



CABONNE COUNCIL

CONTRACT No. 1017527

LUMP SUM CONTRACT

for the

**MANAGEMENT OF MOLONG SWIMMING
POOL,
MOLONG NSW 2866**

**PREPARED BY:
COUNCIL'S DEPARTMENT OF
ENGINEERING & TECHNICAL SERVICES
DATE: JUNE 2019**



CABONNE COUNCIL

**CONTRACT No. 1017527
QUALITY ASSURANCE LUMP SUM CONTRACT**

for the

**MANAGEMENT OF MOLONG SWIMMING
POOL, LOTS 1 & 2 HILL STREET,
MOLONG NSW 2866**

INFORMATION FOR TENDERERS

**PREPARED BY:
COUNCIL'S DEPARTMENT OF
ENGINEERING & TECHNICAL SERVICES
DATE: JUNE 2019**

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INFORMATION FOR TENDERERS

GENERAL

1 PROJECT IDENTIFICATION AND DESCRIPTION

This tender is for Contract No. 1017527 Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866.

This is a Quality Assurance contract with method of payment being Lump Sum.

LOCATION PLAN



2 RELEVANT DOCUMENTS

(a) The Contract Documents for this project are:

- **Conditions of Contract**
- **Specifications (Contractor's Duties and Responsibilities)**
- **Tender Submission Documents**

(b) The following documentation is provided for the information of the Tenderers and does not form part of the Contract Documents:

- Information for Tenderers and Conditions of Tendering

The documents are available from Council's Engineering and Technical Services Department, Main Street, Cudal, Council's website www.cabonne.nsw.gov.au and Council's E-tendering website www.tenderlink.com/cabonne.

The Tenderer warrants and represents that it will, prior to submission of tender, obtain the information and documentation referred to above and will obtain all other information relevant to the works, contingencies and other circumstances having an effect on its tender.

3 TENDERING METHOD

This Contract shall follow the "The Procedures of Open Tendering" in accordance with AS4120-1994 Clause 6.2.3(b), The Principal invites the public advertisement without restriction on the numbers of tenders sought.

4 COUNCIL'S CONTACT PERSON

Enquiries regarding this tender may be directed to:

Name: Engineering Dept. Phone: 02 6390 7100
Position: Coordinator Urban Services & Utilities Email: council@cabonne.nsw.gov.au

5 SITE INSPECTION

A compulsory pre-tender briefing meeting and site inspection will be held on:

Day: Thursday

Date: 20th June 2019

Time: 2.00pm

Place: Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866

The meeting will be minuted and the minutes shall become part of the tender documents. The minutes will be available on request.

Tenderers are required to attend the meeting and sign the meeting attendance sheet in order to submit a conforming tender. A conforming tender must also include a signed statement that the Tenderer has visited the site and has included all site conditions in their Tender Price.

6 TENDER LODGEMENT REQUIREMENTS

Tenders shall be submitted on the Tender Forms provided by the Principal, Tender Submission Documents, and are to be enclosed in a sealed envelope and the envelope marked legibly as follows:

Contract No. 1017527

Tender for Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866

and either:

delivered by hand or by courier and placed in the:

Tender Box
Cabonne Council
97 Bank Street
MOLONG NSW 2866

or

mailed to the Tender Box addressed as follows, and marked:

“Contract 755016 Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866”.

Tender Box
Cabonne Council
PO BOX 17
MOLONG NSW 2866

or

submitted electronically on

www.tenderlink.com/cabonne

So as to be received **before the closing time and date for tenders.**

Time: 12:00 noon

Date: Wednesday, 3rd July 2019



CABONNE COUNCIL

CONTRACT No. 1017527

QUALITY ASSURANCE LUMP SUM CONTRACT

for the

**MANAGEMENT OF MOLONG SWIMMING
POOL, LOTS 1 & 2 HILL STREET,
MOLONG NSW 2866**

CONDITIONS OF TENDERING

**PREPARED BY:
COUNCIL'S DEPARTMENT OF
ENGINEERING & TECHNICAL SERVICES
DATE: JUNE 2019**

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CONDITIONS OF TENDERING

GENERAL

1. PREAMBLE

The Conditions of Tendering have been prepared in accordance with the obligations of the Principal contained in the Australian Standard 4120-1994, Code of Tendering, which sets out the ethics and obligations of the Principal and Tenderers in tendering in the construction industry.

Tenderers and Principal shall comply with the requirements of this AS 4120-1994. In particular attention is drawn to the obligations of Tenderers, in the preparation and submission of their tender for this project.

Without limiting the above obligations: -

- Tenderers shall not submit tenders without a firm intention to proceed.
- Tenderers must not engage in any form of collusive practice.
- Any Tenderer who directly or indirectly canvasses support from an elected member or servant of the Council will be disqualified.

It should be noted that in all contract documentation words importing a gender include every gender.

2. PROJECT INFORMATION

The complete project description, scope of work, specific site and project requirements shall be as defined in the General Conditions of the Contract and Service Specification/Duties and Responsibilities of the Contractor and in the information for Tenderers.

This tender is for Contract No. 1017527 Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866.

It is a Quality Assurance contract with method of payment being Lump Sum.

3. RELEVANT DOCUMENTS

(a) The contract documents for this project are:

CONDITIONS OF CONTRACT

- General Conditions of Contract
- Schedules One to Schedule Five
- Appendix A Duties and Responsibilities of the Contractor
- Tender Submission Documents

4. CONTRACTOR'S RESPONSIBILITY

It shall be the responsibility of the Contractor to ascertain all information relating to the services, the works and site conditions that may affect the progress or method of performing all services and works as specified within the scope of this contract and to prepare for every contingency that may arise. It is further understood that provision for these contingencies have been accounted for, implicitly or explicitly within Schedule of Rates submitted.

5 COUNCIL'S CONTACT PERSON

Enquiries regarding this tender may be directed to:

Name: **Engineering Dept** Phone: **02 6390 7100**
Position: **Coordinator Urban Services & Utilities** Email: **council@cabonne.nsw.gov.au**

TENDER SUBMISSION INFORMATION

6 SUPPORTING INFORMATION FROM TENDERERS

The Tenderer shall provide documentary evidence to prove they have the necessary competence, resources, industrial relations, quality and safety management and financial capacity to carry out the Works.

- Copy of Work, Health & Safety (WHS) Plan
- Copy of Safe Works/Operational Method Statement
- Copy of Environmental Management Plan
- Copy of Quality Management Plan

7 SUBCONTRACTORS

The Tenderer is required to provide, on the tender form in the Tender Submission Documents, the names and telephone numbers of Tenderer's Subcontractors and recognise by initials the Principal's listing of Selected and Nominated Contractors.

8 SITE INSPECTION

Tenderers are required to attend the pre-tender briefing meeting and site inspection and sign the attendance sheet in order to submit a conforming tender.

The compulsory briefing meeting and site inspection will be held on:

Day: Thursday

Date: 20th June 2019

Time: 2.00pm

Place: Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866.

The meeting will be minuted and the minutes shall become part of the tender documents. The minutes will be available on request.

A conforming tender must also include a signed statement that the Tenderer has visited the site and has included all site conditions in their Tender Price.

9 ALTERNATIVE PROPOSALS

Alternative proposals, which satisfy the Principal's basic commercial and performance objectives, technical and legal requirements, maybe submitted as options but only in addition to a conforming tender. All costs associated with the design and documentation of any alternative proposal shall be borne by the Tenderer.

10 TENDER VALIDITY PERIOD

Tenders will be valid for a period of 90 days from the tender closing date. In the event of the withdrawal of the tender prior to the expiration of this period, the Tenderer shall be liable for all costs, losses or damages suffered by the Principal by reason of that withdrawal.

