

**REGISTER OF
CONTRACT AGREEMENTS**

CONTRACT AGREEMENT NO: CA16/1

TITLE: Wollongong City Council Contract Carriers' Agreement 2015

I.R.C. NO: 1028 of 2015

DATE APPROVED/COMMENCEMENT: 14 January 2016 / 23 November 2015

TERM: 36 months

**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE: Serial C8150

DATE TERMINATED:

NUMBER OF PAGES: 12

COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to all contract carriers engaged by Wollongong City Council, located at 41 Burelli Street, Wollongong, who undertake works for the City Works Division.

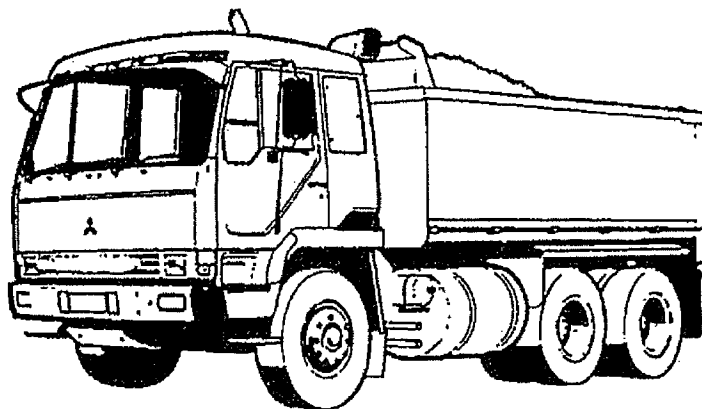
PARTIES: Wollongong City Council -&- the Transport Workers' Union of New South Wales



WOLLONGONG CITY COUNCIL

CONTRACT CARRIERS' AGREEMENT

2015-2018



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1 TITLE

This agreement shall be known as the *Wollongong City Council Contract Carriers Agreement 2015*.

2 PARTIES BOUND

This agreement is entered into on 23 November 2015 between the Principal, Wollongong City Council (WCC) of the first part, the Transport Workers' Union of NSW (TWU) of the second part and the Contract Carriers listed in Attachment 1.

The Contract Carriers are independent carriers that provide services to the Principal under this agreement. Nothing in this agreement is intended to create an employment, or partnership relationship, between the Principal and the Contract Carrier (or its officers, employees or agents).

3 AREA INCIDENCE AND DURATION

This agreement will regulate the terms and conditions of engagement of the Contract Carriers listed in the Priority List at Attachment 1 of this agreement and *terminates* the *Wollongong City Council Contract Carrier's Agreement 1 September 2009 – 31 Aug 2011*, being Agreement CA799/2009 which has been registered with the New South Wales Industrial Relations Commission as IRC9/05.

This agreement **supersedes all other agreements and understandings and will** operate on and from the 23 November 2015 and shall remain in force for a period of three (3) years until 23 November 2018.

For the avoidance of doubt, at the commencement of this agreement, all other previous agreements and understandings are of no effect and provided that this agreement shall continue to remain in force beyond 23 November 2018 until it is terminated, replaced or superseded.

4 PURPOSE OF AGREEMENT

This agreement sets out the terms and conditions for the engagement and performance of Contract Carriers to undertake works for the City Works Division. It does not establish a precedent for, nor preclude, Contract Carriers undertaking Works for other Divisions of Council

5 COUNCIL'S VALUES

We are proud to provide services which are valued by the people of Wollongong, we will :

- Maintain integrity and earn trust

- Treat customers as we want to be treated
- Use the community's money wisely
- Bring out the best in each other

6 OBJECTIVES

The Parties to this agreement agree on the following objectives:

Quality Service Delivery

To provide efficient, on time, cost effective and competitive quality services to our customers and the community

Workplace Health and Safety

To comply with Council's Workplace Health & safety procedures, and policies for contractors.

