver environmentally friendly infrastructure and support the realisation of tangible sustainability outcomes that assist the ACT Government in achieving its sustainability and climate change targets. It is foreseen the Project will achieve these benefits through:

- **ESD** – Incorporating ESD principles and initiatives into the design and construction of the facility;
- **Green Star Design** – The New RSPCA Facility is required to achieve a Green Star Design and As Built rating of five stars, to support a reduction in waste output, energy and water usage, and the carbon footprint and emissions from the building;
- **Sustainable Transportation Outcomes** – The Project will seek to promote greater active travel and public transport use.

The key sustainability outcomes required for the project include:

- **Climate Action** – Reducing net emissions to zero, total scope 1-3 inclusive emissions in line with 1.5 degrees global warming scenario and the impact of materials carbon impacts
- **Site and Buildings** – Design and As-built 5 Star Greenstar rating, target 30% or more urban tree canopy and 30% or more of permeable surfaces across the project area (in line with the ACT Climate Change Strategy 2019-2025) and all-electric buildings*.
- **Waste and Recycling** – Reducing general waste compared to the RSPCA facility at Weston by 10%, maintain a general waste landfill diversion at 90% and achievement of 90% construction and demolition waste recycling.
- **Travel and Transport** – Increase staff, volunteer, and visitor active travel by 20% with supporting end of trip facilities for staff and volunteers.
- **Goods and Services** – Aligning procurement processes with ISO20400.

* The DSC will need to consider competing priorities in relation to tree cover given the known Striped Legless Lizard habitat on the site and the impacts of shade on these habitats, along with adjacent stakeholder requirements for suitable shade in the horse agistment areas.

- The consultant is required to determine the required number of surface level car parking space required, including the appropriate number of accessible parking spaces. Further the option of 2 electric vehicle (EV) charging points should be incorporated in the design, subject to confirmation of site suitability and servicing by the design consultant.
- Land custodianship / current leasing arrangements and the implications for design planning and works delivery
- Current use of the site as horse agistment and the Proposed Realigned Paddock Plan that is prepared as part of initial site investigation stage
- Cost effective, low maintenance and highly functional design – RSPCA Yagoona shelter in Sydney to be considered as a good example

- Inclusion of a bus stop on Fairbairn Ave to better service RSPCA staff, volunteers, and clients
- Required upgrade to intersection of Fairbairn Ave and Addison Road
- Upgrade to Addison Road
- Utilities, services and site conditions investigation for site
- Noise mitigation both to and from the facility
- The facility must comply with the requirements of the National Airports Safeguarding Framework (NASF) owing to proximity to Canberra Airport
- Approvals (E.g.: Conservator ESO / EIS / DA / EPA / NCA DCP) and supporting investigations, surveys, reports, and documentation that will be needed.
- Current and planned government or private works near the project site that may affect design outcomes and/or require coordinated management during construction. Note in particular Canberra Defence Precinct Plan (CDPP) and potential future Fairbairn Ave duplication
- Existing and future planning for nearby services provision and impacts on service alignments.
- Ongoing design refinement in consultation with key government and targeted stakeholders, as detailed in Table 1 & 4.
- Provide inputs and support the development of a project business case for 2023-24 Territory budget funding. Key inputs will be high level details on the scope of the facilities provided and the cost estimate for the construction/delivery.

5. PARTS B AND C (OPTIONAL)

Part B (optional) DSC works may be awarded under the discretion of the Territory and consist of technical advice to support the delivery of the proposed works under a Design and Construction (D&C) Contract subject to funding. Part B (if awarded) may include technical advice during the D&C procurement phase based on provided hourly rates.

Part C (optional) DSC works may be awarded under the discretion of the Territory and consists of technical advice to support the post completion period including commissioning and building tuning activities subject to funding. It is anticipated that the construction handover and occupation occur by June 2025.

Note Part B and C key milestones to be advised prior to completion of Part A (if required). Reporting tasks for Parts B and C are identified in Attachment 5 Part B and C Reporting v1. Deliverables for Parts B and C are identified in Attachment 1 – Design Delivery Milestones V1.

6. DELIVERABLES

The consultant will be required to Prepare plans, reports and cost estimates that are clear, legible and in formats suitable for public display, media release as well as website and hard copy media reproduction as relevant.

Refer to Attachment 1 – Design Delivery Milestones v1, for a list of required deliverables. Note that reports require submission of draft and final versions. Reports are to be provided in Word and pdf accessible

formats. Drawings are to be provided in dwg and pdf formats. Cost estimates/cost plans are to be provided in Excel and pdf formats. **NOTE** -All documents submitted to the Territory must meet the Web Content Accessibility Guidelines. PDFs must pass Adobe Acrobat's inbuilt accessibility check and Microsoft Word documents must pass Microsoft Word's inbuilt accessibility check.

The 3-D visualisation is expected to be of high-quality whether hand drawn or electronically produced.