11 TENDER LODGEMENT REQUIREMENTS

Tenders shall be submitted on the forms provided by the Principal in the Tender Submission Documents, and are to be enclosed in a sealed envelope and the envelope marked legibly as follows:

Contract No. 755016

Tender for Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866.

and either:

delivered by hand or by courier and placed in the:

Tender Box
Cabonne Council
Bank Street
MOLONG NSW 2866

or

mailed to the Tender Box addressed as follows, and marked

“Contract No 755016 Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866”.

Tender Box
Cabonne Council
PO BOX 17
MOLONG NSW 2866

or

submitted electronically on www.tenderlink.com/cabonne

so as to be received **before the closing time and date for tenders.**

Time: 12:00 noon
Date: Wednesday, 3rd July 2019

12 LATE TENDERS

A tender which is received after the closing time and date will only be considered if the Tenderer can satisfy Council that it complies with Clause 177 (5) of the Local Government (General) Regulations 2005.

13 TENDER EVALUATION AND SELECTION

Evaluation, negotiation and selection of tenders shall be in accordance with the requirements of AS 4120 (1994), Code of Tendering and Local Government Regulations 2005 under the Local Government Act 1993.

The evaluation criteria shall be:

- Lump sum tender amount
- Conformity with the tender documents
- Evidence of technical and financial capability
- Previous Experience and Industry reputation
- Quality Management System and Work Health and Safety Environmental Management System

The Principal is not bound to accept the lowest, or any tender.

The successful Tenderer which is accepted shall be notified in writing to all Tenderers.

14 POST TENDER SUBMISSIONS

The Principal may call for post tender submissions from some or all tenderers in order to assist with the evaluation.

Such submissions will be confidential between the Principal and Tenderer.

The call for such submissions will not bind the Principal to proceed to accept a tender.

15 POST TENDER NEGOTIATIONS

The Principal may enter into negotiation with a Preferred Tenderer or a number of candidate tenderers.

Such negotiations will be confidential between the Principal and Tenderer and will be conducted in accordance with guidelines set out in AS 4120 (1994).

The undertaking of negotiations will not bind the Principal to proceed to accept a tender.

16 COST OF TENDERING

All costs associated with tender preparation and submission shall be borne by the Tenderer.

17 CONTRACT COMMENCEMENT DATE

There shall be no Contract prior to the issue of a letter of acceptance and a signed Instrument of Agreement.



CABONNE COUNCIL

CONTRACT No. 1017527

LUMP SUM CONTRACT

for the

**MANAGEMENT OF MOLONG SWIMMING
POOL, LOTS 1 & 2 HILL STREET,
MOLONG NSW 2866**

CONDITIONS OF CONTRACT

**PREPARED BY:
COUNCIL'S DEPARTMENT OF
ENGINEERING & TECHNICAL SERVICES
DATE: JUNE 2019**

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1. BACKGROUND:

- A. The **Council** is the owner of the Molong Swimming Pool
- B. The **Council** wishes to grant the **Contractor** and the **Contractor** wishes to accept, an authority to control conduct and manage the Molong Swimming Pool.
- C. The **Contractor** will control, conduct and manage the Molong Swimming Pool on the terms and conditions set out in this Agreement.

2. GENERAL CONDITIONS

2.1 Scope of Contract

The work under this contract involves the management and operations of the Molong Swimming Pool situated at Lots 1 & 2 Hill Street, Molong NSW 2866 for a specified period from 1st of October 2019 to 31st of March 2022 in accordance with the requirements of this contract.

2.2 Definitions

In this Agreement unless the context otherwise requires, the following words have these meanings.

Accountant means an accountant who is a member of a recognised Australian professional body such as CPA Australia, the Institute of Chartered Accountants in Australia, or the National Institute of Accountants.

Business Day means any day except a Saturday, Sunday or Public Holiday in New South Wales.

Swimming Pool means the **Swimming pool** known as the **Molong Swimming Pool, Lots 1 & 2 Hill Street, MOLONG NSW 2866**, which is contained in the Premises **specified in the SCHEDULE ONE**

Swimming Pool Fees and Charges means the fees and charges payable by **Molong Swimming Pool patrons** as adopted or determined by Council from time to time and as may be amended from time to time **specified in the SCHEDULE THREE**

Swimming Pool Rules means any rules or regulations imposed by Law or Council from time to time relating to the use, occupation and/or access to the **Molong Swimming Pool**

Commencement Date means the commencement date specified in the **SCHEDULE TWO**

Confidential Information means the Records and anything marked as 'confidential'.

Council Cost means all costs in relation to:

- a) Insurance including public liability insurance, building and contents insurance;
- b) Cleaning materials;
- c) Council rates;
- d) Rubbish and waste disposal fees;
- e) Swimming Pool utility costs including electricity, gas, water and sewerage;
- f) Lawn mower and fuel;
- g) Swimming Pool consumables – for example toilet paper, hand towels, hand wash
- h) Installation, repair and replacement of any Swimming Pool equipment – e.g. mower; filter, chlorinator.
- i) Pool chemicals such as chlorine, acid, bicarbonate of soda etc.

However, despite the above this does not include any amounts for which the **Contractor** is liable or responsible for under this Agreement.

General Manager means the General Manager appointed by the Council or an employee of the Council with the written delegation of the General Manager to act on behalf of the General Manager for the purposes of this Agreement.

GST means the goods and services tax imposed under the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)* and the regulations thereunder.

Guarantor means the person(s) specified as guarantors in the **SCHEDULE TWO**

Law includes all statutes, regulations, ordinances, proclamations, rules, by-laws and any other laws that may be applicable whether legislative, regulatory, governmental, departmental or otherwise.

Without limiting the foregoing, this includes the *Local Government Act 1993 (NSW)*

Contractor's Duties means the **Contractor's duties** specified in **Annexure "A"** to this Agreement.

Contractor's Fee means the **contractor's seasonal payments** as specified in the **SCHEDULE FOUR**.

WHS Regulations means the latest *Work Health and Safety Act (NSW)*, the latest *Work Health and Safety Regulation (NSW)*, any other relevant Laws relating to work health and safety and Council's work health and safety policies (as may be amended, introduced or replaced from time to time) including any UV Protection Policy.

Option means the option specified in the **SCHEDULE TWO**.

Premises means the premises described in the **SCHEDULE ONE**

Records means all records (including the Swimming Pool), accounts, books, and data (including information stored on a computer and any other system which stores data) in relation to the Swimming Pool

Schedules means the schedules attached to this Agreement.

Term means the term specified in the **SCHEDULE TWO**

Termination Date means the termination date specified in the **SCHEDULE TWO** or such other date if a holding over period or option period applies, subject to any earlier right of termination set out in this Agreement or available at Law.

2.3 Interpretation Aids

Other interpretation aids appear at or near the end of this document.

3. GRANT OF RIGHTS

3.1 Contractor's Rights

In consideration of the **Contractor** complying with the terms and conditions of this Agreement, the **Council** grants the **Contractor** the right to operate the Molong Swimming Pool for the period starting on the Commencement Date and ending on the Termination Date.

4. PAYMENTS

4.1 Contractor's Fee

Subject to the **Contractor** complying with the terms and conditions of this Agreement, the **Council** will pay the **Contractor's Fee** to the **Contractor** in accordance with the timeframes for payment set out in the **SCHEDULE FOUR**.

4.2 GST

Unless otherwise specified, all amounts are expressed to be **inclusive of GST**.

5. CONTRACTOR'S COTTAGE

Not applicable.