People

To engage with council staff and the community in a professional and equitable manner by observing Council's Code of Conduct and Council's Values.

Partnership

To maintain a partnership between management, employees, the unions, including Contract Carriers to optimise employment security.

Manage organisational change through consultation.

7 WORKPLACE HEALTH & SAFETY

Council is committed to providing a safe working environment and a high standard of health, safety and welfare for all persons.

Contract carriers must ensure they are familiar and comply with Council's workplace health and safety policies and procedures and will be committed to ensuring that they comply with Council's Workplace Health and Safety requirements including but not limited to :

- a. Fit for Work
- b. Smoking in the Workplace
- c. WHS Policy
- d. Inspection and Testing
- e. Plant Policy
- f. Code of Conduct
- g. Pre-start daily inspections
- h. Report any incident or accident to the site supervisor

Requirements and compliance under the Council workplace health and safety policies and procedures may be audited as part of Council's annual internal auditing requirements.

8 ENGAGEMENT

8.1 CONDITIONS OF ENGAGEMENT

8.1.1 Prior to Council officers offering any work, Contract Carriers will ensure that they:

- Are owner-drivers.
- Appear on the priority list (Attachment 1).
- Are medically fit to perform the duties required under this Agreement.
- Have been issued with and wear, appropriate safety wear, ie Council issue and Personal Protective equipment
- Have undergone Council's induction training program.
- Have undergone WHS training.
- Have provided proof of motor lorry drivers licence
- Have furnished an ABN issued by the ATO.
- Have furnished proof of registration for GST with the ATO.
- Have furnished two employment references on initial engagement only.
- As required by Council officers, provide evidence of the above

8.1.2 The Contract Carrier must promptly provide evidence of each of the matters above where requested by a Council officer. The items below form part of the internal WHS auditing schedule

Within 48 hours' notice to produce documentation

- a. Comprehensively or third party property damage insured with Wollongong City Council indemnified.
- b. Insured under public risk with Wollongong City Council indemnified for a minimum of \$10 million.

Carried on the truck at all times and produced on request

- c. Registered by the NSW Roads and Maritime Services.
- d. Inspected by Council's mechanical staff and are of sound and safe mechanical condition.
- e. Of good appearance.
- f. Regularly serviced and a satisfactory service and repair record is maintained.
- g. Fitted with a two-way tail gate, flashing turret light.
- h. Displaying a Wollongong City Council logo.
- i. Equipped with a pre start daily inspection book.
- j. Fitted with reverse alarm that is automatically activated when reverse gear is selected with a noise level range of 87 to 112 dB(a).
- k. Fitted with electrical hazard warning notice visible to the operator when the hoist is operated. The notice must display the minimum safe working distances.

8.1.3 During engagement the Contract Carrier must, at his or her own cost;

- supply all fuel, oil, grease, tarps and spare parts and anything necessary for continuous and satisfactory operation of the truck;

- remove from site and properly dispose of all waste products from the truck including grease & oils, or if approved by Council, dispose of by placing at a location on site in the manner directed by Council;
- keep maintenance and pre start daily inspections records.

8.1.4 Work shall be offered, if and when it becomes available, to Contract Carriers in the order in which they appear on the Priority List (see Attachment 1). If Council hires a contract carrier out of sequence with the Priority List and a higher priority Contract Carrier is not engaged then payment is to be made to the disadvantaged contractor on the basis of four (4) hours at labour and truck rate for that day.

8.1.5 At least one telephone contact number must be provided to Council by the Contract Carrier so that they may be contacted between 2.00 pm and 3.00 pm Monday to Friday for hire instructions for the following day. If a Contract Carrier cannot be contacted on up to two telephone numbers provided it will be assumed he or she is not available for hire.

For the purposes of this clause 8.1.5, “contact” means a Council officer speaking with a Contract Carrier, and not simply leaving a voice message.