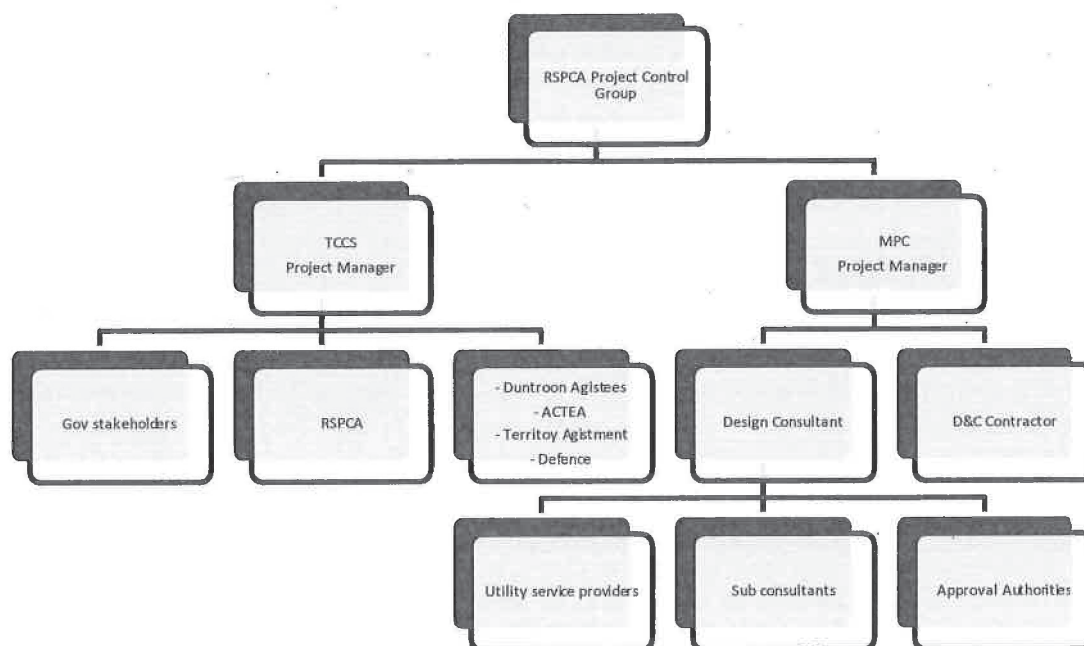
7. CONTRACT MANAGEMENT

This contract will be managed by Infrastructure Delivery Partners Group in collaboration with TCCS. The key contacts will be [enter key stakeholders]

MPC Project Manager	Peter Parry Fielder	Peter.Parry-Fielder@act.gov.au	0435 223 632
MPC Project Officer	Laurence Thomas	laurence.thomas@act.gov.au	02 6205 5140
TCCS Project Manager	Nivad Nafisi	nivad.nafisi@act.gov.au	02 6205 9996

Governance

The following chart outlines the indicative governance structure for the project incorporating key stakeholders, project participants and relevant entities.



Identified Stakeholders

The following initial stakeholder groups have been identified as per the below table. Targeted stakeholders will be consulted during the life of the project. The DSC is required to review and update this list as required in conjunction with MPC and TCCS.

Table 4:

Group Description	Stakeholders
TCCS	- City presentation - urban treescapes only - Roads ACT - ACT No Waste - Network and Infrastructure planning (Transport Canberra buses) - Territory and Business Services - TCCS Communications Unit - Other relevant units and divisions
JACS	- ACT Emergency Services Agency
EPSDD	- Fire Forests and Roads - Strategic Planning - Suburban Land Agency - Conservator of Flora and Fauna - other relevant units / divisions
CMTEDD	- EPA - other relevant units / divisions
Department of Agriculture, Water, and the Environment (Commonwealth)	- As applicable
Commonwealth Department of Defense	- Estate & Infrastructure Group - Majura Military Training Area - other relevant units / divisions
NCA	- As applicable
Service/Utility Providers (Gas, Electricity, Water, Sewerage, Communications)	- In relation to the production of a Development Control Plan
Targeted stakeholders	- RSPCA - ACTEA - Duntroon Users Group - Territory Agistment (paddock contractor) - Canberra Airport Group - RAOs - other as relevant – Only with MPC/TCCS approval

8. ATTACHMENTS

The following documents are referenced in the 38364 Statement of Requirements v1:

Document:	Title:	Version:	Date:
Attachment 1	Design Delivery Milestones	v2	13/07/2022
Attachment 2	RSPCA ACT Revised space brief June 2021	v2	08/07/2022
Attachment 3	RSPCA FINAL Concept Plan	Rev D	08/07/2022
Attachment 4	Site Investigation Report	Rev F	08/07/2022
Attachment 5	Part B and C reporting	v1	12/07/2022
Appendix A	UXO Desktop Review	FINAL	02/08/2021
Appendix B	Aboriginal and Historical Heritage Desktop Review	FINAL	04/08/2021
Appendix C	Geotechnical Desktop Review	FINAL	02/08/2021
Appendix D	Preliminary Ecological Assessment	FINAL	06/08/2021
Appendix E	Services and Utilities	FINAL	06/08/2021
Appendix F	Transport Memo	FINAL	06/08/2021
Appendix G	Contaminated Land	FINAL	04/08/2021
Appendix H	Tree Assessment	FINAL	06/07/2021
Appendix I	BUSHFIRE HAZARD ASSESSMENT	FINAL	29/07/2021
Appendix J	Noise Assessment Report	FINAL	06/08/2021
Appendix K	Planning Pathway and NSAF Assessment	FINAL	12/08/2021



Major Projects Canberra

Infrastructure Delivery Partners Group

Date July 2019 version 1

Personal
information