6. CONTRACTOR'S RIGHTS AND OBLIGATIONS

6.1 No Interruption

Subject to the **Contractor** complying with the terms and conditions of this Agreement and also subject to any rights granted to **Council** under this Agreement or any Law, **Council** will not unreasonably interrupt the **Contractor's** use and enjoyment of the Swimming Pool.

6.2 Collection of Swimming Pool Fees and Charges

a) The **Contractor** may collect and retain entry fees and other charges from Swimming Pool patrons in accordance with Swimming Pool Fees and Charges as specified in the **SCHEDULE THREE**

6.3 Contractor's Duties

a) From the Commencement Date the **Contractor** must conduct the business and manage the Swimming Pool in a proper, businesslike and orderly manner to a high standard in accordance with the **Contractor's** Duties.

Without limiting the foregoing, the **Contractor** must be courteous, attempt to serve the **Council's** best interest in respect of the Swimming Pool and not engage in any conduct that causes or may cause the Council or Swimming Pool loss of prestige or regard.

b) The **Contractor** will not permit or allow any disorderly conduct in or about the Swimming Pool, or permit or allow any improper use of the Swimming Pool including anything that amounts to a breach of any law.

c) The **Contractor** must not permit or allow excess noise to be emitted from the Swimming Pool (being noise above allowable noise levels determined by **Council** from time to time).

d) The **Contractor** will maintain and repair all equipment, fixtures, fittings and facilities in the Swimming Pool in good working order and condition including cleaning and tidying the equipment, fixtures, fittings and facilities as often as required.

e) The **Contractor** will not permit any person onto the roof of any Swimming Pool building and will not allow the erection of any fixtures and fittings without first obtaining **Council's** prior written consent.

f) The **Contractor** must complete all reports and submit all paperwork required by **Council** relating to the Swimming Pool on fortnightly basis as and when required by **Council** including incident reports and details of all complaints, demands or claims relating to the Swimming Pool

g) If required by **Council**, the **Contractor** must attend at any meetings requested by **Council** to discuss the affairs of, and matters pertaining to, the Swimming Pool

h) The **Contractor** will during the term of the contract and at all times the pool is open for use by the public ensure that a person who holds the relevant qualification as specified in the **SCHEDULE FIVE** is in continuous and constant attendance.

i) The **Contractor** will carry out pre-season start-up and end of season shut down procedures.

j) The **Contractor** will, during the swimming season, operate the filter plant in accordance with the equipment manual and any instruction given at any time by the Council's authorised person.

k) The **Contractor** will at all times when the pool is open to the public keep the water in the pool to comply with NSW Department of Health standards.

l) The **Contractor** may close the pool at an earlier hour when necessary for the purpose of cleaning or maintaining the Pool or plant.

m) The **Contractor** may extend the hours of opening as required with prior Council approval.

n) The Pool may be closed during inclement weather resulting in nil patronage with the consent of Council.

o) The Pool is closed on Christmas Day.

p) The Pool may be closed for safety reasons during periods of **electrical storm activity** as per the Pool Manual

q) The **Contractor** will comply with **Council** regulations for food handling and will tailor the level of operation in accordance with the facilities provided.

r) The **Contractor** shall, subject to payment of admission fees, permit the Molong Swimming Club the use of the pool two evenings each week during the season, if such use occurs on the same evenings each week (generally Tuesday & Thursday 4pm-7pm)

s) In the event of organisations requiring the Pool to conduct swimming carnivals, the charges to be made by the **Contractor** shall be the daily fee nominated in the **SCHEDULE THREE**. Season ticket exemptions only applies if the carnival is totally within normal operating times (10.30am to 6.30pm).

t) During the season, the **Contractor** shall have the full and exclusive right to conduct a kiosk at the pool and to use the amplifying equipment and refrigeration equipment installed at the kiosk. The equipment will be handed over to the **Contractor** in good order and condition at the season commencement and handed back to **Council** at the end of the season in good order and condition.

u) The **Contractor** is responsible for own insurance of kiosk supplies and the **Contractor's** own property.

v) **Council** will supply all necessary chemicals, materials, plant and tools for the operation of the Molong Swimming Pool, excluding cleaning products and equipment for bathrooms, showers and kiosk. The **Contractor** will keep an inventory thereof, which may be inspected at any time any authorised **Council** officer.

w) **Council** reserves the right, should circumstances arise, to appoint any such qualified person to be in continuous attendance at no additional cost to **Council**. Reference to the words "at no additional cost to **Council**" being deemed to arise from mutual agreement reached by the parties to this agreement.

x) The **Contractor** will keep the pool open for the purpose of accommodating special events for community groups such as schools and swimming clubs as determined from time to time by **Council** and in consultation with groups or their representatives.

6.4 **Compliance with Laws**

a) The **Contractor** must obtain and maintain any registrations, licenses, permits or other authorities to conduct the **Contractor's** Duties.

b) The **Contractor** will comply with all WH&S Regulations and all other Laws when undertaking any maintenance or repair works or when supervising any maintenance or repair works.

6.5 **Swimming Pool Rules**

a) The **Contractor** is responsible for ensuring pool patrons obey the Swimming Pool Rules.

b) The **Council** will promptly inform the **Contractor** of the introduction, amendment or replacement of any of the Swimming Pool Rules.

6.6 **Advertising**

a) All advertising, marketing and promotion must comply with all Laws, any **Council** requirements and be designed to maximise the utilisation of the Swimming Pool.

b) The **Contractor** cannot advertise market or promote any discounts or special offers in relation to the Swimming Pool unless they are firstly approved of by the **Council** in writing.

6.7 Not to Encumber

The **Contractor** must not mortgage or otherwise encumber the business of the Swimming Pool.

6.8 Not to Contract on the Council's Behalf

Notwithstanding **clause 16** of this Agreement, the **Contractor** may not enter into any contracts or agreements on **Council's** behalf and has no authority to bind the **Council** except as expressly authorised by the **Council** in writing. Without limiting the foregoing, the **Contractor** is not authorised to incur expenses on behalf of the **Council** except as expressly authorised under this Agreement or as otherwise expressly authorised by the **Council** in writing.

7. COUNCIL'S RIGHTS AND OBLIGATIONS**7.1 Council Inspections**

The **Contractor** must permit any person or persons appointed by **Council** at any time to enter and inspect:

- a) the Records; and
- b) any buildings, equipment, fixtures and fittings and any other Swimming Pool facilities.

7.2 Adjustment to Swimming Pool Fees and Charges

a) **Council** reserves the right to adjust at anytime the Swimming Pool Fees and Charges that are payable including introducing new fees and charges, increasing the fees and charges that are payable and removing fees and charges.

b) If **Council** makes such changes:

- i) it will promptly notify the **Contractor** in writing and also specify when such changes are to take effect.

c) Fees will be indexed annually by council's fees and changes without notifying the contractor.

7.3 Council Costs

The **Council** is responsible for the **Council** Costs.

7.4 Council's Right to Repair

The **Council** may at any time enter the Swimming Pool and effect any repairs, replacements, additions or alterations but, to the fullest extent permitted by law, the **Council** is not bound to perform any such repairs, replacements, additions or alterations.

8. INSURANCES AND INDEMNITIES**8.1 Public Liability**

During the term of this Agreement the **Council** will take out and maintain public liability insurance for such sum as it reasonably determines and which contains other terms satisfactory to **Council** including insurance of goods, fixtures and fittings in the Molong Swimming Pool

8.2 Workers' Compensation

The **Contractor** will take out and maintain the following insurance policies:

- a) all insurances required by Law (including under the *Workers Compensation act 1987 (NSW)*;
- b) such other insurance policies as the **Council** reasonably requires.