8.1.6 Without derogation to the ability of Contract Carriers to work elsewhere, in times where there is a shortage of work, Contract Carriers may request a leave of absence to work elsewhere. Council should not unreasonably withhold granting of said leave of absence.

8.1.7 If during the course of this agreement Contract Carriers are removed from the priority list, Council will review the appropriate number demanded by its operations in consultation with the TWU.

8.1.8 This agreement is restricted to the engagement of those Contract Carriers listed in the Priority List. This List may be revised and reissued in accordance with changes to the List.

8.1.9 Preference of engagement will be given to Contract Carriers covered by this agreement, over carriers engaged through any plant hire agreement Council enters into with other entities, but only where the truck or trucks Council determines it needs for particular work are of a carrying capacity of 12 tonnes and above with a 3 axle configuration.

8.1.10 Provided that the required rest breaks are taken and current RMS driving hours regulations are observed for trucks greater than 12 tonnes GVM (as identified at attachment 5 to this agreement), and works operations are not disadvantaged, Contract Carriers already engaged on a work site during normal work hours will be given preference of engagement over other contractors utilising trucks on that site for any inclusive after normal hours work regardless of their listing on the Priority List.

- 8.1.11 All rest breaks will be in accordance with RMS driving hours requirements and as instructed by the Site Supervisor, considering Council operating requirements, eg; staggering lunch breaks.
- 8.1.12 Contract Carriers provided with work by Council will be subject to an evaluation of performance having regard to each of the objectives listed in clauses 5, 6 and 7 of this agreement.
- 8.1.13 The evaluation shall be undertaken within six months from the commencement of this agreement, and thereafter every six months until the agreement ends. The evaluation shall be undertaken as set out at attachment 4.
- 8.1.14 The evaluation shall be undertaken by a delegated Council officer. If the result of the performance evaluation is rated as unsatisfactory, this shall be referred to a Coordinator for final determination.
- 8.1.15 As well as compliance with each of the objectives at clauses 5,6 and 7, the matters to be assessed include:
- whether the truck is delivered to the nominated Council location in a timely manner and whether it complies with relevant conditions of contract;
 - condition of the truck presented;
 - acceptable levels of productivity achieved (per evaluation rating);
 - timely presentation of daily timesheet and pre start daily inspection to the Site supervisor;
 - tonnages loaded shall be in accordance with the GVM requirements set out by the relevant NSW legislation. Tonnages less than the GVM requirements (up to 10% of maximum capacity) will only be allowed when approved by the site supervisor. Where a vehicle passes over a weighbridge, the weighbridge tickets must be supplied back to the site supervisor.
 - workplace health & safety, quality & environmental performance;
 - working in a co-operative manner and providing a high level of customer service to Council at all times;
- 8.1.17 Where the council incorporates an element of cartage or transport requirements as a component of a whole of job tender/quotation which does not include the use of Council's City Works day labour workforce, these such arrangements/contracts fall outside this agreement and do not invoke this agreement.

8.2 DISCIPLINARY PROCEDURE

- 8.2.1 The purpose of this clause is to correct inappropriate behaviour/conduct and poor performance. The Disciplinary procedure set out at this clause 8.2 is designed to give Council and Contract Carriers an agreed process for managing situations where inappropriate behaviour/conduct and poor performance has been identified and changes are required..