The **Contractor** must provide evidence of such insurance to the **Council** together with premium receipts and such other evidence as may be required to prove the existence and continuity of cover.

8.3 Indemnities

a) To the fullest extent permitted by law, the **Contractor** indemnifies the **Council** against all actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, charges, expenses (including legal costs on a full indemnity basis) and all other liability arising out of or in respect of any damage or injury to persons or property upon or connected to the Swimming Pool and any breach or default by the **Contractor** of its obligations.

b) Without limiting the foregoing the **Contractor** is liable for any repairs or replacements caused by the negligent or wilful act or omission or breach or default by the **Contractor** or any agent, contractor, employee or officer of the **Contractor**

c) The **Council** is entitled to deduct any monies due or becoming due to the **Contractor** towards satisfaction of this indemnity.

8.4 Releases

a) The **Contractor** agrees to occupy, use and operate the Swimming Pool at its own risk in all things and releases to the fullest extent permitted by law the **Council** and its officers, employees, agents and contractors from all actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, charges, expenses and all other liability resulting from any accident or event occurring within or about the Swimming Pool except to the extent that it is caused by the negligence of the **Council**, its employees, agents or contractors.

b) Without limiting the generality of the foregoing, if any stock-in-trade or the **Contractor's** fixtures and fittings or any other property of any description or kind whatsoever of or in the possession of the **Contractor** contained in or about the Swimming Pool shall be lost or damaged by heat, fire, electricity, vermin, explosion, tempest, bursting pipes or by the entry of water from any source whatsoever (including rainwater and stormwater) or by the operation of any fire equipment, or otherwise arising, no part of the loss or damage suffered by the **Contractor** thereby shall be borne by the **Council** and the **Contractor** releases the **Council** from liability in respect of such loss or damage except to the extent that it is caused by the negligence of the **Council** or its employees, agents or contractors.

c) Notwithstanding anything to the contrary, the **Council** shall not be liable to the **Contractor** for any indirect, special or consequential loss of any kind whatsoever (even if the **Council** was made aware of the possibility of such loss) including loss of profits or economic loss howsoever caused including that caused or contributed to by:

i) the act, omission, negligence, breach or default of the **Council** or its agents, officers, employees or contractors; or

ii) the **Council** or its agents, officers, employees or contractors taking any action permitted by this Agreement, or in law, or equity, or enforcing, or attempting to enforce, or failing to enforce, or delaying in enforcing any of its rights.

8.5 Third Parties

To the fullest extent permitted by law, the parties agree that the agents, officers, employees and contractors of the **Council** shall have the benefit of, and be entitled to enforce the benefit of, any provisions of this clause which operate to their favour.

8.6 Control of the Molong Swimming Pool

The **Contractor** acknowledges and agrees that for the purposes of the WH&S Regulations the **Contractor** has control of the Swimming Pool and the **Contractor** hereby releases and holds harmless the **Council** from any and all obligations thereunder in respect of the Swimming Pool

9. REPORTS AND ACCOUNTING

9.1 True and Accurate Records

The **Contractor** must keep true and accurate Records and must store such Records for at least 7 years (unless Council elects to store such Records).

9.2 Reports

The **Contractor** is responsible, at its own cost, for the preparation and submission to **Council** of any reports in relation to the business of the Swimming Pool that the Council reasonably requires.

9.3 Compliance with Legislation

The **Contractor** agrees it is responsible, at its own cost, for the preparation of all statements and reports necessary for the business of the Swimming Pool and will comply with all laws including taxation laws and employment laws (including employment and staff payments and entitlements). The **Contractor** will outsource to an Accountant all responsibilities for which it does not have the professional expertise, for example, income tax returns.

9.4 Provision of Records

The **Contractor** agrees that in compliance with this clause the **Contractor** must give the **Council** copies of all Records kept by it together with any supporting documents as may be requested by Council from time to time.

10. TERMINATION

10.1 Term

This Agreement will operate for the Term unless earlier terminated.

10.2 Termination by Council

- a) Should the **Contractor** or the **Council** show good cause why this contract should be terminated prior to the agreed termination date, either party must serve notice, in writing, four weeks prior to the termination subject to that notification not occur during the current pool opening season unless it occurs 4 weeks or less, prior to the end of the current season.
- b) The **Council** may immediately terminate this Agreement and all other agreements between the **Council** and the **Contractor** by giving notice to the **Contractor** if the **Contractor**
- i) breaches this Agreement and:
 - a) the breach is capable of rectification but the **Contractor** fails to do so within 14 days of receiving a notice from the **Council** to rectify the breach; or
 - b) the breach is not capable of rectification; or
 - c) notwithstanding sub-clause A), the breach is of an essential term;
 - ii) becomes insolvent or bankrupt
 - iii) has a receiver, receiver or manager, liquidator, provisional liquidator, controller or any form of external administrator appointed to or over it;
 - iv) enters into a scheme, arrangement, agreement or compromise with its creditors or calls a meeting of creditors;
 - v) is convicted of a criminal offence;
 - vi) fails to obtain the **Council's** consent when required; or
 - vii) ceases to conduct the business of the Swimming Pool for any reason.

10.3 Effect of Expiration or Termination

The termination or expiration of this Agreement shall not affect any provision of this Agreement expressed or capable of operating or having effect subsequent to termination or expiration and shall be without prejudice to any accrued right or remedy of a party in relation to any breach of or default by the other party occurring prior to termination or expiration. This applies irrespective of whether or not a clause is stated not to merge on expiration or termination.

10.4 Council May Rectify Breach

Without prejudice to any right or remedy of **Council**, the **Council** may, at its discretion, rectify any breach or default by the **Contractor** of this Agreement at the **Contractor's** cost. Such costs must be paid by the **Contractor** on demand.

10.5 Termination by Notice

The **Council** may terminate this Agreement (without the need to give any reasons) by giving the **Contractor** at least 30 days prior written notice.

10.6 Suspension

- a) If the **Contractor** defaults or fails or delays in performing its obligations then in addition to and without prejudice to any other rights or remedies of the **Council** (including exercising a right of termination after suspension), the Council may suspend the performance of its obligations until such breach is rectified without being liable to the **Contractor** for any loss or damage of any kind suffered by the **Contractor** as a result of such suspension.
- b) The **Council** is entitled to a reasonable extension of any timeframe applicable to its obligations as a result of such suspension.

11. WHEN AGREEMENT ENDS

11.1 Contractor's Right and Obligations

The **Contractor** must immediately and at its own cost:

- a) deliver to the **Council** all keys, telephone connections, e-mail addresses, equipment and other **Council** property at the Swimming Pool
- b) cease using any of the keys, telephone connections, e-mail addresses, equipment and other **Council** property at the Swimming Pool;

- c) quietly yield up the Swimming Pool to the **Council** in the same condition it was in at the Commencement Date (fair wear and tear excepted); and
- d) pay all moneys owing to any service provider which the **Contractor** had direct agreements with.

11.2 **No Rebate or Compensation**

At the end of this Agreement (for whatever reason), the **Contractor** is not entitled to any rebate or refund of:

- a) any fees or any other money paid by the **Contractor** to the **Council** or any other person.
- b) any marketing, promotional or advertising or any other activities relating to the Swimming Pool; or
- c) any compensation or loss suffered by the **Contractor** resulting from this Agreement ending.

12. OPTION AND HOLDING OVER

12.1 **Option For Further Term**

- a) If an Option is specified, the **Council** may elect to renew this Agreement with the **Contractor** with such renewal to be on the same terms as this Agreement (as they then exist) except that no further Option shall apply and the Termination Date shall be extended to the end of the Option period.
- b) For clarity, no new Molong Swimming Pool Management Agreement needs to be signed to give effect to the renewed term unless **Council** requires this to be done in which case the **Contractor** must sign (and have any Guarantors sign) and return such new agreement to the **Council** within 14 days after it is given to the **Contractor**
- c) If the **Council** elects to renew this Agreement, the **Council** must provide at least 3 months written notice to the **Contractor** prior to the end of Term.
- d) The **Council** reserves the right to call for new tenders to manage the Molong Swimming Pool

13. HOLDING OVER

13.1 **Holding Over**

If the **Contractor** continues to operate the Molong Swimming Pool after the Termination Date with the consent of the **Council**, then the **Contractor** does so on the same terms as this Agreement (as they then exist) except that either party during that holding period may end this Agreement by giving the other at least 30 days prior written notice.

14. GUARANTEE

14.1 **Guarantee and Indemnity**

In consideration of the **Council** granting this Agreement to the **Contractor** the Guarantor hereby:

- a) guarantees to the Council the due and punctual observance and performance by the **Contractor** of all the terms contained in this Agreement and on the part of the **Contractor** to be observed and performed; and
- b) indemnifies the **Council** and agrees at all times hereafter to keep the **Council** indemnified from and against all claims, demands, actions, suits and proceedings and all costs (including legal costs and disbursements on a full indemnity basis), expenses, loss and damage made against, suffered, paid or incurred by the **Council** consequent upon or arising directly or indirectly of any breach, non-observance or non-performance by the **Contractor** of any of the terms contained in this Agreement and on the part of the **Contractor** to be observed and performed.

14.2 **Conditions**

The Guarantor agrees that:

- a) where there is more than one person named as Guarantor the failure or refusal of any Guarantor to execute this Agreement as Guarantor or the fact that the execution of this Agreement by any Guarantor (other than the person sought to be made liable) is or may become unenforceable, void or voidable shall not prejudice or affect the liability or obligations of any Guarantor who does so execute this Agreement;
- b) the guarantee and indemnity shall not be prejudicially affected by any other security or guarantee given in favour of the Council in respect of matters the subject of this guarantee and indemnity;

c) the guarantee and indemnity shall be a continuing guarantee and indemnity and shall be irrevocable and remain in full force and effect until the due and proper and complete performance of all the obligations the subject of the guarantee and indemnity;

d) the liability of the Guarantor shall not be affected notwithstanding any of the following circumstances:

- i) any other person becoming or ceasing to be a Guarantor;
- ii) the death, bankruptcy, insolvency, liquidation or other disability of the **Contractor** or a Guarantor;
- iii) the granting of any time, credit or other indulgence or concession to the **Contractor** or the Guarantor;
- iv) any composition, compromise, release, discharge, arrangement, abandonment, waiver, variation, relinquishment or renewal of any security or right by the **Council**;
- v) any laches, acts or omission in favour of the **Contractor**
- vi) any variation, amendment or addition to the terms of the Agreement (whether with or without the consent or knowledge of the Guarantor);
- vii) any transfer or assignment of the Agreement;
- viii) any determination of the Agreement (whether by effluxion of time, re-entry, forfeiture, surrender or otherwise);
- ix) any absolute or partial release of the **Contractor** or the Guarantor or any compromise with the **Contractor** or the Guarantor; or
- x) any exercise or purported exercise by the **Council** of its right or re-entry;
- xi) any other act, matter or thing that may or would otherwise prevent in whole or part the **Council** from relying upon the guarantee and indemnity given by a Guarantor;

any each of the above circumstances shall be construed separately and independently and so as not be limited by the provisions of any other clause of this Agreement;

e) notwithstanding that as between the Guarantor and the **Contractor** the Guarantor is the guarantor of the **Contractor**, the obligations of the Guarantor shall so far as concern the **Council** and without limiting, reducing or prejudicing any other rights contained herein in any way whatsoever be deemed to be obligations of a primary and principal character;

f) the guarantee and indemnity may be enforced by the **Council** without any steps to claim, enforce or recover against the **Contractor**, and within any time whatsoever after the right to take any such steps against the **Contractor** has arisen and notwithstanding any delay, laches or acts or omission by the **Council** whatsoever;

g) neither the Guarantor's liability nor the **Council's** rights under this clause shall be prejudiced or discharged by any act or omission or any event or securities of any description which might be otherwise have the effect (whether at law, in equity or under statute) of prejudicing or discharging the liability of the Guarantor hereunder either as a Guarantor or principal debtor or as an indemnifier;

h) any and all moneys received by the Council from time to time from the Guarantor shall be applied towards the satisfaction of the default, breach or lack of performance of the obligations hereunder;

i) the Guarantor shall not be entitled to claim or seek to enforce or recover moneys paid pursuant to his obligations contained in this clause from the **Contractor** unless and until all of the obligations the subject of the guarantee and indemnity shall have been fully and completely performed;

j) any and all moneys received by the Council from time to time from the **Contractor** shall be regarded as payments in gross without any right on the part of the Guarantor to stand in place of the Council in respect of or to claim the benefit of any such moneys unless and until all of the obligations the subject of the guarantee and indemnity shall have been fully and completely performed;

k) in the event of the bankruptcy or liquidation of the **Contractor**

i) the Guarantor shall not prove in such bankruptcy or liquidation in competition with the **Council**, and

ii) the Guarantor hereby authorises the **Council**;

A) to prove for any and all moneys which the Guarantor has paid pursuant to the provisions of this clause; and

B) to retain and carry those moneys to a suspense account; and

C) to appropriate in the discretion of the **Council** those moneys until the **Council** shall have received full and complete payment of moneys owing pursuant to the obligations the subject of the guarantee and indemnity;

l) the Guarantor hereby waives in favour of the **Council** any and all rights whatsoever it may have against the **Council** or the **Contractor** or any other person, estate or assets so far as may be necessary to give effect to any act, matter or thing the subject of this guarantee and indemnity;

m) until the due and proper and complete performance of all the obligations the subject of this guarantee and indemnity no party shall be or be able to be released and discharged from those obligations except by the execution by the **Council** of an agreement to that effect;

n) if there is more than one person forming the Guarantor such guarantee and indemnity is given by those persons jointly and severally;

o) it shall execute any and all documents and instruments which may be required to complete or bring into effect the provisions of the guarantee and indemnity;

p) notwithstanding anything else contained in this Agreement to the contrary, should this Agreement be terminated or be or become or be rendered void, voidable, unenforceable or in any way inoperative in whole or in part, the liability of the Guarantor shall remain as if the Agreement remained in force to the extent required to cover the performance of any obligations pursuant to the provisions of the guarantee and indemnity;

q) if the **Contractor** becomes bankrupt or goes into liquidation and the trustee or liquidator disclaims this Agreement, the obligations of the Guarantor contained in this clause shall extend to any loss or damage suffered or incurred by the **Council** as a result of such disclaimer and the Council shall not be required, before calling upon the Guarantor to make good such loss or damage, to prove or take any other steps in the bankruptcy or liquidation.

15. CONFIDENTIALITY

15.1 Confidentiality of Information

The **Contractor** must keep all Confidential Information confidential and not disclose same to any third party except as expressly provided for in this Agreement or otherwise unless the prior written consent of the **Council** is obtained. If the **Contractor** is uncertain as to whether the information is confidential, the **Contractor** agrees to treat it as confidential until the **Council** otherwise notifies it in writing. The **Contractor** must immediately return any Confidential Information of the Council upon demand.