- 8.2.2 The disciplinary procedure is to be used in instances of recurring inappropriate behaviour/conduct or performance issues, as initial occurrences of poor performance or inappropriate behaviour/conduct may be related to an contract carrier's personal circumstances.
- 8.2.3 Each aspect of performance is monitored separately. It is not the intent of the policy that aspects of performance that are distinctly unrelated be used to progress along the disciplinary procedure.
- 8.2.4 To maintain basic and reasonable standards of behaviour/conduct and performance in the service of Wollongong City Council and to set fair and equitable standards of discipline for unsatisfactory conduct and performance;
- Guarantee the rights of all;
 - Ensure a safe and healthy work environment;
 - Prevent contract carriers from generating a poor attendance record or poor work habits;
 - Reinforce and document improved overall performance;
 - Refer contract carriers to Council's Employee Assistance Program where relevant.
- 8.2.5 **Policy**
Wollongong City Council believes that the majority of its contract carriers are loyal and hardworking, however, a large organisation requires policies and standards to assist all managers, supervisors and contract carriers with guidelines and procedures to events that may result in disciplinary or corrective action.
- 8.2.6 An effective Disciplinary Procedure must be fair, reasonable, logical and easily understood by all.
- 8.2.7 Council Supervisors should be aware that these disciplinary procedures should not be used as a sole basis for corrective action of conduct on the job. Supervisors, in the course of their duties, should interact with Contract Carriers, and, where they have concerns in relation to their performance, raise these concerns as they arise. In most circumstances, unless an employee's misconduct is of such a serious nature, these disciplinary procedures should not be used for a "first offence" (e.g. lateness to work, poor timekeeping, etc.).
- 8.2.4. Where problems arise on the job and these problems have been discussed between the supervisor and the contract carrier and this person still shows no signs of improvement, then it may be appropriate to turn to Step 1 of the disciplinary procedures. Caution should be exercised here however, as a sudden deterioration of work performance could indicate underlying personal problems being experienced by the person. In view of this, all supervisory employees should be fully cognisant of Council's Employee Assistance Program and make all attempts to offer assistance to the person. If the offer of assistance is refused, and the misconduct persists, then it is appropriate to continue to Step 1 of the disciplinary procedures. Where EAP assistance is sought and provided and no improvement in

performance results, these cases will be assessed on their merits to determine appropriate action.

- 8.2.9 Review periods will be established for contract carriers who are placed on stages 1, 2, 3 of the disciplinary procedures. If there are periods of absence from the workplace, all such absences will be added onto the review period which has been established, unless otherwise agreed by the parties

8.3 HOURS OF ENGAGEMENT

- 8.3.1 Contract Carriers will be available for engagement between the hours of 6.00 am and 6.00 pm **Monday to Friday**, paid for hours worked at a rate of single time at the flat hourly rate.
- 8.3.2 A Contract Carrier can be engaged by any delegated Council officer
- 8.3.3 Where a Contract Carrier has been engaged, and then informed (by phone or voice mail) that their services are not required, and appropriate notice (12 hours) has been provided, Council is not liable to make any payment to the Contract Carrier.
- 8.3.4 "Hours Worked" exclude travel time to and from the job site at the start and end of the hire per day. Travel between jobs during the hire will be paid at single time at the flat hourly rate and at rates as set out in clause 8.4
- 8.3.5 The normal hours of engagement on a Council roster day shall be paid for hours worked at a rate of single time at the flat hourly rate.
- 8.3.6 The allocated rostered day for Contract Carriers will be taken in conjunction with WCC City Works roster day (9 day fortnight) and be the second Friday in the pay cycle.
- 8.3.7 Contract Carriers engaged on a work site immediately prior to the scheduled roster day and are invited to work at the same work site on the scheduled roster day, Saturday or Sunday will have preference of engagement, notwithstanding the Priority List.
- 8.3.5 If the contract carrier is engaged outside the hours of engagement, as provided in Clause 8.3.1, then the contract carrier will be paid at the rates set out in Clause 8.5.

8.4 RATES OF PAY

- 8.4.1 Rates of pay are itemised under Attachment 2.
- 8.4.2 Rates of pay are adjusted on the basis of Transport Industry - Excavated Materials - Contract Determinations ratified through the NSW Industrial Relations

Commission for 3 axles, Item 6 Hourly Rate, less workers compensation (2%) and employer superannuation guarantee (9.5%).