16. RELATIONSHIPS BETWEEN THE PARTIES

16.1 No Partnership

The **Contractor**

a) acknowledges that the success of the Swimming Pool business depends on the **Contractor's** efforts and that of its employees; and

b) acknowledges that it conducts the Swimming Pool, business as an agent and representative of the **Council** subject to the restrictions and limitations set out in this Agreement and/or as otherwise notified to the **Contractor** in writing by the Council from time to time. The **Contractor** must not hold out or represent that it is a partner, joint venturer or employee of the **Council**.

17. NOTICE

17.1 Service of Notice by Contractor

Any notice required to be served by the **Contractor** shall be valid if in writing and signed by the **Contractor** and deemed to be served on **Council** if served:

a) to the General Manager personally; or

b) by pre-paid post addressed to the General Manager of **Council** in which case it is deemed to have been served 2 Business Days after (and not including) the day of posting; or

c) by facsimile at the business address of the **Council** – in which case it is deemed to have been served at the time and on the day that the whole of the notice has been transmitted from the sending facsimile machine;

However, any notice that is served after 5pm on a Business Day or anytime on a non-Business Day, is deemed to have been served at 9am on the next Business Day.

17.2 **Service of Notice by Council**

Any notice required to be served by **Council** shall be valid if in writing and signed by the General Manager, or Council's solicitor, or any other person authorised by **Council** from time to time and deemed to be served on the Manager if:

- a) delivered to the **Contractor** personally; or
- b) by pre-paid post addressed to the **Contractor** in which case it is deemed to have been served 2 Business Days after (and not including) the day of posting; or
- c) by facsimile to the facsimile at the business address of the **Contractor** – in which case it is deemed to have been served at the time and on the day that the whole of the notice has been transmitted from the sending facsimile machine;

however, any notice that is served after 5pm on a Business Day or anytime on a non-Business Day, is deemed to have been served at 9am on the next Business Day.

Council may, in addition to the above, serve a notice by pre-paid post to the **Contractor's** last known place of business or abode.

18. MISCELLANEOUS PROVISIONS

18.1 **Interpretation**

In this Agreement, unless the context otherwise requires:

- a) headings and underlines are for convenience only and do not affect the interpretation of this Agreement;
- b) words importing the singular include the plural and vice versa;
- c) words importing a gender include any gender;
- d) an expression importing a natural person includes any company, partnership, joint venture, association, Trust, corporation or other owner's corporation;
- e) a reference to any thing includes a part of that thing;
- f) a reference to a part, clause, party, schedule or annexure is a reference to a part, clause, party, schedule or annexure to this Agreement;
- g) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued after that statute;
- h) a reference to a document or an agreement includes an amendment or supplement to, or replacement or novation of that document or agreement;
- i) a reference to a party to this Agreement or in any other document or agreement includes that party's permitted successors and permitted assigns;
- j) where the day on which any thing is to be done is not a Business Day, that thing must be done on the next Business Day;
- k) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it;
- l) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- m) a covenant, an agreement or acknowledgement on the part of, or in favour of, two or more persons, binds them or ensures to their benefit jointly and severally.
- n) the words "includes", "including", "for example", "eg", "ie", "such as" and similar expressions are not words of limitation.

18.2 **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales.

18.3 **Jurisdiction**

Any legal action or proceedings with respect to this Agreement against any party or any of its property and assets may be brought in the Courts of the State of New South Wales and, by execution and delivery of this Agreement that party accepts, for itself and in respect of its property and assets, generally and unconditionally the jurisdiction of the Courts of that State.

18.4 **Variations**

Subject to the terms of this Agreement, any amendments, variation or modification to or of, or consent to departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties.

18.5 **Third Parties**

Subject to the terms of this Agreement, this Agreement shall confer rights and benefits only upon a person expressed to be a party and not upon any other person.

18.6 **Assignment**

a) The **Council** may transfer or assign its rights and obligations under this Agreement without the prior consent of **Contractor**

b) The **Contractor** shall not transfer or assign its rights or obligations under this Agreement without the prior consent in writing of the **Council**.

18.7 **Sub-Contracting**

The **Contractor** must not sub-contract part or all of its rights or obligations.

18.8 **Waivers**

The failure to exercise or delay in exercising by any party of any right conferred by this Agreement shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party.

18.9 **Remedies**

The rights of a party conferred by this Agreement are cumulative and are not exclusive of any rights provided by law.

18.10 **Pre-Contractual Negotiation**

a) This Agreement expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement, representation or warranty by or between the parties in relation to that subject matter or any term of that agreement.

b) Neither party shall, after execution of this Agreement, be entitled, as against the other party or other officers of any party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by this Agreement.

18.11 **Further Assurance**

Each party shall execute all documents and perform all acts necessary to give full effect to this Agreement.

18.12 **Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

18.13 **Counterparts**

This Agreement may be executed in any number of counterparts, all of which taken together shall be deemed to constitute on and the same document.

18.14 **Power of Attorney**

Each party who grants a power of attorney by this Agreement hereby declares that the power of attorney is irrevocable, has been given for valuable consideration, may be exercised during any subsequent legal incapacity on the donor's part and may be exercised notwithstanding any conflict of interest.

SCHEDULE ONE

Premises	Molong Swimming Pool
Address	Lots 1 & 2 Hill Street, Molong NSW 2866
Zoning	RE 1
Parish	Molong
County	Wellington
Lot	1 & 2
DP	1151531

SCHEDULE TWO

- Item 1** **Manager:**
- Item 2** **Commencement Date:** **Monday 30th September 2019**
- Item 3** **Termination Date:** **Sunday 29th March 2022**
- Item 4** **Term:** **3 Years**

Item 5 **The Swimming Season**

The swimming season commences from the first full weekend in November to the last full weekend in March. **Extension of the swimming season is not permitted without prior written consent of Council.**

Item 6 **Opening and Closing Times**

Daily 10.30am to 6.30pm (base times)

The Pool will be open daily seven days a week during the swimming season with restricted hours for the last two weeks of the season 12.00 noon to 5.00pm. daily. The above times are base operating hours and allowance will be made to accommodate supervised school attendance. The opening of the pool in the last two weeks of the season will be on a limited basis relevant to school, swimming club and weather considerations.

The pool is closed on Christmas Day.

Miscellaneous Organised Activities

The **Contractor** shall provide so as to permit organised swimming activities including school classes, learn to swim, lifesaving, water confidence classes etc. for the benefit of the community in harmony with general pool use.

Item 7 **Guarantor**

Not Applicable

Item 8 **Option for further term**

Not Applicable

SCHEDULE THREE

As per council's fees and charges 2019/2020 – indexed annually.

Season pass – Family (2 adults & children up to 18 yrs)	\$235.00
Season pass - Adult	\$115.00
Season pass – child, aged pensioner or concession	\$81.00
Daily – adult	\$4.30
Daily – child or aged pensioner or concession	\$4.20
Daily – under school age	\$2.00
Daily – school groups (with teacher)	\$3.30

SCHEDULE FOUR**Seasonal payments including GST**

DATE	SEASONAL PAYMENTS INCLUDING GST
By 30 November 2019	\$
By 31st December 2019	\$
By 31st January 2020	\$
By 28th February 2020	\$
By 31st March 2020	\$
Total <u>including GST</u>	\$

SCHEDULE FIVE

- Qualifications**
- **Current RLSSA lifeguard qualifications**
 - **WWC check and police check**
 - **Food Handling Certificate (if kiosk in operation)**
 - **Chemical Users Certificate (AQF3- Chemical accreditation)**

ANNEXURE "A" CONTRACTOR'S DUTIES AND RESPONSIBILITIES

- 1 Keep the pool open according to set times during the swimming season. The pool is open seven days a week (closed Christmas day). Base times 10.30am to 6.30pm. The swimming season is from the **first full weekend in November to the last full weekend in March**. The Contractor is not authorised to extend the swimming season beyond the stated dates **without prior written permission from Council**.
- 2 Accept and retain pool entry fees according to Council's adopted schedule of fees and charges.
- 3 Operate pool kiosk and retain profits.
- 4 Ensure that pool water quality is maintained to NSW Health Department standards.
- 5 Ensure that a minimum of four (4) water quality checks are carried out daily and records maintained.
- 6 Be familiar with regular pool user groups and their pool requirements, for example, Canowindra Swimming Club, NSW Sport and Recreation learn to swim classes and school groups.
- 7 Be proficient in the use and operation of the:
 - pool filter system,
 - chlorinator,
 - pool cleaner,
 - water quality test equipment,
 - mower and
 - PA system
- 8 Ensure that chemical storage and handling complies with relevant regulations, legislation and industry standards.
- 9 Ensure that all three pools are cleaned and vacuumed.
- 10 Ensure that toilets and change rooms are cleaned and disinfected daily
- 11 Ensure that grounds and buildings are maintained in a clean and tidy condition.
- 12 Be familiar with NSW Health Department emergency procedures.
- 13 Ensure that all pool Lifeguards possess current up to date RLSSA Lifeguard qualification.
- 14 Supervise pool patrons and enforce pool rules regarding behaviour.
- 15 Open up in the morning and carry out safety checks of pools, grounds and buildings.

- 16 Close down and secure pool at night. Carry out safety checks of pool, grounds and buildings.
- 17 Liaise with Council staff as required principally Urban Services Overseer, Urban Services Coordinator, Urban and Utility Services Manager.
- 18 Comply with NSW Child Protection requirements and documentation.
- 19 Ensure own sub-contractors and employees comply with NSW Child Protection requirements and documentation.
- 20 Visually check the solar heating unit on a weekly basis and advise Council of any observed defects.
- 21 Carry out end of season close-down procedures (including kitchen clean up).
- 22 Carry out start up procedures at the commencement of the season
- 23 The contractor **must** be registered for **GST** throughout the term of the contract.
- 24 Prior written permission from Council **must** be obtained before arranging, permitting or advertising special public events in the pool grounds.
- 25 Be familiar with, utilise and care for PPE provided by Council.
- 26 Comment to the media (and social media) about pool issues is **not** permitted unless specifically authorised by Council. All requests for comment by the media are to be referred to council's Media Officer.
- 27 Ensure appropriate food handling accreditation is maintained for kiosk personnel. Kitchen management, cleanliness and food storage must comply with relevant Council and NSW Health Department regulations.
- 28 Be familiar with Council's pool manual.
- 29 Ensure sufficient staff are available for kiosk operation and pool supervision. **The Lifeguard(s) on duty is/are not to be involved with kiosk operations when the pool is open and pool patrons are present.**
- 30 Ensure that the core function of the lifeguard(s) on duty (close supervision of pool patrons) is uncompromised.

PAYMENT

Payment to the manager will be on a monthly basis during the swimming season according to the tendered price (Inc. GST). **No other arrangements are permitted without prior written permission of Council.**

MANAGER'S RESPONSIBILITIES FOR COSTS

- 1 Own Worker's Compensation insurance.
- 2 Worker's Compensation insurance for own employees.
- 3 Kiosk supplies.
- 4 Own insurance for kiosk supplies.
- 5 Own uniforms.
- 6 Cleaning materials, products and equipment for bathrooms and kiosk.
- 7 Swimming pool consumables ie. Toilet paper, hand towels, handwash, kiosk cleaning.

COUNCIL'S RESPONSIBILITIES FOR COSTS

- 1 Public liability insurance.
- 2 Building and contents insurance for council owned items.
- 3 Pool chemicals.
- 4 Repairs to buildings, pools and equipment including mower.
- 5 Water
- 6 Electricity
- 7 Gas
- 8 Hygiene bins
- 9 Supply of mower and fuel
- 10 Supply of PPE, for example, chemical proof apron, chemical proof gloves, goggles, mask for pool chemical use.



CABONNE COUNCIL

CONTRACT No. 1017527

LUMP SUM CONTRACT

for the

**MANAGEMENT OF MOLONG SWIMMING
POOL, LOTS 1 & 2 HILL STREET,
MOLONG NSW 2866**

TENDER SUBMISSION DOCUMENTS

**PREPARED BY:
COUNCIL'S DEPARTMENT OF ENGINEERING
& TECHNICAL SERVICES
DATE: JUNE 2019**

NOMINATION OF REQUIRED TENDER SUBMISSIONS

All Submitted information will be treated as confidential

TENDER FORMS AND DECLARATIONS

1. Tender Form
2. Lump Sum Tender Form
3. Schedule of Rates
4. Tenderer's Particulars - Personnel
5. Register of Tenderer's Subcontractors and Suppliers
6. Equipment
7. Statutory Declaration on Non-Collusive Tender Submission
8. Acquaintance with Site
9. Receipt of Addenda
10. Statement of Conformance

INSTRUCTION TO TENDERER

The Tenderer shall complete in full and submit the forms in numerical order listed above. The completed forms, declarations and required information shall comprise the Tender Submission Documents. **Initial and date each form at the bottom right hand side of each page.**

COMPLETION OF DOCUMENTS

The omission of / failure to complete the forms listed above may, at the absolute discretion of the Principal, result in a nonconforming tender and be subject to rejection.

TENDERER'S ACKNOWLEDGMENT

Contract: Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866

Contract No: 1017527

Date: _____

Signature of Tenderer: _____

TENDER SUBMISSION FORM 1**TENDER FORM**

The Tenderer must complete and submit with Tender submission.
All Submitted information will be treated as confidential

I, _____ (Print name)

of _____

_____ (Address)

on this _____ day of _____, Year _____

having fully acquainted myself with the Conditions of Tender and accordingly the obligations and responsibilities of the Contract do hereby tender to perform the work described below:

Contract: Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866

Contract No: 1017527

as invited by: CABONNE COUNCIL, in accordance with the following documents.

Conditions of Contract

Information for Tenderers and Conditions of Tendering

Specifications / Contractor's Duties and Responsibilities

Tender Submission Documents

Addendum (if any)

By submitting this Tender, the Tenderer warrants and represents that the Tenderer has made their own enquiries and investigations and has obtained professional advice and all other relevant information so as to inform itself of all risks and contingencies which may affect the Tender price. The Tenderer warrants and represents that it has included for all such risks and contingencies in the Submission.

Contract	Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866		
Contract Number	1017527	Tenderer to Complete	
Council	Cabonne Council	Tenderer's Initial	
Submission Date	12 noon Wednesday, 3 July 2019	Date Submitted by Tenderer	

TENDER SUBMISSION FORM 1 continued

Signature of Tenderer: _____

Phone and facsimile numbers: _____

Subscribed and declared this: _____ Day of _____ Year _____

Before me: _____ (Print name)

Witness: _____ (Signature)

Referees

Name	Position	Telephone No
1.		
.....		
2.		
.....		

Contract	Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866		
Contract Number	1017527	Tenderer to Complete	
Council	Cabonne Council	Tenderer's Initial	
Submission Date	12.00 noon Wednesday, 3 July 2019	Date Submitted by Tenderer	

TENDER SUBMISSION FORM 2

LUMP SUM TENDER FORM

The Tenderer must complete and submit with tender.
All Submitted information will be treated as confidential

The Tenderer shall complete all or part of the following information in accordance with their Tender Submission. Amounts specified for these Lump Sum amount shall equal the extended totals from the relevant Schedule of Rates.

All amounts shall be inclusive of GST.