8.5 RATES FOR HOURS OUTSIDE THE HOURS OF ENGAGEMENT

- 8.5.1 Where the Contract Carrier provides services in excess of eight hours on any one day, payment will be made at the rate of normal truck and entitlement rates plus time and one half on the labour rate for the first two hours. For time worked in excess of those first two hours the normal truck and entitlement rates will continue and the normal labour rate will be doubled
- 8.5.2 A Contract Carrier invited to work on a Saturday shall be paid a minimum of four hours at the normal truck and entitlement rates and the normal labour rate at time and one half for the first two hours and then double labour rate for any time thereafter.
- 8.5.3 A Contract Carrier invited to work on a Sunday or public holiday shall be paid a minimum of four hours at the normal truck and entitlement rates and the normal labour rate at double time.
- 8.5.4 A Contract Carrier recalled by Council after being hired during the hours of engagement as provided in Clause 8.3 shall receive a minimum of four hours hire at the normal truck and entitlement rates plus the appropriate penalty labour rate.
- 8.5.5 A Contract Carrier called for work outside the spread of hours shall be paid the normal truck and entitlement rates plus the appropriate penalty labour rate up to the starting time of the span of hours.

9 GENERAL CONDITIONS

- 9.1 Appearance, general condition and mechanical condition of trucks will be maintained to a standard acceptable to Council.
- 9.2 In the event of a truck breakdown hire time will be discontinued. The site supervisor must be given immediate notification on the nature of breakdown with an estimate on down time.
- 9.3 A copy of Evaluation reports will be sent to the Contract Carrier..
- 9.4 Contract Carriers must ensure that appropriate statutory licences are held, current RMS regulations are observed, and standard heavy truck driver hours, (attachment 5) and that RTA registration and truck insurances are current. Hiring of Contract Carriers is subject to copies of such current renewal documents being made available to Council for recording.

- 9.5 Contract carriers must be inducted to the respective job site by a Council representative, understand the site specific requirements and sign the induction sheet before any work is undertaken.
- 9.6 Variation to this agreement shall only be made by agreement with the parties as described at Clause 2.

10 MINIMUM HIRE

- 10.1 Subject to clause 8.3.3, if a Contract Carrier reports for work at the depot or job site as directed during normal working hours and is not required, due to wet weather, etc, he or she will be paid four (4) hours hire, at the normal truck and labour hire rate. Acceptance of the four (4) hours hire will deem the Contract Carriers remain on site for that time to enable possible resumption of operations.
- 10.2 Subject to clause 10.3 below, after the commencement of work, during normal working hours, a Contract Carrier shall be paid not less than eight (8) hours hire at the normal truck and labour hire rate. Acceptance of the eight (8) hours hire will deem the truck remain on site for that time to enable possible resumption of operations.
- 10.3 Clause 10.2 will not operate for a period of six (6) months following the approval of this agreement by the NSW IRC. In that six (6) month period, the parties agree to trial an arrangement whereby Council can engage the Contract Carriers for a minimum engagement period of four (4) hours, and a Contract Carrier shall be paid not less than four (4) hours hire at the normal truck and labour hire rate. Where on any day the services of more than one Contract Carrier are requested by Council, the carrier higher up on the Priority List will be first offered the longer hire of engagement.
- 10.4 Within one (1) month after the six (6) month period referred to in clause 10.3 above, the TWU is to advise the Council in writing if it elects to either: continue (whilst this agreement is in operation) the arrangement of a minimum hire period of four (4) hours under clause 10.3, or revert back to the arrangement of a minimum hire period of eight (8) hours under clause 10.2. The Council will endeavour to write to the TWU seeking an election should the TWU not advise the Council of its election within two (2) weeks after the expiration of the six (6) month period referred to above.

11 CONDITION FOR PAYMENTS

- 11.1 Contract Carriers will be required to sign a Recipient Created Tax Invoice Agreement with Council.