Tender Submission Form	Description	Lump Sum Amount (including GST)
3	All Works under Contract	

Signature of Tenderer: _____

Phone Number: _____ Fax Number: _____

Subscribed and declared this: _____ Day of _____ (Year) _____

Before me: _____ (Print name)

Witness: _____ (Signature)

Contract	Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866		
Contract Number	1017527	Tenderer to Complete	
Council	Cabonne Council	Tenderer's Initial	
Submission Date	12.00 noon Wednesday, 3 July 2019	Date	

TENDER SUBMISSION FORM 3

SCHEDULE OF RATES – ALL WORKS UNDER CONTRACT

1. All prices shall be GST inclusive.

ITEM	DATE	SEASONAL PAYMENTS INCLUDING GST
------	------	---------------------------------

1	Management of Molong Swimming Pool, Molong NSW 2866	
1.1	By 30 November 2019	\$
1.2	By 31 December 2019	\$
1.3	By 31 January 2020	\$
1.4	By 28 February 2020	\$
1.5	By 31 March 2020	\$
	TOTAL INCLUDING GST	\$

Contract	Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866		
Contract Number	1017527	Tenderer to Complete	
Council	Cabonne Council	Tenderer's Initial	
Submission Date	12.00 noon Wednesday, 3 July 2019	Date Submitted by Tenderer	

TENDER SUBMISSION FORM 4

TENDERER'S PARTICULARS - PERSONNEL

The Tenderer must complete and submit with tender
All Submitted information will be treated as confidential

Provide the names of the Project Manager and Site Manager or Responsible Officer in the event of a winning tender.

1. Contractor 's Manager _____

Name	Company Role	Estimated Time Commitment (%)	Years Experience	
			In current firm	prior

Work responsibilities for this Project:

2. Contractor Site Supervisor _____

Name	Company Role	Estimated Time Commitment (%)	Years Experience	
			In current firm	prior

Work responsibilities for this Project:

3. Other support staff _____

Name	Company Role	Estimated Time Commitment (%)	Years Experience	
			In current firm	prior

Work responsibilities for this Project:

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Submission Date	12.00 noon Wednesday, 3 July 2019	Date Submitted by Tenderer	

TENDER SUBMISSION FORM 5**REGISTER OF TENDERER'S SUBCONTRACTORS AND SUPPLIERS**

The Contractor must complete and submit with Tender submission
All Submitted information will be treated as confidential

The Tenderer is instructed to compile a listing below of all Selected Subcontractors and Suppliers which the Tenderer expects to use to execute the Works under the terms of this Contract.

Supplier or Contractor	Telephone No.	Description of work or materials
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		

Contract	Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866		
Contract Number	1017527	Tenderer to Complete	
Council	Cabonne Council	Tenderer's Initial	
Submission Date	12.00 noon Wednesday, 3 July 2019	Date Submitted by Tenderer	

TENDER SUBMISSION FORM 6

EQUIPMENT

The Tenderer must complete and submit with Tender submission
All Submitted information will be treated as confidential

The Tenderer is instructed to compile a listing below Equipment proposed to execute the Works under the terms of this Contract.

Make / Model	Description	Year of Manufacture	Owned or Leased
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

Contract	Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866		
Contract Number	1017527	Tenderer to Complete	
Council	Cabonne Council	Tenderer's Initial	
Submission Date	12.00 noon Wednesday, 3 July 2019	Date Submitted by Tenderer	

TENDER SUBMISSION FORM 7

STATUTORY DECLARATION ON NON-COLLUSIVE TENDER DECLARATION

The Tenderer must complete and submit with Tender submission
All Submitted information will be treated as confidential

I, _____ (Print name),

of _____ (Address),

do hereby solemnly declare and affirm the following;

1. I, after having made due inquiry believe the following to be completely accurate to the best of my knowledge.
2. Neither the Tenderer nor the Tenderers Agents or Servants have entered into any contract or agreement to offer payment of any kind to a representative of the Principal in the event of a winning tender.
3. Neither the Tenderer nor the Tenderers Agents or Servants have had any knowledge of the price of Tender submitted by its competitors nor did the Tenderer furnish the price of the enclosed tender to any external source prior to the close of the tender date as specified within this Contract.
4. Neither the Tenderer nor the Tenderers Agents or Servants have entered into any contract or agreement to offer payment of any kind to an unsuccessful Tenderer in the event of a winning submission.
5. The Tenderer is not aware of any facts which would affect the decision of the Principal in accepting the Tender nor has the Tenderer attempted to acquire information relevant to the Tenderer award process by soliciting the Principal, the Superintendent or their Representative's Agents or Servants.
6. Neither the Tenderer nor the Tenderers Agents or Servants have entered into any agreement with other Tenderers or third party which results in a payment of unsuccessful Tender fees.
7. The contents of this document are true and correct to the best of my knowledge and in no way have been written under duress of any form.

I make this solemn declaration as to the matter aforesaid, according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Signature of Tenderer: _____

Subscribed and declared at: _____

This: _____ **Day of** _____ **Year** _____

Before me: _____ (Print name)

Witness: _____ (Signature)

(Justice of the Peace or authorised person)

Contract	Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866		
Contract Number	755016	Tenderer to Complete	
Council	Cabonne Council	Tenderer's Initial	
Submission Date	12.00 noon Wednesday, 3 July 2019	Date Submitted by Tenderer	

TENDER SUBMISSION FORM 8

ACQUAINTANCE WITH SITE

The Tenderer must complete and submit with tender
All Submitted information will be treated as confidential

This form shall be signed by the Tenderer as a guarantee to the Principal that the Tenderer has undertaken a site inspection without direction of the Principal so as to be fully acquainted with the physical characteristics of the site.

Site Description: Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866

DECLARATION OF SITE INSPECTION

I, _____, of the Tendering Organisation _____

have, of my own accord, conducted an inspection of the aforementioned site and in doing so I have acquired a sound knowledge of the physical characteristics of the site and any consequential procedures and processes that may arise as a result of any environmental or geographical constraints or conditions and in doing so have abided by all National, State, and Council regulations, legislation and bylaws.

The Tenderer understands that it is the responsibility of the Tendering Organisation to inform all personnel, agents and Subcontractors of the Tendering Organisation of all information pursuant to the preceding paragraph.

Name: _____

Signature: _____

Date: _____

Contract	Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866		
Contract Number	1017527	Tenderer to Complete	
Council	Cabonne Council	Tenderer's Initial	
Submission Date	12.00 noon Wednesday, 3 July 2019	Date Submitted by Tenderer	

INSTRUMENT OF AGREEMENT

This instrument shall be completed by Principal and Contractor after acceptance of the tender.
It is included here for the Tenderer's information.

This form comprises a binding Contractual Agreement between:

CABONNE COUNCIL (Principal) and (Contractor)

to faithfully execute the whole of the Works as set out in the documents below for the

Contract: Management of Molong Swimming Pool, Lots 1 & 2 Hill Street, Molong NSW 2866

Contract No: 1017527

Within the Area of Cabonne Council

in accordance with: Tenderers' Tender dated and
Letter of Acceptance dated

Contractual Document Parts Include

- Conditions of Contract
- Specifications (Contractor's Duties and Responsibilities)
- Tender Submission Documents
- Addendums (if any)

The Principal does not guarantee that information provided as additional to the Contract Documents to assist the Tenderer in the preparation of the tender is accurate or complete and the Tenderer must make their own assessment as to the validity of the information.

Name of Contractor: _____

Signature of Contractor: _____ **Date:** _____

Address: _____

Witness: _____ (Signature)

Signed for and on behalf of Cabonne Council.

.....
General Manager

.....
Witness

.....
Name of General Manager (print)

.....
Name of Witness (print)

.....
Date

.....
Date