- 11.2 Contract Carriers will be required to submit a correctly completed Daily Hire Timesheet, (attachment 6) signed by the authorised Council officer.
- 11.3 Payments, by electronic funds transfer, for Contract Carrier hire will be made fortnightly, pending receipt of a Daily Hire Timesheet and compliance of this contract by a Recipient Created Tax Invoice including GST and ABN details.

12 GRIEVANCE PROCEDURE

- 12.1 Any Contract Carrier should, in the first instance, discuss any grievance affecting their engagement with Council with a nominated Council employee with authority to investigate the grievance.
- 12.2 In the event of failure to resolve the matter at job level, the matter shall be the subject of discussions between a delegate of the TWU and an authorised representative of Council.
- 12.3 In the event of failure to resolve the matter, then it shall be the subject of discussions between the TWU Organiser and the Manager City Works.
- 12.4 Should the matter still remain unresolved, the Secretary of the TWU or his nominee will confer with the General Manager.
- 12.5 In the event of no agreement being reached at this stage, the dispute will be referred to the Industrial Relations Commission for determination.
- 12.6 All work shall continue normally (status quo) while these negotiations are taking place, unless the subject matter of the grievance is the removal of the Contract Carrier from the Priority List. In that circumstance, and until any order from the Commission to the contrary, the Contract Carrier will not be offered work..

13 LEAVE RESERVED

Where on any job abnormal working conditions exist which, in the opinion of the TWU warrant a higher rate, leave is reserved to the TWU to invoke the dispute procedure for this purpose.

14 UNION DELEGATE

A Contract Carrier appointed as TWU delegate shall, upon notification thereof to the Council's City Wide Services Manager by the Secretary of the Union, be recognised as the accredited representative of the Union.

15 ALL INCLUSIVE HIRE RATES

- 15.1 A flat hourly rate will apply for the purposes of this agreement. These rates incorporate payment for all conditions, allowances, public holidays, etc.
- 15.2 The only exception to Clause 15.1 is the payment of "Meal Allowances" to Contract Carriers in the event of work outside normal hours which is not included in Clauses 16 and 17. Meal allowances will be paid to Contract Carriers under the same conditions that apply to the coverage of employees of Council.

16 WORKERS' COMPENSATION

Workers' Compensation coverage for non-incorporated contract carriers will be provided by Council.

17 SUPERANNUATION

The superannuation guarantee levy (currently 9.5% of the labour component of the hire rate) will be paid by Council for non-incorporated contract carriers to the superannuation fund of choice of the non-incorporated Contract Carriers or as required by legislative provisions.

18 ORGANISATIONAL CHANGE

- 18.1 If council is considering workplace change that is likely to have a significant effect on the employees covered by this agreement, Council must consult with employees who are affected by the proposed change.
- 18.2 In the event that the Council does not require the services of one or more of the Contract Carriers listed on the Priority List due to business conditions, reorganisation or organisational change, they will be removed from that List in order of those with the least amount of service with the Council.
- 18.2 Except where removal has occurred pursuant to clause 8.2 of this agreement, Council will provide three (3) weeks payment for each year of service of each Contract Carrier.
- 18.3 The payment will be based on average weekly fees charged by the Contract Carrier to the Council over:
- (a) the twelve (12) month period preceding the notification of removal from the Priority List; and

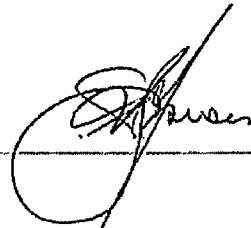
(b) from 12 months after this agreement has been approved by the NSW Industrial Relations Commission, the twenty four (24) month period preceding the notification of removal from the Priority List

19. DEFINITIONS

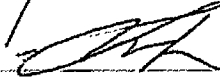
19.1 **Delegated Officer** – a council delegated officer can be the Leading Hand or above

SIGNATURES TO THE AGREEMENT

SIGNED for and on behalf of
Wollongong City Council



In the presence of:



SIGNED for and on behalf of
The Transport Workers' Union
Of NSW:



In the presence of:

