

ORDINARY MEETING**21 FEBRUARY 2023****2****RESOURCE AND PERFORMANCE AGREEMENT WITH ANZAC DAY REGIONAL EVENTS**

58/1/2 | #7356378

RECOMMENDATION:**That Council:**

- 1. Enters into a one-year Resource and Performance Agreement with ANZAC Day regional event organisers for the period 1 March 2024 to 30 June 2024 to the following organisations;**
 - a. RSL Queensland Sub Branch - Babinda to the value of \$7,000 (ex GST)**
 - b. RSL Queensland Sub Branch – Gordonvale to the value of \$7,500 (ex GST)**
 - c. RSL Queensland Sub Branch - Edmonton to the value of \$7,000 (ex GST)**
 - d. RSL Queensland Sub Branch – Edge Hill to the value of \$6,000 (ex GST)**
 - e. Australian Air Force Cadets Cairns – Stratford to the value of \$9,500 (ex GST)**
 - f. Yorkeys Knob Boating Club to the value of \$6,500 (ex GST)**
 - g. Rotary, Cairns Northern Beaches -Trinity Beach to the value of \$9,500 (ex GST)**
- 2. Delegates authority to the Chief Executive Officer in accordance with the *Local Government Act 2009* to finalise any and all matters associated with the Resource and Performance Agreement.**

INTERESTED PARTIES:

- RSL Queensland Sub Branch - Babinda
- RSL Queensland Sub Branch - Gordonvale
- RSL Queensland Sub Branch - Edmonton
- RSL Queensland Sub Branch - Edge Hill
- Australian Air Force Cadets Cairns - Stratford
- Yorkeys Knob Boating Club
- Rotary, Cairns Northern Beaches -Trinity Beach

Full list of committee members in appendix 1

Note: The identification of interested parties is provided on a best endeavours basis by Council Officers and may not be exhaustive.

EXECUTIVE SUMMARY:

Council has provided ad hoc financial support to seven regional ANZAC Day events, delivered by various community groups since 2011. In 2020 Council formalised the support, issuing three-year Resource and Performance Agreements to the seven regional events. The 2024 events require financial support by Council, via a one-year Resource and Performance Agreement totalling \$18,000 (ex GST) and up to \$35,000 of in-kind

support, across the seven sites.

Key Performance Indicators (KPIs) in the Resource and Performance Agreements require organisations to acknowledge Council's support, obtain the necessary permits, applications and present a proposed budget. A post-event report is also required that acquits funds and provides attendance estimates.

BACKGROUND:

Seven suburbs organise ANZAC Day events, through various not-for-profit groups such as RSL Clubs, Rotary Clubs and Defence Cadet groups.

These differ in attendance, program, and cost to deliver.

- Edge Hill: 1,000 guests
- Yorkeys Knob: 500 guests
- Babinda: 200 dawn/400 march
- Edmonton: 2,000 guests
- Gordonvale: 400 dawn/2,000 march
- Stratford: 3,500 guests
- Trinity Beach: 4,000 guests

Council has funded these various events since 2011 through informal means, with inconsistency in the support levels. This sparked a review in 2019 with the outcome being a move toward a Resource and Performance Agreement.

These community groups have successfully delivered ANZAC Day Regional Events through a Resource and Performance Agreement funding since 2020.

The financial support enables the groups to deliver the events through assisting with the hire costs of audio visual and equipment and providing safer practices through assisting with the road closures and first aid.

Council officers have assessed the 2024 Resource and Performance Agreements and this report provides an overview of that assessment and associated recommendations.

COMMENT:

The recommended duration of the Resource and Performance Agreements are a one-year initial term totalling \$18,000 (ex GST) and \$35,000 of in-kind support across the seven sites. The split across the seven sites is based on the funding requested from each community group, the event's attendance, and technical requirements.

| | |
|--|--|
| RSL Queensland Sub Branch - Babinda | \$2,000 cash & up to \$5,000 in-kind funding |
| RSL Queensland Sub Branch - Gordonvale | \$2,500 cash & up to \$5,000 in-kind funding |
| RSL Queensland Sub Branch - Edmonton | \$2,000 cash & up to \$5,000 in-kind funding |
| RSL Queensland Sub Branch - Edge Hill | \$1,000 cash & up to \$5,000 in-kind funding |
| Australian Air Force Cadets Cairns - Stratford | \$4,500 cash & up to \$5,000 in-kind funding |

| | |
|--|--|
| Yorkeys Knob Boating Club | \$1,500 cash & up to \$5,000 in-kind funding |
| Rotary, Cairns Northern Beaches -Trinity Beach | \$4,500 cash & up to \$5,000 in-kind funding |

Policy

The seven groups have been assessed as a Community Organisation and therefore fall under the remit of the Resource and Performance Agreement section of Council's Community Grant Policy.

CONSULTATION:

Representatives of the following have been consulted in the preparation of this report:

- RSL Queensland Sub Branch - Babinda
- RSL Queensland Sub Branch - Gordonvale
- RSL Queensland Sub Branch - Edmonton
- RSL Queensland Sub Branch - Edge Hill
- Australian Air Force Cadets Cairns - Stratford
- Yorkeys Knob Boating Club
- Rotary, Cairns Northern Beaches -Trinity Beach

ATTACHMENTS

Appendix 1 – Committee Members Names

Appendix 2 – Resource & Performance Agreements



Ann Combe
Executive Manager, Marketing & Communications



Christine Posgate
Director, People and Organisational Performance

Appendix 1 – Committee Leaders

Committee Members

RSL Queensland Sub Branch - Babinda

President: Frank Gatty

Ben Stone

Max Luxton

Jenni Stone

RSL Queensland Sub Branch – Gordonvale

President: Phil Betruch

Peta Isan

Event contact, not on the committee: Dave Chalk

RSL Queensland Sub Branch - Edmonton

President: Ian Oakley

Warren Boyd

Doug Parson

Event contact, not on the committee: Doug Belton

RSL Queensland Sub Branch - Edge Hill

President: Lisa Gray

Australian Air Force Cadets Cairns - Stratford

Commanding Officer: Ed Hayton

Yorkeys Knob Boating Club

Commodore: Don Cortis

Terry Rhook

Matt Turner

Julie Simon-Abbott

Grant Golombick

Robert Gray

Darren Brice

John Bottoms

David Wall

Tony Andersen

Event contact, not on the committee: Krisztina Jahshan

Rotary, Cairns Northern Beaches -Trinity Beach

President: Hannah Boon

Majella Fallon

Narelle Paisley

Tammy Collins



Resource and Performance Agreement

Cairns Regional COUNCIL

("COUNCIL")

Babinda ANZAC Day Event Organiser

("RECIPIENT")

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Parties

| | |
|---|----------------------|
| Cairns Regional COUNCIL ABN 24 310 025 910 | ("COUNCIL") |
| Babinda ANZAC Day Event Organiser | ("RECIPIENT") |

Background

- A. The RECIPIENT intends to deliver the RECIPIENT's Obligations and requires the Funding from COUNCIL to do so.
- B. COUNCIL has agreed to provide Funding to the RECIPIENT in consideration for the RECIPIENT delivering the RECIPIENT's Obligations, and the RECIPIENT has agreed to accept and acquit the Funding on the terms and conditions set out in this Agreement.
- C. This report aims to ensure clarity regarding the financial support provided by COUNCIL to the RECIPIENT and the responsible utilisation of funds for the successful execution of the ANZAC Day event.

The Parties Agree:

INTRODUCTORY PROVISIONS

1. APPLICATION DATA

| ITEM NO. | DATA | DETAILS |
|----------|--|---|
| Item 1 | RECIPIENT: | |
| | ABN: | |
| | Address for Service: | <u>Postal Address:</u> <u>Email Address:</u> |
| | Contact Name: | |
| | Email: | |
| | Telephone: | |
| Item 2 | Commencement Date of agreement: | 1 March 2024 |
| | Expiry Date: | 30 June 2024 |

| | | |
|--------|----------------|--|
| Item 3 | Funding | <p>\$2,000.00 cash (excl GST) - Per calendar year</p> <p>This report outlines the financial support extended to the RECIPIENTS upcoming ANZAC Day event. The Funding has been allocated to assist in covering expenses associated with ensuring the safe and successful execution of the event for the local community.</p> <p>Utilisation of cash Funds:</p> <p>The provided funding is earmarked for specific purposes crucial to the safe delivery of the ANZAC Day event. It is imperative that the expenses incurred align with the event's safety requirements. The designated areas for spending include:</p> <p>Traffic Management Services First Aid Services Hydration Stations Security Personnel Event Hire Equipment Assistance with Event Coordination Audio-Visual Equipment</p> <p>Financial Accountability:</p> <p>In the event that the total expenditures remain below the allocated funding amount, we request that any surplus funds be promptly returned to the COUNCIL. This measure ensures transparency and responsible financial management.</p> <p>Ineligible Funding Items:</p> <p>It is essential to note that the allocated funds cannot be utilised for certain items. Ineligible expenses include:</p> <p>Gifts Prize Money Alcohol Tobacco Items purchased for events not held on ANZAC Day, specifically on 25 April 2024.</p> <p>Up to \$5,000.00 in-kind Funding:</p> |
|--------|----------------|--|

| | | |
|--------|---------------------------------------|--|
| | | <p>In addition to the monetary support, in-kind funding has been allocated. This may cover various aspects such as:</p> <p>Free hire of COUNCIL-owned event spaces Associated cleaning and maintenance of these spaces Electrical works required for these event spaces Bin orders</p> <p>Detailed Information:</p> <p>For a comprehensive understanding of the funding details, please refer to the Schedule 1.</p> |
| Item 4 | COUNCIL's Address for Service: | <p><u>Address for Hand Delivery:</u> Attn: Chief Executive Officer, 119 – 145 Spence Street, Cairns Qld 4870</p> <p><u>Postal Address:</u> PO Box 359, Cairns Qld 4870</p> <p><u>Email Address:</u> council@cairns.qld.gov.au</p> |
| Item 5 | COUNCIL Contact: | <p><u>COUNCIL Contact Name:</u> Chrystal Neeve, Senior Events Officer</p> <p><u>Email Address:</u> c.neeve@cairns.qld.gov.au</p> <p><u>Telephone Number:</u> 07 4044 3477</p> |

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless inconsistent with the context or subject matter:

Address for Service means the address of each party appearing in this Agreement or any other address nominated in writing by a party to the other party as its new address for notices or service.

Agreement means this Resource and Performance Agreement.

Application Data means the table in Clause 1 of this Agreement.

Authority means any federal, state or local government or regulator which is required to approve all or any aspect of the RECIPIENT's Obligations.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Cairns.

Commencement Date means the date this Agreement will start, as specified in Item 2.

Confidential Information means documents and information provided or made available by COUNCIL or obtained by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations which are of their nature confidential or which COUNCIL has identified to the RECIPIENT as being confidential but does not include documents and information which are in the public domain other than through a breach of this clause.

Expiry Date means the date the Agreement will end, as specified in Item 2.

Funding means the payment and/or other consideration to be provided by COUNCIL to the RECIPIENT under this Agreement, as specified in Item 3, and which shall be paid and/or provided in accordance with the terms of this Agreement.

GST, Supply, Supplier and Tax Invoice have the same meaning as given to these terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, management of the RECIPIENT's Obligations, industrial, scientific, literary or artistic fields.

In-Kind Support means COUNCIL resources, materials and/or services that are provided to the RECIPIENT in accordance with this Agreement. Services that are outsourced by COUNCIL are not considered in-kind.

Insolvency Event occurs if the RECIPIENT becomes the subject of bankruptcy proceedings, winding up proceedings, is declared bankrupt, has a winding up order made against it, has a receiver and/or manager or administrator appointed or enters into a scheme of arrangement with creditors.

Item means the item number in the Application Data.

Laws means any statute, regulation or ordinance made by any Authority and where appropriate, includes the applicable common law.

Option means any option or options to renew this Agreement for a further term, as specified in Item 2.

Personal Information has the meaning given to that term by the *Information Privacy Act 2009*.

Public Health Directions means directions given by the Chief Health Officer under section 362B of the *Public Health Act 2005* and, if applicable, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020* (Cth), or any other legislation pursuant to which a local, State or Commonwealth Government can give directions for public health purposes.

RECIPIENT's Obligations means those obligations that the RECIPIENT is required to carry out in consideration for the RECIPIENT receiving the Funding, which are particularised in Schedule 1. Reference to the RECIPIENT's Obligations throughout this Agreement is to be construed to include all or any part of them.

Schedule means a schedule to this Agreement.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, and including any Option if exercised in accordance with this Agreement.

Unexpended Funds means any part of the Funding which has been paid to the RECIPIENT but which has not been spent or committed by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations.

2.2 This Agreement is to be construed as follows unless the context requires otherwise:

- a) Reference to one gender includes all genders;
- b) Reference to the singular includes the plural and vice versa;
- c) Reference to a person includes a corporation or other entity and vice versa;
- d) Reference to a schedule means a schedule to this Agreement;

- e) Reference to money is to Australian dollars;
- f) Where the RECIPIENT is more than one party, the obligations under this Agreement bind the RECIPIENT jointly and severally;
- g) Reference to the RECIPIENT includes its personnel or authorised subcontractors.

FUNDING

3. FUNDING

- 3.1 COUNCIL will provide the Funding to the RECIPIENT, and in consideration, the RECIPIENT will comply with the terms and conditions set out under this Agreement. COUNCIL is not obliged to provide any Funding to the RECIPIENT unless the RECIPIENT has complied with each of its obligations under the Agreement at the time at which payment is sought.
- 3.2 The RECIPIENT must only use the Funding towards the delivery of the RECIPIENT's Obligations and in the manner otherwise required by this Agreement. COUNCIL will provide the Funding to the RECIPIENT in accordance with the provisions outlined in Schedule 1, subject to the following:
- a) The RECIPIENT has shown to COUNCIL's satisfaction that it has satisfied the requirements set out in this Agreement, including in Schedule 1;
 - b) The RECIPIENT has issued a Tax Invoice, (unless GST is not applicable, upon which the RECIPIENT will provide COUNCIL with an invoice) to COUNCIL for the instalment;
 - c) COUNCIL is reasonably satisfied that the RECIPIENT is not otherwise in breach of this Agreement.
- 3.3 Any payment to the RECIPIENT by COUNCIL is not an admission or acceptance by COUNCIL that the RECIPIENT has complied with this Agreement.
- 3.4 **Unexpended Funds**
- a) The RECIPIENT must refund any Unexpended Funds to COUNCIL within fourteen (14) Business Days of the Expiry Date;
 - b) COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpended Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL;
 - c) Where the RECIPIENT's expenditure for the Funding is more than the amount of Funding allocated for the activity, the RECIPIENT must bear the difference between these amounts.
- 3.5 **No Further Funding**
- a) The RECIPIENT acknowledges that COUNCIL has no obligation to provide the RECIPIENT with funding or assistance of any kind:
 - i) in excess of the Funding; or
 - ii) beyond the Term.
 - b) For the avoidance of doubt, the RECIPIENT is responsible for acquiring and/or providing any additional funds, materials or equipment in excess of the Funding required to carry out or complete the RECIPIENT's Obligation.

3.6 Misapplied Funds

- a) If the RECIPIENT uses the Funding other than in accordance with this Agreement, including but not limited to using the Funding in contravention of any part of Schedule 1 (“**Misapplied Funds**”):
 - i) COUNCIL may, by written notice, require the RECIPIENT to refund the Misapplied Funds; and
 - ii) If COUNCIL exercises its rights under the preceding subclause, then the RECIPIENT must within ten (10) Business Days of receipt of the notice refund the Misapplied Funds plus any interest on it calculated on daily balances at the rate per annum determined by the Supreme Court of Queensland on judgments by default as applicable at the date of COUNCIL’s notice and is fully capitalised on the last Business Day of each month if unpaid; and
 - iii) If the Misapplied Funds are not repaid in accordance with the preceding subclause, COUNCIL may:
 - A. Recover the amount as a liquidated debt due to COUNCIL; or
 - B. Set the amount off against any other amount payable by COUNCIL to the RECIPIENT, whether under this Agreement or otherwise.
- b) Nothing in this Clause 0 affects the accrued rights or remedies of COUNCIL, including the right to terminate this Agreement in accordance with Clause 7.
- c) This clause survives the expiration or termination of this Agreement for any reason, and applies where COUNCIL becomes aware of the Misapplied Funds after the end of the Term.

3.7 In-Kind Support

- a) This clause applies to any In-Kind Support provided by COUNCIL pursuant to this Agreement, but only to the extent expressly specified in Schedule 1.
- b) COUNCIL’s obligation to deliver In-Kind Support shall be limited to circumstances where:
 - i) The RECIPIENT makes a request for In-Kind Support;
 - ii) The nature of the In-Kind Support requested is fully particularised, is directly connected to the delivery of the RECIPIENT’s Obligations, and is compliant with the terms of this Agreement (including but not limited to in relation to any funding threshold for the In-Kind Support);
 - iii) COUNCIL, acting reasonably, considers that it can provide the In-Kind Support, having regard to its resources and other commitments and statutory obligations.
- c) The provision of In-Kind Support will not in any way give rise to any responsibility on the part of COUNCIL to carry out any role or discharge any responsibility with respect to the overall management or delivery of the RECIPIENT’s Obligations, irrespective of the nature of the In-Kind Support provided.

RECIPIENT'S OBLIGATIONS

4. RECIPIENT'S OBLIGATIONS

- 4.1 In exchange for the provision of the Funding, the RECIPIENT shall comply with the requirements set out in Schedule 1.
- 4.2 In delivering the RECIPIENT's Obligations, the RECIPIENT must:
- a) Ensure the RECIPIENT's Obligations are fully delivered by the Expiry Date;
 - b) Engage and/or retain personnel who are able to competently deliver and perform the RECIPIENT's Obligations;
 - c) Ensure that all personnel or authorised subcontractors engaged in the delivery of the RECIPIENT's Obligations have all the skills and qualifications necessary to deliver the RECIPIENT's Obligations, including but not limited to ensuring any personnel or authorised subcontractors hold all competencies, licenses, accreditations and qualifications which may be required;
 - d) Consult regularly during the Term with COUNCIL;
 - e) Comply with any applicable Laws, requirements from Authorities or industry standards relating to the RECIPIENT's Obligations;
 - f) Adhere to and comply with any reasonable direction issued by COUNCIL in relation to the performance of the RECIPIENT's Obligations.
- 4.3 The RECIPIENT must promptly notify COUNCIL:
- a) Of any matters that the RECIPIENT reasonably considers may affect the RECIPIENT's ability to meet any obligation under this Agreement;
 - b) Of any matter that may affect the RECIPIENT's eligibility to continue receiving the Funding;
 - c) Of any allegation of misconduct or dishonesty concerning the RECIPIENT; or
 - d) Of any change to its details in the Application Data.
- 4.4 The RECIPIENT must not make any public statement concerning the Funding, any In-Kind Support or COUNCIL's contribution to the delivery of the RECIPIENT's Obligations generally, without first obtaining the written approval of COUNCIL.
- 4.5 COUNCIL may at any time during the Term request that the RECIPIENT provide to it details in relation to the acquittal of the Funding and the RECIPIENT must promptly comply with any such request.
- 4.6 The RECIPIENT must maintain and retain for five (5) years following the Expiry Date, accurate records of how the Funding was acquitted.
- 4.7 **COUNCIL Contact**
- a) If the RECIPIENT wishes to liaise with COUNCIL about the performance of the RECIPIENT's Obligations or in relation to this Agreement generally, the RECIPIENT may liaise with the COUNCIL Contact nominated in Item 5 of the Application Data, and using the contact details nominated in Item 5 of the Application Data.

- b) Nothing in the preceding subclause affects the RECIPIENT's obligations to issue notices pursuant to Clause 13.

WARRANTIES, INSURANCES AND INDEMNITIES

5. WARRANTIES

- 5.1 The RECIPIENT warrants that as at the date of this Agreement, the RECIPIENT and/or its personnel (as the case may be) hold all necessary competencies, accreditations, qualifications, permits, clearances or other authorisations which are required for the RECIPIENT to comply with its obligations under this Agreement, and will maintain such competencies, accreditation, qualifications, permits, clearances or other authorisations at all times during the Term.
- 5.2 The RECIPIENT must ensure that, in performing work associated with the RECIPIENT's Obligations, it complies with:
- a) This Agreement;
 - b) All applicable Law;
 - c) All relevant industry standards, codes and guidelines;
 - d) All policies, requirements and procedures of COUNCIL which are applicable to the RECIPIENT's Obligations and which are publicly available or otherwise made known to the RECIPIENT, including but not limited to COUNCIL's work health and safety policies and procedures. The RECIPIENT warrants that it has reviewed copies of COUNCIL's policies and procedures, understands them and agrees to comply with them.
- 5.3 The RECIPIENT warrants that it has the necessary skills and expertise to be able to competently deliver the RECIPIENT's Obligations, in accordance with this Agreement and any applicable industry standard.
- 5.4 Without limiting the generality of the preceding subclauses, the RECIPIENT warrants to COUNCIL that:
- a) The RECIPIENT at all times shall exercise due skill, care and diligence in delivery of the RECIPIENT's Obligations and otherwise discharging its obligations under this Agreement;
 - b) The RECIPIENT shall deliver the RECIPIENT's Obligations and otherwise discharge its obligations under this Agreement so that the RECIPIENT's Obligations, when delivered, are:
 - i) Fit for their stated purpose; and
 - ii) Compliant with all the requirements of the Agreement; and
 - c) The RECIPIENT has undertaken all necessary enquiries and investigations to satisfy itself as to:
 - i) The nature and extent of its obligations under the Agreement; and
 - ii) The completeness and accuracy of the Agreement.
- 5.5 The warranties set out in this clause remain unaffected notwithstanding any variation.

6. INSURANCES AND INDEMNITIES

- 6.1 The parties acknowledge and agree that COUNCIL's obligations are limited to the provision of Funding only. The RECIPIENT is solely responsible for performing the RECIPIENT's Obligations consistently with the terms of this Agreement.
- 6.2 The RECIPIENT must, prior to the Commencement Date, take out and maintain insurance for the Term for public liability to the value of \$20,000,000.00 per incident in respect of the RECIPIENT's activities, including but not limited to potential liabilities to COUNCIL and third parties under this Agreement and the RECIPIENT must cause COUNCIL's interests to be noted on its insurance policies. The RECIPIENT must provide COUNCIL with evidence of these insurances prior to the Commencement Date.
- 6.3 The RECIPIENT must ensure that it holds workers' compensation insurance in respect of any personnel engaged by the RECIPIENT as required by Law. The RECIPIENT must provide COUNCIL with evidence of this insurance prior to the Commencement Date.
- 6.4 The parties acknowledge that COUNCIL is self-insured.
- 6.5 COUNCIL will not in any way be liable to the RECIPIENT for loss or damage the RECIPIENT suffers in connection with this Agreement.
- 6.6 The RECIPIENT releases to the full extent permitted by law, COUNCIL and its representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with any of the RECIPIENT's Obligations or this Agreement.
- 6.7 The RECIPIENT indemnifies COUNCIL against all losses, claims or damages COUNCIL incurs as a result of the performance of its obligations under this Agreement, or its negligence or failure to comply with the terms of this Agreement, except to the extent that any such losses claims or damages are caused by any negligent act or omission of the COUNCIL or any of its personnel and the amount of all claims, damages, costs and expenses which may be paid, suffered or incurred by COUNCIL in respect of any such loss, damage or injury will be made good at the RECIPIENT's expense and may be deducted from any moneys due or becoming due to the RECIPIENT.
- 6.8 COUNCIL and its representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of bargain, loss or denial of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of production, loss of data or goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this Agreement.

END OF AGREEMENT

7. DEFAULT AND TERMINATION

- 7.1 Where a party ("**defaulting party**") fails to comply with any term of this Agreement and fails to remedy that non-compliance within five (5) Business Days of receiving notice from the other party ("**non-defaulting party**") to do so, then the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party.
- 7.2 Where:
 - a) COUNCIL considers, acting reasonably, that this Agreement is no longer desirable having regard to adverse publicity relating to or associated with the RECIPIENT; or

- b) The control or beneficial ownership of the RECIPIENT changes; or
- c) The RECIPIENT becomes subject to any Insolvency Event during the Term;

then COUNCIL may terminate this Agreement by giving written notice to the RECIPIENT.

7.3 Termination for convenience

- a) Notwithstanding any other provision of the Agreement, COUNCIL may terminate this Agreement at any time, for any reason or without cause in its absolute discretion, upon providing the RECIPIENT with no less than 60 days' written notice ("**Notice Period**").
- b) If COUNCIL exercises its rights pursuant to the preceding subclause, the RECIPIENT must cease expenditure of any Funding immediately upon receipt of the notice referred to in the preceding subclause, and COUNCIL will not be required to provide any further Funding to the RECIPIENT.
- c) Notwithstanding the preceding subclause, the RECIPIENT may continue to utilise the Funding during the Notice Period in respect of property, materials or services which have been ordered and for which the RECIPIENT is legally bound to pay (but, in the case of property or materials, only if legal title to the property or material will pass to COUNCIL on payment).

- 7.4 Upon termination of this Agreement, COUNCIL will not be required to provide any further Funding to the RECIPIENT and may require the RECIPIENT to refund COUNCIL all or part of the Funding (at COUNCIL's discretion) within ten (10) Business Days of COUNCIL's request to do so.

8. OPTION

- 8.1 This clause applies only if an Option is specified in the Application Data. If there is no Option specified in the Application Data, then this clause has no effect.

- 8.2 If the RECIPIENT:

- a) Throughout the term of the Agreement has performed its obligations and met all Key Performance Indicators to the satisfaction of COUNCIL; and
- b) Is not in default under this Agreement; and
- c) COUNCIL has received written notification from the RECIPIENT regarding their commitment to continue to deliver the RECIPIENT's Obligations;

then COUNCIL, at its discretion, at any time before the Expiry Date, may renew this Agreement for a further term, the duration of which is specified in the Application Data as the Option. If multiple terms are specified in the Application Data as the Option, COUNCIL may, at its discretion, renew this Agreement for as many terms as are specified.

- 8.3 If COUNCIL exercises the Option, this Agreement shall be renewed on the same terms and conditions.

9. FORCE MAJEURE

- 9.1 Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to anything beyond that party's (the "**Affected Party**") reasonable control and occurs without the fault or negligence of that party, including, but not limited to, fire, storm, flood, earthquake, explosion, war, terrorism, invasion, rebellion, sabotage, pandemic, epidemic, law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application ("**Force Majeure Event**"), provided that any such event was not reasonably capable of being contemplated at the date of this Agreement. However, the Affected Party must:

- (a) Notify the non-affected party in writing as soon as practicable, describing in a reasonable level of detail the nature of the Force Majeure Event and its likely effect on the Affected Party's obligations under this Agreement;
 - (b) Continue to perform all unaffected obligations in accordance with this Agreement;
 - (c) Where possible, use reasonable endeavors to continue to perform the affected obligations, whether by way of a work-around or other methods agreed with the non-affected party;
 - (d) Use reasonable endeavors to overcome the effects of the Force Majeure Event as soon as possible (which may include negotiating, in good faith, revisions to the RECIPIENT's Obligations); and
 - (e) Notify the non-affected party as soon as it is no longer affected by the Force Majeure Event.
- 9.2 If that failure or delay exceeds twenty (20) consecutive Business Days, either party may immediately terminate this Agreement (without affecting the accrued rights and obligations of the parties as at the date of termination) by giving written notice to the other party without any liability to the other party for any loss or damage suffered as a result of the termination. Termination shall be effective on and from the date the notice is given to the other party.
- 9.3 In the event a party exercises its right to terminate this Agreement pursuant to the preceding subclause, then any Unexpended Funds already paid by COUNCIL to the RECIPIENT shall be immediately repayable to COUNCIL by the RECIPIENT, and COUNCIL shall not be liable to pay any further instalments of Funding on and from the date the termination of this Agreement is effective. COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpected Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL.
- 9.4 The parties acknowledge and agree that the COVID-19 pandemic is a Force Majeure Event, except to the extent provided under Clause 9.5.
- 9.5 The RECIPIENT acknowledges and agrees that:
- (a) It has taken into account the circumstances of the COVID-19 pandemic Force Majeure Event and practical and legal requirements in relation to that pandemic, including Public Health Directions in force as at the date of this Agreement;
 - (b) Despite any other clause, the Public Health Directions in force as at the date of this Agreement will not constitute a Force Majeure Event; and
 - (c) Without limiting Clause 9.2, if the RECIPIENT cannot deliver any of the RECIPIENT's Obligations on the basis of the Public Health Directions in force as at the date of this Agreement constituting a Force Majeure Event, the RECIPIENT will be in breach of this Agreement and, in addition to any other rights of COUNCIL in relation to that breach, COUNCIL may require the RECIPIENT, upon demand, to refund any Funding.

GENERAL PROVISIONS

10. ASSIGNMENT

- 10.1 The RECIPIENT may not assign, sell, subcontract or otherwise transfer its rights, interests and obligations under this Agreement without the prior written consent of COUNCIL, which may be given, withheld or given subject to conditions, in COUNCIL's absolute discretion.

- 10.2 Where the RECIPIENT is a corporation, an assignment, sale, subcontract or other transfer of rights will include any arrangement whereby the controlling shareholders of the RECIPIENT as at the Commencement Date are changed.

11. INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

- 11.1 The RECIPIENT warrants to COUNCIL that it has not infringed any Intellectual Property Rights of a third party in connection with this Agreement or generally in the delivery of the RECIPIENT's Obligations.
- 11.2 The RECIPIENT agrees to maintain the confidence of any Confidential Information and to prevent its unauthorised disclosure to or use by any other person.
- 11.3 The RECIPIENT warrants that it will not do anything to infringe COUNCIL's Intellectual Property Rights in any material, whether that material is provided by COUNCIL in accordance with this Agreement, or whether the material is identified by the RECIPIENT during the course of the performance of its obligations.
- 11.4 The RECIPIENT warrants that it will deal with any Personal Information in accordance with the *Information Privacy Act 2009* as though the RECIPIENT were bound by the *Information Privacy Act 2009*.

12. APPLICABLE LAW

- 12.1 This Agreement is governed by, and is to be construed in accordance with, the law of the State of Queensland, Australia.
- 12.2 The parties agree that the courts of the State of Queensland will have exclusive jurisdiction to hear disputes arising out of or relating to either this Agreement or the formation of this Agreement.

13. NOTICES

- 13.1 Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 13.2 Any notice may be served by delivery in person or by post or transmission by email to the Address for Service of the RECIPIENT specified in the Application Data.
- 13.3 If a party's Address for Service change from what is specified in the Application Data, that party must advise the other party of the address change as soon as practicable, and the newly notified address shall be the party's Address for Service.
- 13.4 Notice is effective for the purposes of this Agreement:
- a) If delivered by hand to the RECIPIENT's address for hand-delivery:
 - i) If delivered before 5.00pm on a business day: immediately upon delivery;
 - ii) If delivered after 5.00pm on a business day, or if delivered on a day that is not a business day: 8.30am the following business day;
 - b) If delivered by post to the RECIPIENT's postal address:
 - i) If the notice was posted before 5.00pm on a business day: three (3) business days after the date the notice was posted;
 - ii) If the notice was posted after 5.00pm on a business day, or if posted on a day that is not a business day: three (3) business days after the next business day;
 - c) If transmitted by email to the RECIPIENT's email address:

- i) If transmitted before 5.00pm on a business day: immediately upon transmission, unless the sender receives a notification of failed transmission immediately following transmission;
- ii) If transmitted after 5.00pm on a business day, or if transmitted on a day that is not a business day: at 8.30am on the next business day.

14. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties in relation to the Funding.

15. FURTHER ASSURANCES

Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this Agreement.

16. LEGAL AND OTHER COSTS

- 16.1 Each party is responsible for its own legal costs in relation to the negotiation, preparation and execution of this Agreement.
- 16.2 Unless specified otherwise, the RECIPIENT must comply with its obligations under this Agreement at its own cost.

17. DISPUTE RESOLUTION

- 17.1 If a dispute arises between the parties in connection with this Agreement then a party may only deal with that dispute in the manner set out in this clause.
- 17.2 The party claiming a dispute has arisen in connection with this Agreement must give to the other party a notice specifying the nature of the dispute and requiring its resolution under this clause.
- 17.3 Within ten (10) Business Days after a notice is given under Clause 17.2 (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use their best efforts to resolve the dispute in good faith.
- 17.4 If the dispute is not resolved within ten (10) Business Days, either party may take legal proceedings to resolve the dispute.
- 17.5 The provisions of this clause do not prevent either party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

18. RELATIONSHIP OF PARTIES

18.1 Unless otherwise stated:

- a) nothing in this Agreement shall, in any way, give rise to a relationship between COUNCIL and the RECIPIENT beyond that which is expressly contemplated by this Agreement, and does not create a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- b) neither party has the authority to bind the other party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other party or to pledge the other party's credit.

19. TIME OF THE ESSENCE

- 19.1 Time shall be of the essence of this Agreement.

20. GOODS AND SERVICES TAX

- 20.1 The amounts payable by COUNCIL under this Agreement are exclusive of GST unless otherwise provided. If GST is to be assessed on the provision of goods, services or any other Supply under this Agreement, then the Supplier must provide the RECIPIENT with a Tax Invoice.

21. DISCLOSURE OF INFORMATION

- 21.1 Other than as provided in this Agreement, the RECIPIENT must not disclose the terms of this Agreement to any third party without COUNCIL's written consent.
- 21.2 Without limiting any specific clauses of this Agreement COUNCIL may disclose the terms of this Agreement as it sees fit.
- 21.3 This clause survives the termination of this Agreement.

22. VARIATIONS TO THIS AGREEMENT

- 22.1 This Agreement may not be varied other than in writing, signed by or on behalf of the parties.

Schedule 1 – RECIPIENT's Obligations

1 FUNDING AIMS / OBJECTIVES

COUNCIL seeks to work in partnership with the RECIPIENT in order to provide a safe and successful ANZAC Day Service that supports the growing population of Cairns to commemorate this important nationally recognised day.

This document represents a mutual agreement between Cairns Regional COUNCIL (COUNCIL) and the RECIPIENT. The function of the Agreement is to establish the level of cash Funding and in-kind Funding provided by COUNCIL and the minimum performance and reporting to be provided by the RECIPIENT.

2 SCOPE OF WORKS

- The RECIPIENT intends to organise, promote and deliver the ANZAC Day event described herein and has sought financial assistance from COUNCIL to do so.
- COUNCIL has agreed to provide funding to the RECIPIENT towards the ANZAC Day event, the RECIPIENT has agreed to accept the funding on the terms and conditions set out in this agreement. The funding amount is final, as stated in this document.
- The RECIPIENT will provide all the relevant paperwork for required event related permits and applications.
- COUNCIL will assist with processing the completed paperwork and will promote the event to residents through the COUNCIL website prior to the event.
- COUNCIL holds no responsibility for the successful delivery of events coordinated outside of COUNCIL such as the event described herein.
- Inclusion of Cairns Regional COUNCIL's logo and the following wording acknowledgment statement. "Proudly supported by Cairns Regional Council on all printed material produced by the RECIPIENT, including its website.
- Invitations and tickets to the event for Councillors and appropriate staff of COUNCIL; and
- Opportunities for COUNCIL representatives to speak at key ANZAC day activities.

3 KEY PERFORMANCE INDICATORS (KPIs)

| |
|---|
| KPIs to be addressed in the Acquittal Email by the RECIPIENT |
| 1. Provide the Funding Agreement |
| 2. Provide the permits, applications, proposed budget and invoice in a timely manner. |
| 3. Ensure the event complies with COUNCIL permits |
| 4. Provide evidence that COUNCIL received acknowledgement for its support through marketing and promotional activities, MC acknowledgements or onsite signage |
| 5. Provide a formal acquittal to COUNCIL |
| 6. Provide an outcomes report to COUNCIL |

4 REPORTING REQUIREMENTS AND PAYMENT SCHEDULE

| ANZAC Day Event Milestones | Due Date | Cash (excl GST) | In-kind (excl GST) |
|---|------------|--------------------|-----------------------|
| 1 Funding Agreement submitted by the RECIPIENT. | 11/03/2024 | | |
| 2 All permits, Public Liability Insurance, applications and invoices submitted by the RECIPIENT. | 31/03/2024 | | |
| 3 Invoices will be settled 30 days following receipt by COUNCIL. | 01/04/2024 | \$2,000.00 | |
| 4 Internal services organised by COUNCIL. | 15/04/2024 | | Up to \$5,000.00 |
| 5 Acquittal submitted by the RECIPIENT: including evidence of how Funding was spent, including income and expenditure (budgeted versus actuals) and copies of expenditure receipts for items paid for using the Funding. | 01/06/2024 | | |
| 6 Outcomes report submitted by the RECIPIENT: Funds returned to COUNCIL if budget not spent in full and a written debrief provided to COUNCIL including attendance numbers and evidence of acknowledgement of COUNCIL's support. | 30/06/2024 | | |

Executed As An Agreement

SIGNED for and on behalf of **CAIRNS
REGIONAL COUNCIL ABN 24 310 025 910** by
its delegated officer,
in the presence of:

Witness Name

Name (COUNCIL's Representative)

Witness Signature

Signature

Signature Dated: ____/____/____

Signature Dated: ____/____/____

EXECUTED by **Babinda ANZAC Day Event
Organiser** in accordance with its constitution and
the *Associations Incorporation Act 1981* in the
presence of:

Name (Committee Member)

Signature (Committee Member)

Signature Dated: ____/____/____

Witness Name

Name (Committee Member)

Witness Signature

Signature (Committee Member)

Signature Dated: ____/____/____

Signature Dated: ____/____/____



Resource and Performance Agreement

Cairns Regional COUNCIL

("COUNCIL")

Gordonvale ANZAC Day Event Organiser

("RECIPIENT")

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Parties

| | |
|---|----------------------|
| Cairns Regional COUNCIL ABN 24 310 025 910 | ("COUNCIL") |
| Gordonvale ANZAC Day Event Organiser | ("RECIPIENT") |

Background

- A. The RECIPIENT intends to deliver the RECIPIENT's Obligations and requires the Funding from COUNCIL to do so.
- B. COUNCIL has agreed to provide Funding to the RECIPIENT in consideration for the RECIPIENT delivering the RECIPIENT's Obligations, and the RECIPIENT has agreed to accept and acquit the Funding on the terms and conditions set out in this Agreement.
- C. This report aims to ensure clarity regarding the financial support provided by COUNCIL to the RECIPIENT and the responsible utilisation of funds for the successful execution of the ANZAC Day event.

The Parties Agree:

INTRODUCTORY PROVISIONS

1. APPLICATION DATA

| ITEM NO. | DATA | DETAILS |
|----------|--|---|
| Item 1 | RECIPIENT: | |
| | ABN: | |
| | Address for Service: | <u>Postal Address:</u> <u>Email Address:</u> |
| | Contact Name: | |
| | Email: | |
| | Telephone: | |
| Item 2 | Commencement Date of agreement: | 1 March 2024 |
| | Expiry Date: | 30 June 2024 |

| | | |
|--------|----------------|--|
| Item 3 | Funding | <p>\$2,500.00 cash (excl GST) - Per calendar year</p> <p>This report outlines the financial support extended to the RECIPIENTS upcoming ANZAC Day event. The Funding has been allocated to assist in covering expenses associated with ensuring the safe and successful execution of the event for the local community.</p> <p>Utilisation of cash Funds:</p> <p>The provided funding is earmarked for specific purposes crucial to the safe delivery of the ANZAC Day event. It is imperative that the expenses incurred align with the event's safety requirements. The designated areas for spending include:</p> <p>Traffic Management Services First Aid Services Hydration Stations Security Personnel Event Hire Equipment Assistance with Event Coordination Audio-Visual Equipment</p> <p>Financial Accountability:</p> <p>In the event that the total expenditures remain below the allocated funding amount, we request that any surplus funds be promptly returned to the COUNCIL. This measure ensures transparency and responsible financial management.</p> <p>Ineligible Funding Items:</p> <p>It is essential to note that the allocated funds cannot be utilised for certain items. Ineligible expenses include:</p> <p>Gifts Prize Money Alcohol Tobacco Items purchased for events not held on ANZAC Day, specifically on 25 April 2024.</p> <p>Up to \$5,000.00 in-kind Funding:</p> |
|--------|----------------|--|

| | | |
|--------|---------------------------------------|--|
| | | <p>In addition to the monetary support, in-kind funding has been allocated. This may cover various aspects such as:</p> <p>Free hire of COUNCIL-owned event spaces Associated cleaning and maintenance of these spaces Electrical works required for these event spaces Bin orders</p> <p>Detailed Information:</p> <p>For a comprehensive understanding of the funding details, please refer to the Schedule 1.</p> |
| Item 4 | COUNCIL's Address for Service: | <p><u>Address for Hand Delivery:</u> Attn: Chief Executive Officer, 119 – 145 Spence Street, Cairns Qld 4870</p> <p><u>Postal Address:</u> PO Box 359, Cairns Qld 4870</p> <p><u>Email Address:</u> council@cairns.qld.gov.au</p> |
| Item 5 | COUNCIL Contact: | <p><u>COUNCIL Contact Name:</u> Chrystal Neeve, Senior Events Officer</p> <p><u>Email Address:</u> c.neeve@cairns.qld.gov.au</p> <p><u>Telephone Number:</u> 07 4044 3477</p> |

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless inconsistent with the context or subject matter:

Address for Service means the address of each party appearing in this Agreement or any other address nominated in writing by a party to the other party as its new address for notices or service.

Agreement means this Resource and Performance Agreement.

Application Data means the table in Clause 1 of this Agreement.

Authority means any federal, state or local government or regulator which is required to approve all or any aspect of the RECIPIENT's Obligations.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Cairns.

Commencement Date means the date this Agreement will start, as specified in Item 2.

Confidential Information means documents and information provided or made available by COUNCIL or obtained by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations which are of their nature confidential or which COUNCIL has identified to the RECIPIENT as being confidential but does not include documents and information which are in the public domain other than through a breach of this clause.

Expiry Date means the date the Agreement will end, as specified in Item 2.

Funding means the payment and/or other consideration to be provided by COUNCIL to the RECIPIENT under this Agreement, as specified in Item 3, and which shall be paid and/or provided in accordance with the terms of this Agreement.

GST, Supply, Supplier and Tax Invoice have the same meaning as given to these terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, management of the RECIPIENT's Obligations, industrial, scientific, literary or artistic fields.

In-Kind Support means COUNCIL resources, materials and/or services that are provided to the RECIPIENT in accordance with this Agreement. Services that are outsourced by COUNCIL are not considered in-kind.

Insolvency Event occurs if the RECIPIENT becomes the subject of bankruptcy proceedings, winding up proceedings, is declared bankrupt, has a winding up order made against it, has a receiver and/or manager or administrator appointed or enters into a scheme of arrangement with creditors.

Item means the item number in the Application Data.

Laws means any statute, regulation or ordinance made by any Authority and where appropriate, includes the applicable common law.

Option means any option or options to renew this Agreement for a further term, as specified in Item 2.

Personal Information has the meaning given to that term by the *Information Privacy Act 2009*.

Public Health Directions means directions given by the Chief Health Officer under section 362B of the *Public Health Act 2005* and, if applicable, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020* (Cth), or any other legislation pursuant to which a local, State or Commonwealth Government can give directions for public health purposes.

RECIPIENT's Obligations means those obligations that the RECIPIENT is required to carry out in consideration for the RECIPIENT receiving the Funding, which are particularised in Schedule 1. Reference to the RECIPIENT's Obligations throughout this Agreement is to be construed to include all or any part of them.

Schedule means a schedule to this Agreement.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, and including any Option if exercised in accordance with this Agreement.

Unexpended Funds means any part of the Funding which has been paid to the RECIPIENT but which has not been spent or committed by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations.

2.2 This Agreement is to be construed as follows unless the context requires otherwise:

- a) Reference to one gender includes all genders;
- b) Reference to the singular includes the plural and vice versa;
- c) Reference to a person includes a corporation or other entity and vice versa;
- d) Reference to a schedule means a schedule to this Agreement;

- e) Reference to money is to Australian dollars;
- f) Where the RECIPIENT is more than one party, the obligations under this Agreement bind the RECIPIENT jointly and severally;
- g) Reference to the RECIPIENT includes its personnel or authorised subcontractors.

FUNDING

3. FUNDING

- 3.1 COUNCIL will provide the Funding to the RECIPIENT, and in consideration, the RECIPIENT will comply with the terms and conditions set out under this Agreement. COUNCIL is not obliged to provide any Funding to the RECIPIENT unless the RECIPIENT has complied with each of its obligations under the Agreement at the time at which payment is sought.
- 3.2 The RECIPIENT must only use the Funding towards the delivery of the RECIPIENT's Obligations and in the manner otherwise required by this Agreement. COUNCIL will provide the Funding to the RECIPIENT in accordance with the provisions outlined in Schedule 1, subject to the following:
- a) The RECIPIENT has shown to COUNCIL's satisfaction that it has satisfied the requirements set out in this Agreement, including in Schedule 1;
 - b) The RECIPIENT has issued a Tax Invoice, (unless GST is not applicable, upon which the RECIPIENT will provide COUNCIL with an invoice) to COUNCIL for the instalment;
 - c) COUNCIL is reasonably satisfied that the RECIPIENT is not otherwise in breach of this Agreement.
- 3.3 Any payment to the RECIPIENT by COUNCIL is not an admission or acceptance by COUNCIL that the RECIPIENT has complied with this Agreement.
- 3.4 **Unexpended Funds**
- a) The RECIPIENT must refund any Unexpended Funds to COUNCIL within fourteen (14) Business Days of the Expiry Date;
 - b) COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpended Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL;
 - c) Where the RECIPIENT's expenditure for the Funding is more than the amount of Funding allocated for the activity, the RECIPIENT must bear the difference between these amounts.
- 3.5 **No Further Funding**
- a) The RECIPIENT acknowledges that COUNCIL has no obligation to provide the RECIPIENT with funding or assistance of any kind:
 - i) in excess of the Funding; or
 - ii) beyond the Term.
 - b) For the avoidance of doubt, the RECIPIENT is responsible for acquiring and/or providing any additional funds, materials or equipment in excess of the Funding required to carry out or complete the RECIPIENT's Obligation.

3.6 Misapplied Funds

- a) If the RECIPIENT uses the Funding other than in accordance with this Agreement, including but not limited to using the Funding in contravention of any part of Schedule 1 (“**Misapplied Funds**”):
 - i) COUNCIL may, by written notice, require the RECIPIENT to refund the Misapplied Funds; and
 - ii) If COUNCIL exercises its rights under the preceding subclause, then the RECIPIENT must within ten (10) Business Days of receipt of the notice refund the Misapplied Funds plus any interest on it calculated on daily balances at the rate per annum determined by the Supreme Court of Queensland on judgments by default as applicable at the date of COUNCIL’s notice and is fully capitalised on the last Business Day of each month if unpaid; and
 - iii) If the Misapplied Funds are not repaid in accordance with the preceding subclause, COUNCIL may:
 - A. Recover the amount as a liquidated debt due to COUNCIL; or
 - B. Set the amount off against any other amount payable by COUNCIL to the RECIPIENT, whether under this Agreement or otherwise.
- b) Nothing in this Clause 0 affects the accrued rights or remedies of COUNCIL, including the right to terminate this Agreement in accordance with Clause 7.
- c) This clause survives the expiration or termination of this Agreement for any reason, and applies where COUNCIL becomes aware of the Misapplied Funds after the end of the Term.

3.7 In-Kind Support

- a) This clause applies to any In-Kind Support provided by COUNCIL pursuant to this Agreement, but only to the extent expressly specified in Schedule 1.
- b) COUNCIL’s obligation to deliver In-Kind Support shall be limited to circumstances where:
 - i) The RECIPIENT makes a request for In-Kind Support;
 - ii) The nature of the In-Kind Support requested is fully particularised, is directly connected to the delivery of the RECIPIENT’s Obligations, and is compliant with the terms of this Agreement (including but not limited to in relation to any funding threshold for the In-Kind Support);
 - iii) COUNCIL, acting reasonably, considers that it can provide the In-Kind Support, having regard to its resources and other commitments and statutory obligations.
- c) The provision of In-Kind Support will not in any way give rise to any responsibility on the part of COUNCIL to carry out any role or discharge any responsibility with respect to the overall management or delivery of the RECIPIENT’s Obligations, irrespective of the nature of the In-Kind Support provided.

RECIPIENT'S OBLIGATIONS

4. RECIPIENT'S OBLIGATIONS

- 4.1 In exchange for the provision of the Funding, the RECIPIENT shall comply with the requirements set out in Schedule 1.
- 4.2 In delivering the RECIPIENT's Obligations, the RECIPIENT must:
- a) Ensure the RECIPIENT's Obligations are fully delivered by the Expiry Date;
 - b) Engage and/or retain personnel who are able to competently deliver and perform the RECIPIENT's Obligations;
 - c) Ensure that all personnel or authorised subcontractors engaged in the delivery of the RECIPIENT's Obligations have all the skills and qualifications necessary to deliver the RECIPIENT's Obligations, including but not limited to ensuring any personnel or authorised subcontractors hold all competencies, licenses, accreditations and qualifications which may be required;
 - d) Consult regularly during the Term with COUNCIL;
 - e) Comply with any applicable Laws, requirements from Authorities or industry standards relating to the RECIPIENT's Obligations;
 - f) Adhere to and comply with any reasonable direction issued by COUNCIL in relation to the performance of the RECIPIENT's Obligations.
- 4.3 The RECIPIENT must promptly notify COUNCIL:
- a) Of any matters that the RECIPIENT reasonably considers may affect the RECIPIENT's ability to meet any obligation under this Agreement;
 - b) Of any matter that may affect the RECIPIENT's eligibility to continue receiving the Funding;
 - c) Of any allegation of misconduct or dishonesty concerning the RECIPIENT; or
 - d) Of any change to its details in the Application Data.
- 4.4 The RECIPIENT must not make any public statement concerning the Funding, any In-Kind Support or COUNCIL's contribution to the delivery of the RECIPIENT's Obligations generally, without first obtaining the written approval of COUNCIL.
- 4.5 COUNCIL may at any time during the Term request that the RECIPIENT provide to it details in relation to the acquittal of the Funding and the RECIPIENT must promptly comply with any such request.
- 4.6 The RECIPIENT must maintain and retain for five (5) years following the Expiry Date, accurate records of how the Funding was acquitted.
- 4.7 **COUNCIL Contact**
- a) If the RECIPIENT wishes to liaise with COUNCIL about the performance of the RECIPIENT's Obligations or in relation to this Agreement generally, the RECIPIENT may liaise with the COUNCIL Contact nominated in Item 5 of the Application Data, and using the contact details nominated in Item 5 of the Application Data.

- b) Nothing in the preceding subclause affects the RECIPIENT's obligations to issue notices pursuant to Clause 13.

pWARRANTIES, INSURANCES AND INDEMNITIES

5. WARRANTIES

- 5.1 The RECIPIENT warrants that as at the date of this Agreement, the RECIPIENT and/or its personnel (as the case may be) hold all necessary competencies, accreditations, qualifications, permits, clearances or other authorisations which are required for the RECIPIENT to comply with its obligations under this Agreement, and will maintain such competencies, accreditation, qualifications, permits, clearances or other authorisations at all times during the Term.
- 5.2 The RECIPIENT must ensure that, in performing work associated with the RECIPIENT's Obligations, it complies with:
- a) This Agreement;
 - b) All applicable Law;
 - c) All relevant industry standards, codes and guidelines;
 - d) All policies, requirements and procedures of COUNCIL which are applicable to the RECIPIENT's Obligations and which are publicly available or otherwise made known to the RECIPIENT, including but not limited to COUNCIL's work health and safety policies and procedures. The RECIPIENT warrants that it has reviewed copies of COUNCIL's policies and procedures, understands them and agrees to comply with them.
- 5.3 The RECIPIENT warrants that it has the necessary skills and expertise to be able to competently deliver the RECIPIENT's Obligations, in accordance with this Agreement and any applicable industry standard.
- 5.4 Without limiting the generality of the preceding subclauses, the RECIPIENT warrants to COUNCIL that:
- a) The RECIPIENT at all times shall exercise due skill, care and diligence in delivery of the RECIPIENT's Obligations and otherwise discharging its obligations under this Agreement;
 - b) The RECIPIENT shall deliver the RECIPIENT's Obligations and otherwise discharge its obligations under this Agreement so that the RECIPIENT's Obligations, when delivered, are:
 - i) Fit for their stated purpose; and
 - ii) Compliant with all the requirements of the Agreement; and
 - c) The RECIPIENT has undertaken all necessary enquiries and investigations to satisfy itself as to:
 - i) The nature and extent of its obligations under the Agreement; and
 - ii) The completeness and accuracy of the Agreement.
- 5.5 The warranties set out in this clause remain unaffected notwithstanding any variation.

6. INSURANCES AND INDEMNITIES

- 6.1 The parties acknowledge and agree that COUNCIL's obligations are limited to the provision of Funding only. The RECIPIENT is solely responsible for performing the RECIPIENT's Obligations consistently with the terms of this Agreement.
- 6.2 The RECIPIENT must, prior to the Commencement Date, take out and maintain insurance for the Term for public liability to the value of \$20,000,000.00 per incident in respect of the RECIPIENT's activities, including but not limited to potential liabilities to COUNCIL and third parties under this Agreement and the RECIPIENT must cause COUNCIL's interests to be noted on its insurance policies. The RECIPIENT must provide COUNCIL with evidence of these insurances prior to the Commencement Date.
- 6.3 The RECIPIENT must ensure that it holds workers' compensation insurance in respect of any personnel engaged by the RECIPIENT as required by Law. The RECIPIENT must provide COUNCIL with evidence of this insurance prior to the Commencement Date.
- 6.4 The parties acknowledge that COUNCIL is self-insured.
- 6.5 COUNCIL will not in any way be liable to the RECIPIENT for loss or damage the RECIPIENT suffers in connection with this Agreement.
- 6.6 The RECIPIENT releases to the full extent permitted by law, COUNCIL and its representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with any of the RECIPIENT's Obligations or this Agreement.
- 6.7 The RECIPIENT indemnifies COUNCIL against all losses, claims or damages COUNCIL incurs as a result of the performance of its obligations under this Agreement, or its negligence or failure to comply with the terms of this Agreement, except to the extent that any such losses claims or damages are caused by any negligent act or omission of the COUNCIL or any of its personnel and the amount of all claims, damages, costs and expenses which may be paid, suffered or incurred by COUNCIL in respect of any such loss, damage or injury will be made good at the RECIPIENT's expense and may be deducted from any moneys due or becoming due to the RECIPIENT.
- 6.8 COUNCIL and its representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of bargain, loss or denial of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of production, loss of data or goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this Agreement.

END OF AGREEMENT

7. DEFAULT AND TERMINATION

- 7.1 Where a party ("**defaulting party**") fails to comply with any term of this Agreement and fails to remedy that non-compliance within five (5) Business Days of receiving notice from the other party ("**non-defaulting party**") to do so, then the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party.
- 7.2 Where:
 - a) COUNCIL considers, acting reasonably, that this Agreement is no longer desirable having regard to adverse publicity relating to or associated with the RECIPIENT; or

- b) The control or beneficial ownership of the RECIPIENT changes; or
- c) The RECIPIENT becomes subject to any Insolvency Event during the Term;

then COUNCIL may terminate this Agreement by giving written notice to the RECIPIENT.

7.3 Termination for convenience

- a) Notwithstanding any other provision of the Agreement, COUNCIL may terminate this Agreement at any time, for any reason or without cause in its absolute discretion, upon providing the RECIPIENT with no less than 60 days' written notice ("**Notice Period**").
- b) If COUNCIL exercises its rights pursuant to the preceding subclause, the RECIPIENT must cease expenditure of any Funding immediately upon receipt of the notice referred to in the preceding subclause, and COUNCIL will not be required to provide any further Funding to the RECIPIENT.
- c) Notwithstanding the preceding subclause, the RECIPIENT may continue to utilise the Funding during the Notice Period in respect of property, materials or services which have been ordered and for which the RECIPIENT is legally bound to pay (but, in the case of property or materials, only if legal title to the property or material will pass to COUNCIL on payment).

7.4 Upon termination of this Agreement, COUNCIL will not be required to provide any further Funding to the RECIPIENT and may require the RECIPIENT to refund COUNCIL all or part of the Funding (at COUNCIL's discretion) within ten (10) Business Days of COUNCIL's request to do so.

8. OPTION

8.1 This clause applies only if an Option is specified in the Application Data. If there is no Option specified in the Application Data, then this clause has no effect.

8.2 If the RECIPIENT:

- a) Throughout the term of the Agreement has performed its obligations and met all Key Performance Indicators to the satisfaction of COUNCIL; and
- b) Is not in default under this Agreement; and
- c) COUNCIL has received written notification from the RECIPIENT regarding their commitment to continue to deliver the RECIPIENT's Obligations;

then COUNCIL, at its discretion, at any time before the Expiry Date, may renew this Agreement for a further term, the duration of which is specified in the Application Data as the Option. If multiple terms are specified in the Application Data as the Option, COUNCIL may, at its discretion, renew this Agreement for as many terms as are specified.

8.3 If COUNCIL exercises the Option, this Agreement shall be renewed on the same terms and conditions.

9. FORCE MAJEURE

9.1 Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to anything beyond that party's (the "**Affected Party**") reasonable control and occurs without the fault or negligence of that party, including, but not limited to, fire, storm, flood, earthquake, explosion, war, terrorism, invasion, rebellion, sabotage, pandemic, epidemic, law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application ("**Force Majeure Event**"), provided that any such event was not reasonably capable of being contemplated at the date of this Agreement. However, the Affected Party must:

- (a) Notify the non-affected party in writing as soon as practicable, describing in a reasonable level of detail the nature of the Force Majeure Event and its likely effect on the Affected Party's obligations under this Agreement;
 - (b) Continue to perform all unaffected obligations in accordance with this Agreement;
 - (c) Where possible, use reasonable endeavors to continue to perform the affected obligations, whether by way of a work-around or other methods agreed with the non-affected party;
 - (d) Use reasonable endeavors to overcome the effects of the Force Majeure Event as soon as possible (which may include negotiating, in good faith, revisions to the RECIPIENT's Obligations); and
 - (e) Notify the non-affected party as soon as it is no longer affected by the Force Majeure Event.
- 9.2 If that failure or delay exceeds twenty (20) consecutive Business Days, either party may immediately terminate this Agreement (without affecting the accrued rights and obligations of the parties as at the date of termination) by giving written notice to the other party without any liability to the other party for any loss or damage suffered as a result of the termination. Termination shall be effective on and from the date the notice is given to the other party.
- 9.3 In the event a party exercises its right to terminate this Agreement pursuant to the preceding subclause, then any Unexpended Funds already paid by COUNCIL to the RECIPIENT shall be immediately repayable to COUNCIL by the RECIPIENT, and COUNCIL shall not be liable to pay any further instalments of Funding on and from the date the termination of this Agreement is effective. COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpected Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL.
- 9.4 The parties acknowledge and agree that the COVID-19 pandemic is a Force Majeure Event, except to the extent provided under Clause 9.5.
- 9.5 The RECIPIENT acknowledges and agrees that:
- (a) It has taken into account the circumstances of the COVID-19 pandemic Force Majeure Event and practical and legal requirements in relation to that pandemic, including Public Health Directions in force as at the date of this Agreement;
 - (b) Despite any other clause, the Public Health Directions in force as at the date of this Agreement will not constitute a Force Majeure Event; and
 - (c) Without limiting Clause 9.2, if the RECIPIENT cannot deliver any of the RECIPIENT's Obligations on the basis of the Public Health Directions in force as at the date of this Agreement constituting a Force Majeure Event, the RECIPIENT will be in breach of this Agreement and, in addition to any other rights of COUNCIL in relation to that breach, COUNCIL may require the RECIPIENT, upon demand, to refund any Funding.

GENERAL PROVISIONS

10. ASSIGNMENT

- 10.1 The RECIPIENT may not assign, sell, subcontract or otherwise transfer its rights, interests and obligations under this Agreement without the prior written consent of COUNCIL, which may be given, withheld or given subject to conditions, in COUNCIL's absolute discretion.

- 10.2 Where the RECIPIENT is a corporation, an assignment, sale, subcontract or other transfer of rights will include any arrangement whereby the controlling shareholders of the RECIPIENT as at the Commencement Date are changed.

11. INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

- 11.1 The RECIPIENT warrants to COUNCIL that it has not infringed any Intellectual Property Rights of a third party in connection with this Agreement or generally in the delivery of the RECIPIENT's Obligations.
- 11.2 The RECIPIENT agrees to maintain the confidence of any Confidential Information and to prevent its unauthorised disclosure to or use by any other person.
- 11.3 The RECIPIENT warrants that it will not do anything to infringe COUNCIL's Intellectual Property Rights in any material, whether that material is provided by COUNCIL in accordance with this Agreement, or whether the material is identified by the RECIPIENT during the course of the performance of its obligations.
- 11.4 The RECIPIENT warrants that it will deal with any Personal Information in accordance with the *Information Privacy Act 2009* as though the RECIPIENT were bound by the *Information Privacy Act 2009*.

12. APPLICABLE LAW

- 12.1 This Agreement is governed by, and is to be construed in accordance with, the law of the State of Queensland, Australia.
- 12.2 The parties agree that the courts of the State of Queensland will have exclusive jurisdiction to hear disputes arising out of or relating to either this Agreement or the formation of this Agreement.

13. NOTICES

- 13.1 Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 13.2 Any notice may be served by delivery in person or by post or transmission by email to the Address for Service of the RECIPIENT specified in the Application Data.
- 13.3 If a party's Address for Service change from what is specified in the Application Data, that party must advise the other party of the address change as soon as practicable, and the newly notified address shall be the party's Address for Service.
- 13.4 Notice is effective for the purposes of this Agreement:
- a) If delivered by hand to the RECIPIENT's address for hand-delivery:
 - i) If delivered before 5.00pm on a business day: immediately upon delivery;
 - ii) If delivered after 5.00pm on a business day, or if delivered on a day that is not a business day: 8.30am the following business day;
 - b) If delivered by post to the RECIPIENT's postal address:
 - i) If the notice was posted before 5.00pm on a business day: three (3) business days after the date the notice was posted;
 - ii) If the notice was posted after 5.00pm on a business day, or if posted on a day that is not a business day: three (3) business days after the next business day;
 - c) If transmitted by email to the RECIPIENT's email address:

- i) If transmitted before 5.00pm on a business day: immediately upon transmission, unless the sender receives a notification of failed transmission immediately following transmission;
- ii) If transmitted after 5.00pm on a business day, or if transmitted on a day that is not a business day: at 8.30am on the next business day.

14. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties in relation to the Funding.

15. FURTHER ASSURANCES

Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this Agreement.

16. LEGAL AND OTHER COSTS

- 16.1 Each party is responsible for its own legal costs in relation to the negotiation, preparation and execution of this Agreement.
- 16.2 Unless specified otherwise, the RECIPIENT must comply with its obligations under this Agreement at its own cost.

17. DISPUTE RESOLUTION

- 17.1 If a dispute arises between the parties in connection with this Agreement then a party may only deal with that dispute in the manner set out in this clause.
- 17.2 The party claiming a dispute has arisen in connection with this Agreement must give to the other party a notice specifying the nature of the dispute and requiring its resolution under this clause.
- 17.3 Within ten (10) Business Days after a notice is given under Clause 17.2 (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use their best efforts to resolve the dispute in good faith.
- 17.4 If the dispute is not resolved within ten (10) Business Days, either party may take legal proceedings to resolve the dispute.
- 17.5 The provisions of this clause do not prevent either party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

18. RELATIONSHIP OF PARTIES

18.1 Unless otherwise stated:

- a) nothing in this Agreement shall, in any way, give rise to a relationship between COUNCIL and the RECIPIENT beyond that which is expressly contemplated by this Agreement, and does not create a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- b) neither party has the authority to bind the other party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other party or to pledge the other party's credit.

19. TIME OF THE ESSENCE

- 19.1 Time shall be of the essence of this Agreement.

20. GOODS AND SERVICES TAX

- 20.1 The amounts payable by COUNCIL under this Agreement are exclusive of GST unless otherwise provided. If GST is to be assessed on the provision of goods, services or any other Supply under this Agreement, then the Supplier must provide the RECIPIENT with a Tax Invoice.

21. DISCLOSURE OF INFORMATION

- 21.1 Other than as provided in this Agreement, the RECIPIENT must not disclose the terms of this Agreement to any third party without COUNCIL's written consent.
- 21.2 Without limiting any specific clauses of this Agreement COUNCIL may disclose the terms of this Agreement as it sees fit.
- 21.3 This clause survives the termination of this Agreement.

22. VARIATIONS TO THIS AGREEMENT

- 22.1 This Agreement may not be varied other than in writing, signed by or on behalf of the parties.

Schedule 1 – RECIPIENT's Obligations

1 FUNDING AIMS / OBJECTIVES

COUNCIL seeks to work in partnership with the RECIPIENT in order to provide a safe and successful ANZAC Day Service that supports the growing population of Cairns to commemorate this important nationally recognised day.

This document represents a mutual agreement between Cairns Regional COUNCIL (COUNCIL) and the RECIPIENT. The function of the Agreement is to establish the level of cash Funding and in-kind Funding provided by COUNCIL and the minimum performance and reporting to be provided by the RECIPIENT.

2 SCOPE OF WORKS

- The RECIPIENT intends to organise, promote and deliver the ANZAC Day event described herein and has sought financial assistance from COUNCIL to do so.
- COUNCIL has agreed to provide funding to the RECIPIENT towards the ANZAC Day event, the RECIPIENT has agreed to accept the funding on the terms and conditions set out in this agreement. The funding amount is final, as stated in this document.
- The RECIPIENT will provide all the relevant paperwork for required event related permits and applications.
- COUNCIL will assist with processing the completed paperwork and will promote the event to residents through the COUNCIL website prior to the event.
- COUNCIL holds no responsibility for the successful delivery of events coordinated outside of COUNCIL such as the event described herein.
- Inclusion of Cairns Regional COUNCIL's logo and the following wording acknowledgment statement. "Proudly supported by Cairns Regional Council on all printed material produced by the RECIPIENT, including its website.
- Invitations and tickets to the event for Councillors and appropriate staff of COUNCIL; and
- Opportunities for COUNCIL representatives to speak at key ANZAC day activities.

3 KEY PERFORMANCE INDICATORS (KPIs)

| |
|---|
| KPIs to be addressed in the Acquittal Email by the RECIPIENT |
| 1. Provide the Funding Agreement |
| 2. Provide the permits, applications, proposed budget and invoice in a timely manner. |
| 3. Ensure the event complies with COUNCIL permits |
| 4. Provide evidence that COUNCIL received acknowledgement for its support through marketing and promotional activities, MC acknowledgements or onsite signage |
| 5. Provide a formal acquittal to COUNCIL |
| 6. Provide an outcomes report to COUNCIL |

4 REPORTING REQUIREMENTS AND PAYMENT SCHEDULE

| ANZAC Day Event Milestones | Due Date | Cash (excl GST) | In-kind (excl GST) |
|--|------------|--------------------|-----------------------|
| 1 Funding Agreement submitted by the RECIPIENT. | 11/03/2024 | | |
| 2 All permits, Public Liability Insurance, applications and invoices submitted by the RECIPIENT. | 31/03/2024 | | |
| 3 Invoices will be settled 30 days following receipt by COUNCIL. | 01/04/2024 | \$2,500.00 | |
| 4 Internal services organised by COUNCIL. | 15/04/2024 | | Up to \$5,000.00 |
| 5 Acquittal submitted by the RECIPIENT: including evidence of how Funding was spent, including income and expenditure (budgeted versus actuals) and copies of expenditure receipts for items paid for using the Funding. | 01/06/2024 | | |
| 6 Outcomes report submitted by the RECIPIENT: Funds returned to COUNCIL if budget not spent in full and a written debrief provided to COUNCIL including attendance numbers and evidence of acknowledgement of COUNCIL's support. | 30/06/2024 | | |

Executed As An Agreement

SIGNED for and on behalf of **CAIRNS
REGIONAL COUNCIL ABN 24 310 025 910** by
its delegated officer,
in the presence of:

Witness Name

Name (COUNCIL's Representative)

Witness Signature

Signature

Signature Dated: ____/____/____

Signature Dated: ____/____/____

EXECUTED by **Gordonvale ANZAC Day Event
Organiser** in accordance with its constitution and
the *Associations Incorporation Act 1981* in the
presence of:

Name (Committee Member)

Signature (Committee Member)

Signature Dated: ____/____/____

Witness Name

Name (Committee Member)

Witness Signature

Signature (Committee Member)

Signature Dated: ____/____/____

Signature Dated: ____/____/____



Resource and Performance Agreement

Cairns Regional COUNCIL

("COUNCIL")

Edmonton ANZAC Day Event Organiser

("RECIPIENT")

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Parties

| | |
|---|----------------------|
| Cairns Regional COUNCIL ABN 24 310 025 910 | ("COUNCIL") |
| Edmonton ANZAC Day Event Organiser | ("RECIPIENT") |

Background

- A. The RECIPIENT intends to deliver the RECIPIENT's Obligations and requires the Funding from COUNCIL to do so.
- B. COUNCIL has agreed to provide Funding to the RECIPIENT in consideration for the RECIPIENT delivering the RECIPIENT's Obligations, and the RECIPIENT has agreed to accept and acquit the Funding on the terms and conditions set out in this Agreement.
- C. This report aims to ensure clarity regarding the financial support provided by COUNCIL to the RECIPIENT and the responsible utilisation of funds for the successful execution of the ANZAC Day event.

The Parties Agree:

INTRODUCTORY PROVISIONS

1. APPLICATION DATA

| ITEM NO. | DATA | DETAILS |
|----------|--|---|
| Item 1 | RECIPIENT: | |
| | ABN: | |
| | Address for Service: | <u>Postal Address:</u> <u>Email Address:</u> |
| | Contact Name: | |
| | Email: | |
| | Telephone: | |
| Item 2 | Commencement Date of agreement: | 1 March 2024 |
| | Expiry Date: | 30 June 2024 |

| | | |
|--------|----------------|--|
| Item 3 | Funding | <p>\$2,000.00 cash (excl GST) - Per calendar year</p> <p>This report outlines the financial support extended to the RECIPIENTS upcoming ANZAC Day event. The Funding has been allocated to assist in covering expenses associated with ensuring the safe and successful execution of the event for the local community.</p> <p>Utilisation of cash Funds:</p> <p>The provided funding is earmarked for specific purposes crucial to the safe delivery of the ANZAC Day event. It is imperative that the expenses incurred align with the event's safety requirements. The designated areas for spending include:</p> <p>Traffic Management Services First Aid Services Hydration Stations Security Personnel Event Hire Equipment Assistance with Event Coordination Audio-Visual Equipment</p> <p>Financial Accountability:</p> <p>In the event that the total expenditures remain below the allocated funding amount, we request that any surplus funds be promptly returned to the COUNCIL. This measure ensures transparency and responsible financial management.</p> <p>Ineligible Funding Items:</p> <p>It is essential to note that the allocated funds cannot be utilised for certain items. Ineligible expenses include:</p> <p>Gifts Prize Money Alcohol Tobacco Items purchased for events not held on ANZAC Day, specifically on 25 April 2024.</p> <p>Up to \$5,000.00 in-kind Funding:</p> |
|--------|----------------|--|

| | | |
|--------|---------------------------------------|--|
| | | <p>In addition to the monetary support, in-kind funding has been allocated. This may cover various aspects such as:</p> <p>Free hire of COUNCIL-owned event spaces Associated cleaning and maintenance of these spaces Electrical works required for these event spaces Bin orders</p> <p>Detailed Information:</p> <p>For a comprehensive understanding of the funding details, please refer to the Schedule 1.</p> |
| Item 4 | COUNCIL's Address for Service: | <p><u>Address for Hand Delivery:</u> Attn: Chief Executive Officer, 119 – 145 Spence Street, Cairns Qld 4870</p> <p><u>Postal Address:</u> PO Box 359, Cairns Qld 4870</p> <p><u>Email Address:</u> council@cairns.qld.gov.au</p> |
| Item 5 | COUNCIL Contact: | <p><u>COUNCIL Contact Name:</u> Chrystal Neeve, Senior Events Officer</p> <p><u>Email Address:</u> c.neeve@cairns.qld.gov.au</p> <p><u>Telephone Number:</u> 07 4044 3477</p> |

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless inconsistent with the context or subject matter:

Address for Service means the address of each party appearing in this Agreement or any other address nominated in writing by a party to the other party as its new address for notices or service.

Agreement means this Resource and Performance Agreement.

Application Data means the table in Clause 1 of this Agreement.

Authority means any federal, state or local government or regulator which is required to approve all or any aspect of the RECIPIENT's Obligations.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Cairns.

Commencement Date means the date this Agreement will start, as specified in Item 2.

Confidential Information means documents and information provided or made available by COUNCIL or obtained by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations which are of their nature confidential or which COUNCIL has identified to the RECIPIENT as being confidential but does not include documents and information which are in the public domain other than through a breach of this clause.

Expiry Date means the date the Agreement will end, as specified in Item 2.

Funding means the payment and/or other consideration to be provided by COUNCIL to the RECIPIENT under this Agreement, as specified in Item 3, and which shall be paid and/or provided in accordance with the terms of this Agreement.

GST, Supply, Supplier and Tax Invoice have the same meaning as given to these terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, management of the RECIPIENT's Obligations, industrial, scientific, literary or artistic fields.

In-Kind Support means COUNCIL resources, materials and/or services that are provided to the RECIPIENT in accordance with this Agreement. Services that are outsourced by COUNCIL are not considered in-kind.

Insolvency Event occurs if the RECIPIENT becomes the subject of bankruptcy proceedings, winding up proceedings, is declared bankrupt, has a winding up order made against it, has a receiver and/or manager or administrator appointed or enters into a scheme of arrangement with creditors.

Item means the item number in the Application Data.

Laws means any statute, regulation or ordinance made by any Authority and where appropriate, includes the applicable common law.

Option means any option or options to renew this Agreement for a further term, as specified in Item 2.

Personal Information has the meaning given to that term by the *Information Privacy Act 2009*.

Public Health Directions means directions given by the Chief Health Officer under section 362B of the *Public Health Act 2005* and, if applicable, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020* (Cth), or any other legislation pursuant to which a local, State or Commonwealth Government can give directions for public health purposes.

RECIPIENT's Obligations means those obligations that the RECIPIENT is required to carry out in consideration for the RECIPIENT receiving the Funding, which are particularised in Schedule 1. Reference to the RECIPIENT's Obligations throughout this Agreement is to be construed to include all or any part of them.

Schedule means a schedule to this Agreement.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, and including any Option if exercised in accordance with this Agreement.

Unexpended Funds means any part of the Funding which has been paid to the RECIPIENT but which has not been spent or committed by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations.

2.2 This Agreement is to be construed as follows unless the context requires otherwise:

- a) Reference to one gender includes all genders;
- b) Reference to the singular includes the plural and vice versa;
- c) Reference to a person includes a corporation or other entity and vice versa;
- d) Reference to a schedule means a schedule to this Agreement;

- e) Reference to money is to Australian dollars;
- f) Where the RECIPIENT is more than one party, the obligations under this Agreement bind the RECIPIENT jointly and severally;
- g) Reference to the RECIPIENT includes its personnel or authorised subcontractors.

FUNDING

3. FUNDING

- 3.1 COUNCIL will provide the Funding to the RECIPIENT, and in consideration, the RECIPIENT will comply with the terms and conditions set out under this Agreement. COUNCIL is not obliged to provide any Funding to the RECIPIENT unless the RECIPIENT has complied with each of its obligations under the Agreement at the time at which payment is sought.
- 3.2 The RECIPIENT must only use the Funding towards the delivery of the RECIPIENT's Obligations and in the manner otherwise required by this Agreement. COUNCIL will provide the Funding to the RECIPIENT in accordance with the provisions outlined in Schedule 1, subject to the following:
- a) The RECIPIENT has shown to COUNCIL's satisfaction that it has satisfied the requirements set out in this Agreement, including in Schedule 1;
 - b) The RECIPIENT has issued a Tax Invoice, (unless GST is not applicable, upon which the RECIPIENT will provide COUNCIL with an invoice) to COUNCIL for the instalment;
 - c) COUNCIL is reasonably satisfied that the RECIPIENT is not otherwise in breach of this Agreement.
- 3.3 Any payment to the RECIPIENT by COUNCIL is not an admission or acceptance by COUNCIL that the RECIPIENT has complied with this Agreement.
- 3.4 **Unexpended Funds**
- a) The RECIPIENT must refund any Unexpended Funds to COUNCIL within fourteen (14) Business Days of the Expiry Date;
 - b) COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpended Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL;
 - c) Where the RECIPIENT's expenditure for the Funding is more than the amount of Funding allocated for the activity, the RECIPIENT must bear the difference between these amounts.
- 3.5 **No Further Funding**
- a) The RECIPIENT acknowledges that COUNCIL has no obligation to provide the RECIPIENT with funding or assistance of any kind:
 - i) in excess of the Funding; or
 - ii) beyond the Term.
 - b) For the avoidance of doubt, the RECIPIENT is responsible for acquiring and/or providing any additional funds, materials or equipment in excess of the Funding required to carry out or complete the RECIPIENT's Obligation.

3.6 Misapplied Funds

- a) If the RECIPIENT uses the Funding other than in accordance with this Agreement, including but not limited to using the Funding in contravention of any part of Schedule 1 (“**Misapplied Funds**”):
 - i) COUNCIL may, by written notice, require the RECIPIENT to refund the Misapplied Funds; and
 - ii) If COUNCIL exercises its rights under the preceding subclause, then the RECIPIENT must within ten (10) Business Days of receipt of the notice refund the Misapplied Funds plus any interest on it calculated on daily balances at the rate per annum determined by the Supreme Court of Queensland on judgments by default as applicable at the date of COUNCIL’s notice and is fully capitalised on the last Business Day of each month if unpaid; and
 - iii) If the Misapplied Funds are not repaid in accordance with the preceding subclause, COUNCIL may:
 - A. Recover the amount as a liquidated debt due to COUNCIL; or
 - B. Set the amount off against any other amount payable by COUNCIL to the RECIPIENT, whether under this Agreement or otherwise.
- b) Nothing in this Clause 0 affects the accrued rights or remedies of COUNCIL, including the right to terminate this Agreement in accordance with Clause 7.
- c) This clause survives the expiration or termination of this Agreement for any reason, and applies where COUNCIL becomes aware of the Misapplied Funds after the end of the Term.

3.7 In-Kind Support

- a) This clause applies to any In-Kind Support provided by COUNCIL pursuant to this Agreement, but only to the extent expressly specified in Schedule 1.
- b) COUNCIL’s obligation to deliver In-Kind Support shall be limited to circumstances where:
 - i) The RECIPIENT makes a request for In-Kind Support;
 - ii) The nature of the In-Kind Support requested is fully particularised, is directly connected to the delivery of the RECIPIENT’s Obligations, and is compliant with the terms of this Agreement (including but not limited to in relation to any funding threshold for the In-Kind Support);
 - iii) COUNCIL, acting reasonably, considers that it can provide the In-Kind Support, having regard to its resources and other commitments and statutory obligations.
- c) The provision of In-Kind Support will not in any way give rise to any responsibility on the part of COUNCIL to carry out any role or discharge any responsibility with respect to the overall management or delivery of the RECIPIENT’s Obligations, irrespective of the nature of the In-Kind Support provided.

RECIPIENT'S OBLIGATIONS

4. RECIPIENT'S OBLIGATIONS

- 4.1 In exchange for the provision of the Funding, the RECIPIENT shall comply with the requirements set out in Schedule 1.
- 4.2 In delivering the RECIPIENT's Obligations, the RECIPIENT must:
- a) Ensure the RECIPIENT's Obligations are fully delivered by the Expiry Date;
 - b) Engage and/or retain personnel who are able to competently deliver and perform the RECIPIENT's Obligations;
 - c) Ensure that all personnel or authorised subcontractors engaged in the delivery of the RECIPIENT's Obligations have all the skills and qualifications necessary to deliver the RECIPIENT's Obligations, including but not limited to ensuring any personnel or authorised subcontractors hold all competencies, licenses, accreditations and qualifications which may be required;
 - d) Consult regularly during the Term with COUNCIL;
 - e) Comply with any applicable Laws, requirements from Authorities or industry standards relating to the RECIPIENT's Obligations;
 - f) Adhere to and comply with any reasonable direction issued by COUNCIL in relation to the performance of the RECIPIENT's Obligations.
- 4.3 The RECIPIENT must promptly notify COUNCIL:
- a) Of any matters that the RECIPIENT reasonably considers may affect the RECIPIENT's ability to meet any obligation under this Agreement;
 - b) Of any matter that may affect the RECIPIENT's eligibility to continue receiving the Funding;
 - c) Of any allegation of misconduct or dishonesty concerning the RECIPIENT; or
 - d) Of any change to its details in the Application Data.
- 4.4 The RECIPIENT must not make any public statement concerning the Funding, any In-Kind Support or COUNCIL's contribution to the delivery of the RECIPIENT's Obligations generally, without first obtaining the written approval of COUNCIL.
- 4.5 COUNCIL may at any time during the Term request that the RECIPIENT provide to it details in relation to the acquittal of the Funding and the RECIPIENT must promptly comply with any such request.
- 4.6 The RECIPIENT must maintain and retain for five (5) years following the Expiry Date, accurate records of how the Funding was acquitted.
- 4.7 **COUNCIL Contact**
- a) If the RECIPIENT wishes to liaise with COUNCIL about the performance of the RECIPIENT's Obligations or in relation to this Agreement generally, the RECIPIENT may liaise with the COUNCIL Contact nominated in Item 5 of the Application Data, and using the contact details nominated in Item 5 of the Application Data.

- b) Nothing in the preceding subclause affects the RECIPIENT's obligations to issue notices pursuant to Clause 13.

WARRANTIES, INSURANCES AND INDEMNITIES

5. WARRANTIES

- 5.1 The RECIPIENT warrants that as at the date of this Agreement, the RECIPIENT and/or its personnel (as the case may be) hold all necessary competencies, accreditations, qualifications, permits, clearances or other authorisations which are required for the RECIPIENT to comply with its obligations under this Agreement, and will maintain such competencies, accreditation, qualifications, permits, clearances or other authorisations at all times during the Term.
- 5.2 The RECIPIENT must ensure that, in performing work associated with the RECIPIENT's Obligations, it complies with:
- a) This Agreement;
 - b) All applicable Law;
 - c) All relevant industry standards, codes and guidelines;
 - d) All policies, requirements and procedures of COUNCIL which are applicable to the RECIPIENT's Obligations and which are publicly available or otherwise made known to the RECIPIENT, including but not limited to COUNCIL's work health and safety policies and procedures. The RECIPIENT warrants that it has reviewed copies of COUNCIL's policies and procedures, understands them and agrees to comply with them.
- 5.3 The RECIPIENT warrants that it has the necessary skills and expertise to be able to competently deliver the RECIPIENT's Obligations, in accordance with this Agreement and any applicable industry standard.
- 5.4 Without limiting the generality of the preceding subclauses, the RECIPIENT warrants to COUNCIL that:
- a) The RECIPIENT at all times shall exercise due skill, care and diligence in delivery of the RECIPIENT's Obligations and otherwise discharging its obligations under this Agreement;
 - b) The RECIPIENT shall deliver the RECIPIENT's Obligations and otherwise discharge its obligations under this Agreement so that the RECIPIENT's Obligations, when delivered, are:
 - i) Fit for their stated purpose; and
 - ii) Compliant with all the requirements of the Agreement; and
 - c) The RECIPIENT has undertaken all necessary enquiries and investigations to satisfy itself as to:
 - i) The nature and extent of its obligations under the Agreement; and
 - ii) The completeness and accuracy of the Agreement.
- 5.5 The warranties set out in this clause remain unaffected notwithstanding any variation.

6. INSURANCES AND INDEMNITIES

- 6.1 The parties acknowledge and agree that COUNCIL's obligations are limited to the provision of Funding only. The RECIPIENT is solely responsible for performing the RECIPIENT's Obligations consistently with the terms of this Agreement.
- 6.2 The RECIPIENT must, prior to the Commencement Date, take out and maintain insurance for the Term for public liability to the value of \$20,000,000.00 per incident in respect of the RECIPIENT's activities, including but not limited to potential liabilities to COUNCIL and third parties under this Agreement and the RECIPIENT must cause COUNCIL's interests to be noted on its insurance policies. The RECIPIENT must provide COUNCIL with evidence of these insurances prior to the Commencement Date.
- 6.3 The RECIPIENT must ensure that it holds workers' compensation insurance in respect of any personnel engaged by the RECIPIENT as required by Law. The RECIPIENT must provide COUNCIL with evidence of this insurance prior to the Commencement Date.
- 6.4 The parties acknowledge that COUNCIL is self-insured.
- 6.5 COUNCIL will not in any way be liable to the RECIPIENT for loss or damage the RECIPIENT suffers in connection with this Agreement.
- 6.6 The RECIPIENT releases to the full extent permitted by law, COUNCIL and its representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with any of the RECIPIENT's Obligations or this Agreement.
- 6.7 The RECIPIENT indemnifies COUNCIL against all losses, claims or damages COUNCIL incurs as a result of the performance of its obligations under this Agreement, or its negligence or failure to comply with the terms of this Agreement, except to the extent that any such losses claims or damages are caused by any negligent act or omission of the COUNCIL or any of its personnel and the amount of all claims, damages, costs and expenses which may be paid, suffered or incurred by COUNCIL in respect of any such loss, damage or injury will be made good at the RECIPIENT's expense and may be deducted from any moneys due or becoming due to the RECIPIENT.
- 6.8 COUNCIL and its representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of bargain, loss or denial of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of production, loss of data or goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this Agreement.

END OF AGREEMENT

7. DEFAULT AND TERMINATION

- 7.1 Where a party ("**defaulting party**") fails to comply with any term of this Agreement and fails to remedy that non-compliance within five (5) Business Days of receiving notice from the other party ("**non-defaulting party**") to do so, then the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party.
- 7.2 Where:
 - a) COUNCIL considers, acting reasonably, that this Agreement is no longer desirable having regard to adverse publicity relating to or associated with the RECIPIENT; or

- b) The control or beneficial ownership of the RECIPIENT changes; or
- c) The RECIPIENT becomes subject to any Insolvency Event during the Term;

then COUNCIL may terminate this Agreement by giving written notice to the RECIPIENT.

7.3 Termination for convenience

- a) Notwithstanding any other provision of the Agreement, COUNCIL may terminate this Agreement at any time, for any reason or without cause in its absolute discretion, upon providing the RECIPIENT with no less than 60 days' written notice ("**Notice Period**").
- b) If COUNCIL exercises its rights pursuant to the preceding subclause, the RECIPIENT must cease expenditure of any Funding immediately upon receipt of the notice referred to in the preceding subclause, and COUNCIL will not be required to provide any further Funding to the RECIPIENT.
- c) Notwithstanding the preceding subclause, the RECIPIENT may continue to utilise the Funding during the Notice Period in respect of property, materials or services which have been ordered and for which the RECIPIENT is legally bound to pay (but, in the case of property or materials, only if legal title to the property or material will pass to COUNCIL on payment).

- 7.4 Upon termination of this Agreement, COUNCIL will not be required to provide any further Funding to the RECIPIENT and may require the RECIPIENT to refund COUNCIL all or part of the Funding (at COUNCIL's discretion) within ten (10) Business Days of COUNCIL's request to do so.

8. OPTION

- 8.1 This clause applies only if an Option is specified in the Application Data. If there is no Option specified in the Application Data, then this clause has no effect.

- 8.2 If the RECIPIENT:

- a) Throughout the term of the Agreement has performed its obligations and met all Key Performance Indicators to the satisfaction of COUNCIL; and
- b) Is not in default under this Agreement; and
- c) COUNCIL has received written notification from the RECIPIENT regarding their commitment to continue to deliver the RECIPIENT's Obligations;

then COUNCIL, at its discretion, at any time before the Expiry Date, may renew this Agreement for a further term, the duration of which is specified in the Application Data as the Option. If multiple terms are specified in the Application Data as the Option, COUNCIL may, at its discretion, renew this Agreement for as many terms as are specified.

- 8.3 If COUNCIL exercises the Option, this Agreement shall be renewed on the same terms and conditions.

9. FORCE MAJEURE

- 9.1 Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to anything beyond that party's (the "**Affected Party**") reasonable control and occurs without the fault or negligence of that party, including, but not limited to, fire, storm, flood, earthquake, explosion, war, terrorism, invasion, rebellion, sabotage, pandemic, epidemic, law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application ("**Force Majeure Event**"), provided that any such event was not reasonably capable of being contemplated at the date of this Agreement. However, the Affected Party must:

- (a) Notify the non-affected party in writing as soon as practicable, describing in a reasonable level of detail the nature of the Force Majeure Event and its likely effect on the Affected Party's obligations under this Agreement;
 - (b) Continue to perform all unaffected obligations in accordance with this Agreement;
 - (c) Where possible, use reasonable endeavors to continue to perform the affected obligations, whether by way of a work-around or other methods agreed with the non-affected party;
 - (d) Use reasonable endeavors to overcome the effects of the Force Majeure Event as soon as possible (which may include negotiating, in good faith, revisions to the RECIPIENT's Obligations); and
 - (e) Notify the non-affected party as soon as it is no longer affected by the Force Majeure Event.
- 9.2 If that failure or delay exceeds twenty (20) consecutive Business Days, either party may immediately terminate this Agreement (without affecting the accrued rights and obligations of the parties as at the date of termination) by giving written notice to the other party without any liability to the other party for any loss or damage suffered as a result of the termination. Termination shall be effective on and from the date the notice is given to the other party.
- 9.3 In the event a party exercises its right to terminate this Agreement pursuant to the preceding subclause, then any Unexpended Funds already paid by COUNCIL to the RECIPIENT shall be immediately repayable to COUNCIL by the RECIPIENT, and COUNCIL shall not be liable to pay any further instalments of Funding on and from the date the termination of this Agreement is effective. COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpected Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL.
- 9.4 The parties acknowledge and agree that the COVID-19 pandemic is a Force Majeure Event, except to the extent provided under Clause 9.5.
- 9.5 The RECIPIENT acknowledges and agrees that:
- (a) It has taken into account the circumstances of the COVID-19 pandemic Force Majeure Event and practical and legal requirements in relation to that pandemic, including Public Health Directions in force as at the date of this Agreement;
 - (b) Despite any other clause, the Public Health Directions in force as at the date of this Agreement will not constitute a Force Majeure Event; and
 - (c) Without limiting Clause 9.2, if the RECIPIENT cannot deliver any of the RECIPIENT's Obligations on the basis of the Public Health Directions in force as at the date of this Agreement constituting a Force Majeure Event, the RECIPIENT will be in breach of this Agreement and, in addition to any other rights of COUNCIL in relation to that breach, COUNCIL may require the RECIPIENT, upon demand, to refund any Funding.

GENERAL PROVISIONS

10. ASSIGNMENT

- 10.1 The RECIPIENT may not assign, sell, subcontract or otherwise transfer its rights, interests and obligations under this Agreement without the prior written consent of COUNCIL, which may be given, withheld or given subject to conditions, in COUNCIL's absolute discretion.

- 10.2 Where the RECIPIENT is a corporation, an assignment, sale, subcontract or other transfer of rights will include any arrangement whereby the controlling shareholders of the RECIPIENT as at the Commencement Date are changed.

11. INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

- 11.1 The RECIPIENT warrants to COUNCIL that it has not infringed any Intellectual Property Rights of a third party in connection with this Agreement or generally in the delivery of the RECIPIENT's Obligations.
- 11.2 The RECIPIENT agrees to maintain the confidence of any Confidential Information and to prevent its unauthorised disclosure to or use by any other person.
- 11.3 The RECIPIENT warrants that it will not do anything to infringe COUNCIL's Intellectual Property Rights in any material, whether that material is provided by COUNCIL in accordance with this Agreement, or whether the material is identified by the RECIPIENT during the course of the performance of its obligations.
- 11.4 The RECIPIENT warrants that it will deal with any Personal Information in accordance with the *Information Privacy Act 2009* as though the RECIPIENT were bound by the *Information Privacy Act 2009*.

12. APPLICABLE LAW

- 12.1 This Agreement is governed by, and is to be construed in accordance with, the law of the State of Queensland, Australia.
- 12.2 The parties agree that the courts of the State of Queensland will have exclusive jurisdiction to hear disputes arising out of or relating to either this Agreement or the formation of this Agreement.

13. NOTICES

- 13.1 Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 13.2 Any notice may be served by delivery in person or by post or transmission by email to the Address for Service of the RECIPIENT specified in the Application Data.
- 13.3 If a party's Address for Service change from what is specified in the Application Data, that party must advise the other party of the address change as soon as practicable, and the newly notified address shall be the party's Address for Service.
- 13.4 Notice is effective for the purposes of this Agreement:
- a) If delivered by hand to the RECIPIENT's address for hand-delivery:
 - i) If delivered before 5.00pm on a business day: immediately upon delivery;
 - ii) If delivered after 5.00pm on a business day, or if delivered on a day that is not a business day: 8.30am the following business day;
 - b) If delivered by post to the RECIPIENT's postal address:
 - i) If the notice was posted before 5.00pm on a business day: three (3) business days after the date the notice was posted;
 - ii) If the notice was posted after 5.00pm on a business day, or if posted on a day that is not a business day: three (3) business days after the next business day;

- c) If transmitted by email to the RECIPIENT's email address:
 - i) If transmitted before 5.00pm on a business day: immediately upon transmission, unless the sender receives a notification of failed transmission immediately following transmission;
 - ii) If transmitted after 5.00pm on a business day, or if transmitted on a day that is not a business day: at 8.30am on the next business day.

14. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties in relation to the Funding.

15. FURTHER ASSURANCES

Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this Agreement.

16. LEGAL AND OTHER COSTS

- 16.1 Each party is responsible for its own legal costs in relation to the negotiation, preparation and execution of this Agreement.
- 16.2 Unless specified otherwise, the RECIPIENT must comply with its obligations under this Agreement at its own cost.

17. DISPUTE RESOLUTION

- 17.1 If a dispute arises between the parties in connection with this Agreement then a party may only deal with that dispute in the manner set out in this clause.
- 17.2 The party claiming a dispute has arisen in connection with this Agreement must give to the other party a notice specifying the nature of the dispute and requiring its resolution under this clause.
- 17.3 Within ten (10) Business Days after a notice is given under Clause 17.2 (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use their best efforts to resolve the dispute in good faith.
- 17.4 If the dispute is not resolved within ten (10) Business Days, either party may take legal proceedings to resolve the dispute.
- 17.5 The provisions of this clause do not prevent either party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

18. RELATIONSHIP OF PARTIES

18.1 Unless otherwise stated:

- a) nothing in this Agreement shall, in any way, give rise to a relationship between COUNCIL and the RECIPIENT beyond that which is expressly contemplated by this Agreement, and does not create a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- b) neither party has the authority to bind the other party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other party or to pledge the other party's credit.

19. TIME OF THE ESSENCE

- 19.1 Time shall be of the essence of this Agreement.

20. GOODS AND SERVICES TAX

- 20.1 The amounts payable by COUNCIL under this Agreement are exclusive of GST unless otherwise provided. If GST is to be assessed on the provision of goods, services or any other Supply under this Agreement, then the Supplier must provide the RECIPIENT with a Tax Invoice.

21. DISCLOSURE OF INFORMATION

- 21.1 Other than as provided in this Agreement, the RECIPIENT must not disclose the terms of this Agreement to any third party without COUNCIL's written consent.
- 21.2 Without limiting any specific clauses of this Agreement COUNCIL may disclose the terms of this Agreement as it sees fit.
- 21.3 This clause survives the termination of this Agreement.

22. VARIATIONS TO THIS AGREEMENT

- 22.1 This Agreement may not be varied other than in writing, signed by or on behalf of the parties.

Schedule 1 – RECIPIENT's Obligations

1 FUNDING AIMS / OBJECTIVES

COUNCIL seeks to work in partnership with the RECIPIENT in order to provide a safe and successful ANZAC Day Service that supports the growing population of Cairns to commemorate this important nationally recognised day.

This document represents a mutual agreement between Cairns Regional COUNCIL (COUNCIL) and the RECIPIENT. The function of the Agreement is to establish the level of cash Funding and in-kind Funding provided by COUNCIL and the minimum performance and reporting to be provided by the RECIPIENT.

2 SCOPE OF WORKS

- The RECIPIENT intends to organise, promote and deliver the ANZAC Day event described herein and has sought financial assistance from COUNCIL to do so.
- COUNCIL has agreed to provide funding to the RECIPIENT towards the ANZAC Day event, the RECIPIENT has agreed to accept the funding on the terms and conditions set out in this agreement. The funding amount is final, as stated in this document.
- The RECIPIENT will provide all the relevant paperwork for required event related permits and applications.
- COUNCIL will assist with processing the completed paperwork and will promote the event to residents through the COUNCIL website prior to the event.
- COUNCIL holds no responsibility for the successful delivery of events coordinated outside of COUNCIL such as the event described herein.
- Inclusion of Cairns Regional COUNCIL's logo and the following wording acknowledgment statement. "Proudly supported by Cairns Regional Council on all printed material produced by the RECIPIENT, including its website.
- Invitations and tickets to the event for Councillors and appropriate staff of COUNCIL; and
- Opportunities for COUNCIL representatives to speak at key ANZAC day activities.

3 KEY PERFORMANCE INDICATORS (KPIs)

| |
|---|
| KPIs to be addressed in the Acquittal Email by the RECIPIENT |
| 1. Provide the Funding Agreement |
| 2. Provide the permits, applications, proposed budget and invoice in a timely manner. |
| 3. Ensure the event complies with COUNCIL permits |
| 4. Provide evidence that COUNCIL received acknowledgement for its support through marketing and promotional activities, MC acknowledgements or onsite signage |
| 5. Provide a formal acquittal to COUNCIL |
| 6. Provide an outcomes report to COUNCIL |

4 REPORTING REQUIREMENTS AND PAYMENT SCHEDULE

| ANZAC Day Event Milestones | Due Date | Cash (excl GST) | In-kind (excl GST) |
|---|------------|--------------------|-----------------------|
| 1 Funding Agreement submitted by the RECIPIENT. | 11/03/2024 | | |
| 2 All permits, Public Liability Insurance, applications and invoices submitted by the RECIPIENT. | 31/03/2024 | | |
| 3 Invoices will be settled 30 days following receipt by COUNCIL. | 01/04/2024 | \$2,000.00 | |
| 4 Internal services organised by COUNCIL. | 15/04/2024 | | Up to \$5,000.00 |
| 5 Acquittal submitted by the RECIPIENT: including evidence of how Funding was spent, including income and expenditure (budgeted versus actuals) and copies of expenditure receipts for items paid for using the Funding. | 01/06/2024 | | |
| 6 Outcomes report submitted by the RECIPIENT: Funds returned to COUNCIL if budget not spent in full and a written debrief provided to COUNCIL including attendance numbers and evidence of acknowledgement of COUNCIL's support. | 30/06/2024 | | |

Executed As An Agreement

SIGNED for and on behalf of **CAIRNS
REGIONAL COUNCIL ABN 24 310 025 910** by
its delegated officer,
in the presence of:

Witness Name

Name (COUNCIL's Representative)

Witness Signature

Signature

Signature Dated: ____/____/____

Signature Dated: ____/____/____

EXECUTED by **Edmonton ANZAC Day Event
Organiser** in accordance with its constitution and
the *Associations Incorporation Act 1981* in the
presence of:

Name (Committee Member)

Signature (Committee Member)

Signature Dated: ____/____/____

Witness Name

Name (Committee Member)

Witness Signature

Signature (Committee Member)

Signature Dated: ____/____/____

Signature Dated: ____/____/____



Resource and Performance Agreement

Cairns Regional COUNCIL

("COUNCIL")

Edge Hill ANZAC Day Event Organiser

("RECIPIENT")

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Parties

| | |
|---|----------------------|
| Cairns Regional COUNCIL ABN 24 310 025 910 | ("COUNCIL") |
| Edge Hill ANZAC Day Event Organiser | ("RECIPIENT") |

Background

- A. The RECIPIENT intends to deliver the RECIPIENT's Obligations and requires the Funding from COUNCIL to do so.
- B. COUNCIL has agreed to provide Funding to the RECIPIENT in consideration for the RECIPIENT delivering the RECIPIENT's Obligations, and the RECIPIENT has agreed to accept and acquit the Funding on the terms and conditions set out in this Agreement.
- C. This report aims to ensure clarity regarding the financial support provided by COUNCIL to the RECIPIENT and the responsible utilisation of funds for the successful execution of the ANZAC Day event.

The Parties Agree:

INTRODUCTORY PROVISIONS

1. APPLICATION DATA

| ITEM NO. | DATA | DETAILS |
|----------|--|---|
| Item 1 | RECIPIENT: | |
| | ABN: | |
| | Address for Service: | <u>Postal Address:</u> <u>Email Address:</u> |
| | Contact Name: | |
| | Email: | |
| | Telephone: | |
| Item 2 | Commencement Date of agreement: | 1 March 2024 |
| | Expiry Date: | 30 June 2024 |

| | | |
|--------|----------------|--|
| Item 3 | Funding | <p>\$1,000.00 cash (excl GST) - Per calendar year</p> <p>This report outlines the financial support extended to the RECIPIENTS upcoming ANZAC Day event. The Funding has been allocated to assist in covering expenses associated with ensuring the safe and successful execution of the event for the local community.</p> <p>Utilisation of cash Funds:</p> <p>The provided funding is earmarked for specific purposes crucial to the safe delivery of the ANZAC Day event. It is imperative that the expenses incurred align with the event's safety requirements. The designated areas for spending include:</p> <p>Traffic Management Services First Aid Services Hydration Stations Security Personnel Event Hire Equipment Assistance with Event Coordination Audio-Visual Equipment</p> <p>Financial Accountability:</p> <p>In the event that the total expenditures remain below the allocated funding amount, we request that any surplus funds be promptly returned to the COUNCIL. This measure ensures transparency and responsible financial management.</p> <p>Ineligible Funding Items:</p> <p>It is essential to note that the allocated funds cannot be utilised for certain items. Ineligible expenses include:</p> <p>Gifts Prize Money Alcohol Tobacco Items purchased for events not held on ANZAC Day, specifically on 25 April 2024.</p> <p>Up to \$5,000.00 in-kind Funding:</p> |
|--------|----------------|--|

| | | |
|--------|---------------------------------------|--|
| | | <p>In addition to the monetary support, in-kind funding has been allocated. This may cover various aspects such as:</p> <p>Free hire of COUNCIL-owned event spaces Associated cleaning and maintenance of these spaces Electrical works required for these event spaces Bin orders</p> <p>Detailed Information:</p> <p>For a comprehensive understanding of the funding details, please refer to the Schedule 1.</p> |
| Item 4 | COUNCIL's Address for Service: | <p><u>Address for Hand Delivery:</u> Attn: Chief Executive Officer, 119 – 145 Spence Street, Cairns Qld 4870</p> <p><u>Postal Address:</u> PO Box 359, Cairns Qld 4870</p> <p><u>Email Address:</u> council@cairns.qld.gov.au</p> |
| Item 5 | COUNCIL Contact: | <p><u>COUNCIL Contact Name:</u> Chrystal Neeve, Senior Events Officer</p> <p><u>Email Address:</u> c.neeve@cairns.qld.gov.au</p> <p><u>Telephone Number:</u> 07 4044 3477</p> |

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless inconsistent with the context or subject matter:

Address for Service means the address of each party appearing in this Agreement or any other address nominated in writing by a party to the other party as its new address for notices or service.

Agreement means this Resource and Performance Agreement.

Application Data means the table in Clause 1 of this Agreement.

Authority means any federal, state or local government or regulator which is required to approve all or any aspect of the RECIPIENT's Obligations.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Cairns.

Commencement Date means the date this Agreement will start, as specified in Item 2.

Confidential Information means documents and information provided or made available by COUNCIL or obtained by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations which are of their nature confidential or which COUNCIL has identified to the RECIPIENT as being confidential but does not include documents and information which are in the public domain other than through a breach of this clause.

Expiry Date means the date the Agreement will end, as specified in Item 2.

Funding means the payment and/or other consideration to be provided by COUNCIL to the RECIPIENT under this Agreement, as specified in Item 3, and which shall be paid and/or provided in accordance with the terms of this Agreement.

GST, Supply, Supplier and Tax Invoice have the same meaning as given to these terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, management of the RECIPIENT's Obligations, industrial, scientific, literary or artistic fields.

In-Kind Support means COUNCIL resources, materials and/or services that are provided to the RECIPIENT in accordance with this Agreement. Services that are outsourced by COUNCIL are not considered in-kind.

Insolvency Event occurs if the RECIPIENT becomes the subject of bankruptcy proceedings, winding up proceedings, is declared bankrupt, has a winding up order made against it, has a receiver and/or manager or administrator appointed or enters into a scheme of arrangement with creditors.

Item means the item number in the Application Data.

Laws means any statute, regulation or ordinance made by any Authority and where appropriate, includes the applicable common law.

Option means any option or options to renew this Agreement for a further term, as specified in Item 2.

Personal Information has the meaning given to that term by the *Information Privacy Act 2009*.

Public Health Directions means directions given by the Chief Health Officer under section 362B of the *Public Health Act 2005* and, if applicable, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020* (Cth), or any other legislation pursuant to which a local, State or Commonwealth Government can give directions for public health purposes.

RECIPIENT's Obligations means those obligations that the RECIPIENT is required to carry out in consideration for the RECIPIENT receiving the Funding, which are particularised in Schedule 1. Reference to the RECIPIENT's Obligations throughout this Agreement is to be construed to include all or any part of them.

Schedule means a schedule to this Agreement.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, and including any Option if exercised in accordance with this Agreement.

Unexpended Funds means any part of the Funding which has been paid to the RECIPIENT but which has not been spent or committed by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations.

2.2 This Agreement is to be construed as follows unless the context requires otherwise:

- a) Reference to one gender includes all genders;
- b) Reference to the singular includes the plural and vice versa;
- c) Reference to a person includes a corporation or other entity and vice versa;
- d) Reference to a schedule means a schedule to this Agreement;

- e) Reference to money is to Australian dollars;
- f) Where the RECIPIENT is more than one party, the obligations under this Agreement bind the RECIPIENT jointly and severally;
- g) Reference to the RECIPIENT includes its personnel or authorised subcontractors.

FUNDING

3. FUNDING

- 3.1 COUNCIL will provide the Funding to the RECIPIENT, and in consideration, the RECIPIENT will comply with the terms and conditions set out under this Agreement. COUNCIL is not obliged to provide any Funding to the RECIPIENT unless the RECIPIENT has complied with each of its obligations under the Agreement at the time at which payment is sought.
- 3.2 The RECIPIENT must only use the Funding towards the delivery of the RECIPIENT's Obligations and in the manner otherwise required by this Agreement. COUNCIL will provide the Funding to the RECIPIENT in accordance with the provisions outlined in Schedule 1, subject to the following:
- a) The RECIPIENT has shown to COUNCIL's satisfaction that it has satisfied the requirements set out in this Agreement, including in Schedule 1;
 - b) The RECIPIENT has issued a Tax Invoice, (unless GST is not applicable, upon which the RECIPIENT will provide COUNCIL with an invoice) to COUNCIL for the instalment;
 - c) COUNCIL is reasonably satisfied that the RECIPIENT is not otherwise in breach of this Agreement.
- 3.3 Any payment to the RECIPIENT by COUNCIL is not an admission or acceptance by COUNCIL that the RECIPIENT has complied with this Agreement.
- 3.4 **Unexpended Funds**
- a) The RECIPIENT must refund any Unexpended Funds to COUNCIL within fourteen (14) Business Days of the Expiry Date;
 - b) COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpended Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL;
 - c) Where the RECIPIENT's expenditure for the Funding is more than the amount of Funding allocated for the activity, the RECIPIENT must bear the difference between these amounts.
- 3.5 **No Further Funding**
- a) The RECIPIENT acknowledges that COUNCIL has no obligation to provide the RECIPIENT with funding or assistance of any kind:
 - i) in excess of the Funding; or
 - ii) beyond the Term.
 - b) For the avoidance of doubt, the RECIPIENT is responsible for acquiring and/or providing any additional funds, materials or equipment in excess of the Funding required to carry out or complete the RECIPIENT's Obligation.

3.6 Misapplied Funds

- a) If the RECIPIENT uses the Funding other than in accordance with this Agreement, including but not limited to using the Funding in contravention of any part of Schedule 1 (**“Misapplied Funds”**):
 - i) COUNCIL may, by written notice, require the RECIPIENT to refund the Misapplied Funds; and
 - ii) If COUNCIL exercises its rights under the preceding subclause, then the RECIPIENT must within ten (10) Business Days of receipt of the notice refund the Misapplied Funds plus any interest on it calculated on daily balances at the rate per annum determined by the Supreme Court of Queensland on judgments by default as applicable at the date of COUNCIL’s notice and is fully capitalised on the last Business Day of each month if unpaid; and
 - iii) If the Misapplied Funds are not repaid in accordance with the preceding subclause, COUNCIL may:
 - A. Recover the amount as a liquidated debt due to COUNCIL; or
 - B. Set the amount off against any other amount payable by COUNCIL to the RECIPIENT, whether under this Agreement or otherwise.
- b) Nothing in this Clause 3.6 affects the accrued rights or remedies of COUNCIL, including the right to terminate this Agreement in accordance with Clause 7.
- c) This clause survives the expiration or termination of this Agreement for any reason, and applies where COUNCIL becomes aware of the Misapplied Funds after the end of the Term.

3.7 In-Kind Support

- a) This clause applies to any In-Kind Support provided by COUNCIL pursuant to this Agreement, but only to the extent expressly specified in Schedule 1.
- b) COUNCIL’s obligation to deliver In-Kind Support shall be limited to circumstances where:
 - i) The RECIPIENT makes a request for In-Kind Support;
 - ii) The nature of the In-Kind Support requested is fully particularised, is directly connected to the delivery of the RECIPIENT’s Obligations, and is compliant with the terms of this Agreement (including but not limited to in relation to any funding threshold for the In-Kind Support);
 - iii) COUNCIL, acting reasonably, considers that it can provide the In-Kind Support, having regard to its resources and other commitments and statutory obligations.
- c) The provision of In-Kind Support will not in any way give rise to any responsibility on the part of COUNCIL to carry out any role or discharge any responsibility with respect to the overall management or delivery of the RECIPIENT’s Obligations, irrespective of the nature of the In-Kind Support provided.

RECIPIENT’S OBLIGATIONS

4. RECIPIENT’S OBLIGATIONS

- 4.1 In exchange for the provision of the Funding, the RECIPIENT shall comply with the requirements set out in Schedule 1.

4.2 In delivering the RECIPIENT's Obligations, the RECIPIENT must:

- a) Ensure the RECIPIENT's Obligations are fully delivered by the Expiry Date;
- b) Engage and/or retain personnel who are able to competently deliver and perform the RECIPIENT's Obligations;
- c) Ensure that all personnel or authorised subcontractors engaged in the delivery of the RECIPIENT's Obligations have all the skills and qualifications necessary to deliver the RECIPIENT's Obligations, including but not limited to ensuring any personnel or authorised subcontractors hold all competencies, licenses, accreditations and qualifications which may be required;
- d) Consult regularly during the Term with COUNCIL;
- e) Comply with any applicable Laws, requirements from Authorities or industry standards relating to the RECIPIENT's Obligations;
- f) Adhere to and comply with any reasonable direction issued by COUNCIL in relation to the performance of the RECIPIENT's Obligations.

4.3 The RECIPIENT must promptly notify COUNCIL:

- a) Of any matters that the RECIPIENT reasonably considers may affect the RECIPIENT's ability to meet any obligation under this Agreement;
- b) Of any matter that may affect the RECIPIENT's eligibility to continue receiving the Funding;
- c) Of any allegation of misconduct or dishonesty concerning the RECIPIENT; or
- d) Of any change to its details in the Application Data.

4.4 The RECIPIENT must not make any public statement concerning the Funding, any In-Kind Support or COUNCIL's contribution to the delivery of the RECIPIENT's Obligations generally, without first obtaining the written approval of COUNCIL.

4.5 COUNCIL may at any time during the Term request that the RECIPIENT provide to it details in relation to the acquittal of the Funding and the RECIPIENT must promptly comply with any such request.

4.6 The RECIPIENT must maintain and retain for five (5) years following the Expiry Date, accurate records of how the Funding was acquitted.

4.7 **COUNCIL Contact**

- a) If the RECIPIENT wishes to liaise with COUNCIL about the performance of the RECIPIENT's Obligations or in relation to this Agreement generally, the RECIPIENT may liaise with the COUNCIL Contact nominated in Item 5 of the Application Data, and using the contact details nominated in Item 5 of the Application Data.
- b) Nothing in the preceding subclause affects the RECIPIENT's obligations to issue notices pursuant to Clause 13.

WARRANTIES, INSURANCES AND INDEMNITIES**5. WARRANTIES**

- 5.1 The RECIPIENT warrants that as at the date of this Agreement, the RECIPIENT and/or its personnel (as the case may be) hold all necessary competencies, accreditations, qualifications, permits, clearances or other authorisations which are required for the RECIPIENT to comply with its obligations under this Agreement, and will maintain such competencies, accreditation, qualifications, permits, clearances or other authorisations at all times during the Term.
- 5.2 The RECIPIENT must ensure that, in performing work associated with the RECIPIENT's Obligations, it complies with:
- a) This Agreement;
 - b) All applicable Law;
 - c) All relevant industry standards, codes and guidelines;
 - d) All policies, requirements and procedures of COUNCIL which are applicable to the RECIPIENT's Obligations and which are publicly available or otherwise made known to the RECIPIENT, including but not limited to COUNCIL's work health and safety policies and procedures. The RECIPIENT warrants that it has reviewed copies of COUNCIL's policies and procedures, understands them and agrees to comply with them.
- 5.3 The RECIPIENT warrants that it has the necessary skills and expertise to be able to competently deliver the RECIPIENT's Obligations, in accordance with this Agreement and any applicable industry standard.
- 5.4 Without limiting the generality of the preceding subclauses, the RECIPIENT warrants to COUNCIL that:
- a) The RECIPIENT at all times shall exercise due skill, care and diligence in delivery of the RECIPIENT's Obligations and otherwise discharging its obligations under this Agreement;
 - b) The RECIPIENT shall deliver the RECIPIENT's Obligations and otherwise discharge its obligations under this Agreement so that the RECIPIENT's Obligations, when delivered, are:
 - i) Fit for their stated purpose; and
 - ii) Compliant with all the requirements of the Agreement; and
 - c) The RECIPIENT has undertaken all necessary enquiries and investigations to satisfy itself as to:
 - i) The nature and extent of its obligations under the Agreement; and
 - ii) The completeness and accuracy of the Agreement.
- 5.5 The warranties set out in this clause remain unaffected notwithstanding any variation.

6. INSURANCES AND INDEMNITIES

- 6.1 The parties acknowledge and agree that COUNCIL's obligations are limited to the provision of Funding only. The RECIPIENT is solely responsible for performing the RECIPIENT's Obligations consistently with the terms of this Agreement.

- 6.2 The RECIPIENT must, prior to the Commencement Date, take out and maintain insurance for the Term for public liability to the value of \$20,000,000.00 per incident in respect of the RECIPIENT's activities, including but not limited to potential liabilities to COUNCIL and third parties under this Agreement and the RECIPIENT must cause COUNCIL's interests to be noted on its insurance policies. The RECIPIENT must provide COUNCIL with evidence of these insurances prior to the Commencement Date.
- 6.3 The RECIPIENT must ensure that it holds workers' compensation insurance in respect of any personnel engaged by the RECIPIENT as required by Law. The RECIPIENT must provide COUNCIL with evidence of this insurance prior to the Commencement Date.
- 6.4 The parties acknowledge that COUNCIL is self-insured.
- 6.5 COUNCIL will not in any way be liable to the RECIPIENT for loss or damage the RECIPIENT suffers in connection with this Agreement.
- 6.6 The RECIPIENT releases to the full extent permitted by law, COUNCIL and its representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with any of the RECIPIENT's Obligations or this Agreement.
- 6.7 The RECIPIENT indemnifies COUNCIL against all losses, claims or damages COUNCIL incurs as a result of the performance of its obligations under this Agreement, or its negligence or failure to comply with the terms of this Agreement, except to the extent that any such losses claims or damages are caused by any negligent act or omission of the COUNCIL or any of its personnel and the amount of all claims, damages, costs and expenses which may be paid, suffered or incurred by COUNCIL in respect of any such loss, damage or injury will be made good at the RECIPIENT's expense and may be deducted from any moneys due or becoming due to the RECIPIENT.
- 6.8 COUNCIL and its representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of bargain, loss or denial of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of production, loss of data or goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this Agreement.

END OF AGREEMENT

7. DEFAULT AND TERMINATION

- 7.1 Where a party ("**defaulting party**") fails to comply with any term of this Agreement and fails to remedy that non-compliance within five (5) Business Days of receiving notice from the other party ("**non-defaulting party**") to do so, then the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party.
- 7.2 Where:
- a) COUNCIL considers, acting reasonably, that this Agreement is no longer desirable having regard to adverse publicity relating to or associated with the RECIPIENT; or
 - b) The control or beneficial ownership of the RECIPIENT changes; or
 - c) The RECIPIENT becomes subject to any Insolvency Event during the Term;
- then COUNCIL may terminate this Agreement by giving written notice to the RECIPIENT.

7.3 Termination for convenience

- a) Notwithstanding any other provision of the Agreement, COUNCIL may terminate this Agreement at any time, for any reason or without cause in its absolute discretion, upon providing the RECIPIENT with no less than 60 days' written notice ("**Notice Period**").
- b) If COUNCIL exercises its rights pursuant to the preceding subclause, the RECIPIENT must cease expenditure of any Funding immediately upon receipt of the notice referred to in the preceding subclause, and COUNCIL will not be required to provide any further Funding to the RECIPIENT.
- c) Notwithstanding the preceding subclause, the RECIPIENT may continue to utilise the Funding during the Notice Period in respect of property, materials or services which have been ordered and for which the RECIPIENT is legally bound to pay (but, in the case of property or materials, only if legal title to the property or material will pass to COUNCIL on payment).

7.4 Upon termination of this Agreement, COUNCIL will not be required to provide any further Funding to the RECIPIENT and may require the RECIPIENT to refund COUNCIL all or part of the Funding (at COUNCIL's discretion) within ten (10) Business Days of COUNCIL's request to do so.

8. OPTION

8.1 This clause applies only if an Option is specified in the Application Data. If there is no Option specified in the Application Data, then this clause has no effect.

8.2 If the RECIPIENT:

- a) Throughout the term of the Agreement has performed its obligations and met all Key Performance Indicators to the satisfaction of COUNCIL; and
- b) Is not in default under this Agreement; and
- c) COUNCIL has received written notification from the RECIPIENT regarding their commitment to continue to deliver the RECIPIENT's Obligations;

then COUNCIL, at its discretion, at any time before the Expiry Date, may renew this Agreement for a further term, the duration of which is specified in the Application Data as the Option. If multiple terms are specified in the Application Data as the Option, COUNCIL may, at its discretion, renew this Agreement for as many terms as are specified.

8.3 If COUNCIL exercises the Option, this Agreement shall be renewed on the same terms and conditions.

9. FORCE MAJEURE

9.1 Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to anything beyond that party's (the "**Affected Party**") reasonable control and occurs without the fault or negligence of that party, including, but not limited to, fire, storm, flood, earthquake, explosion, war, terrorism, invasion, rebellion, sabotage, pandemic, epidemic, law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application ("**Force Majeure Event**"), provided that any such event was not reasonably capable of being contemplated at the date of this Agreement. However, the Affected Party must:

- (a) Notify the non-affected party in writing as soon as practicable, describing in a reasonable level of detail the nature of the Force Majeure Event and its likely effect on the Affected Party's obligations under this Agreement;
- (b) Continue to perform all unaffected obligations in accordance with this Agreement;

- (c) Where possible, use reasonable endeavors to continue to perform the affected obligations, whether by way of a work-around or other methods agreed with the non-affected party;
 - (d) Use reasonable endeavors to overcome the effects of the Force Majeure Event as soon as possible (which may include negotiating, in good faith, revisions to the RECIPIENT's Obligations); and
 - (e) Notify the non-affected party as soon as it is no longer affected by the Force Majeure Event.
- 9.2 If that failure or delay exceeds twenty (20) consecutive Business Days, either party may immediately terminate this Agreement (without affecting the accrued rights and obligations of the parties as at the date of termination) by giving written notice to the other party without any liability to the other party for any loss or damage suffered as a result of the termination. Termination shall be effective on and from the date the notice is given to the other party.
- 9.3 In the event a party exercises its right to terminate this Agreement pursuant to the preceding subclause, then any Unexpended Funds already paid by COUNCIL to the RECIPIENT shall be immediately repayable to COUNCIL by the RECIPIENT, and COUNCIL shall not be liable to pay any further instalments of Funding on and from the date the termination of this Agreement is effective. COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpected Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL.
- 9.4 The parties acknowledge and agree that the COVID-19 pandemic is a Force Majeure Event, except to the extent provided under Clause 9.5.
- 9.5 The RECIPIENT acknowledges and agrees that:
- (a) It has taken into account the circumstances of the COVID-19 pandemic Force Majeure Event and practical and legal requirements in relation to that pandemic, including Public Health Directions in force as at the date of this Agreement;
 - (b) Despite any other clause, the Public Health Directions in force as at the date of this Agreement will not constitute a Force Majeure Event; and
 - (c) Without limiting Clause 9.2, if the RECIPIENT cannot deliver any of the RECIPIENT's Obligations on the basis of the Public Health Directions in force as at the date of this Agreement constituting a Force Majeure Event, the RECIPIENT will be in breach of this Agreement and, in addition to any other rights of COUNCIL in relation to that breach, COUNCIL may require the RECIPIENT, upon demand, to refund any Funding.

GENERAL PROVISIONS

10. ASSIGNMENT

- 10.1 The RECIPIENT may not assign, sell, subcontract or otherwise transfer its rights, interests and obligations under this Agreement without the prior written consent of COUNCIL, which may be given, withheld or given subject to conditions, in COUNCIL's absolute discretion.
- 10.2 Where the RECIPIENT is a corporation, an assignment, sale, subcontract or other transfer of rights will include any arrangement whereby the controlling shareholders of the RECIPIENT as at the Commencement Date are changed.

11. INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

- 11.1 The RECIPIENT warrants to COUNCIL that it has not infringed any Intellectual Property Rights of a third party in connection with this Agreement or generally in the delivery of the RECIPIENT's Obligations.
- 11.2 The RECIPIENT agrees to maintain the confidence of any Confidential Information and to prevent its unauthorised disclosure to or use by any other person.
- 11.3 The RECIPIENT warrants that it will not do anything to infringe COUNCIL's Intellectual Property Rights in any material, whether that material is provided by COUNCIL in accordance with this Agreement, or whether the material is identified by the RECIPIENT during the course of the performance of its obligations.
- 11.4 The RECIPIENT warrants that it will deal with any Personal Information in accordance with the *Information Privacy Act 2009* as though the RECIPIENT were bound by the *Information Privacy Act 2009*.

12. APPLICABLE LAW

- 12.1 This Agreement is governed by, and is to be construed in accordance with, the law of the State of Queensland, Australia.
- 12.2 The parties agree that the courts of the State of Queensland will have exclusive jurisdiction to hear disputes arising out of or relating to either this Agreement or the formation of this Agreement.

13. NOTICES

- 13.1 Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 13.2 Any notice may be served by delivery in person or by post or transmission by email to the Address for Service of the RECIPIENT specified in the Application Data.
- 13.3 If a party's Address for Service change from what is specified in the Application Data, that party must advise the other party of the address change as soon as practicable, and the newly notified address shall be the party's Address for Service.
- 13.4 Notice is effective for the purposes of this Agreement:
 - a) If delivered by hand to the RECIPIENT's address for hand-delivery:
 - i) If delivered before 5.00pm on a business day: immediately upon delivery;
 - ii) If delivered after 5.00pm on a business day, or if delivered on a day that is not a business day: 8.30am the following business day;
 - b) If delivered by post to the RECIPIENT's postal address:
 - i) If the notice was posted before 5.00pm on a business day: three (3) business days after the date the notice was posted;
 - ii) If the notice was posted after 5.00pm on a business day, or if posted on a day that is not a business day: three (3) business days after the next business day;
 - c) If transmitted by email to the RECIPIENT's email address:
 - i) If transmitted before 5.00pm on a business day: immediately upon transmission, unless the sender receives a notification of failed transmission immediately following transmission;

- ii) If transmitted after 5.00pm on a business day, or if transmitted on a day that is not a business day: at 8.30am on the next business day.

14. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties in relation to the Funding.

15. FURTHER ASSURANCES

Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this Agreement.

16. LEGAL AND OTHER COSTS

- 16.1 Each party is responsible for its own legal costs in relation to the negotiation, preparation and execution of this Agreement.
- 16.2 Unless specified otherwise, the RECIPIENT must comply with its obligations under this Agreement at its own cost.

17. DISPUTE RESOLUTION

- 17.1 If a dispute arises between the parties in connection with this Agreement then a party may only deal with that dispute in the manner set out in this clause.
- 17.2 The party claiming a dispute has arisen in connection with this Agreement must give to the other party a notice specifying the nature of the dispute and requiring its resolution under this clause.
- 17.3 Within ten (10) Business Days after a notice is given under Clause 17.2 (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use their best efforts to resolve the dispute in good faith.
- 17.4 If the dispute is not resolved within ten (10) Business Days, either party may take legal proceedings to resolve the dispute.
- 17.5 The provisions of this clause do not prevent either party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

18. RELATIONSHIP OF PARTIES

18.1 Unless otherwise stated:

- a) nothing in this Agreement shall, in any way, give rise to a relationship between COUNCIL and the RECIPIENT beyond that which is expressly contemplated by this Agreement, and does not create a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- b) neither party has the authority to bind the other party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other party or to pledge the other party's credit.

19. TIME OF THE ESSENCE

- 19.1 Time shall be of the essence of this Agreement.

20. GOODS AND SERVICES TAX

- 20.1 The amounts payable by COUNCIL under this Agreement are exclusive of GST unless otherwise provided. If GST is to be assessed on the provision of goods, services or any other Supply under this Agreement, then the Supplier must provide the RECIPIENT with a Tax Invoice.

21. DISCLOSURE OF INFORMATION

- 21.1 Other than as provided in this Agreement, the RECIPIENT must not disclose the terms of this Agreement to any third party without COUNCIL's written consent.
- 21.2 Without limiting any specific clauses of this Agreement COUNCIL may disclose the terms of this Agreement as it sees fit.
- 21.3 This clause survives the termination of this Agreement.

22. VARIATIONS TO THIS AGREEMENT

- 22.1 This Agreement may not be varied other than in writing, signed by or on behalf of the parties.

Schedule 1 – RECIPIENT's Obligations

1 FUNDING AIMS / OBJECTIVES

COUNCIL seeks to work in partnership with the RECIPIENT in order to provide a safe and successful ANZAC Day Service that supports the growing population of Cairns to commemorate this important nationally recognised day.

This document represents a mutual agreement between Cairns Regional COUNCIL (COUNCIL) and the RECIPIENT. The function of the Agreement is to establish the level of cash Funding and in-kind Funding provided by COUNCIL and the minimum performance and reporting to be provided by the RECIPIENT.

2 SCOPE OF WORKS

- The RECIPIENT intends to organise, promote and deliver the ANZAC Day event described herein and has sought financial assistance from COUNCIL to do so.
- COUNCIL has agreed to provide funding to the RECIPIENT towards the ANZAC Day event, the RECIPIENT has agreed to accept the funding on the terms and conditions set out in this agreement. The funding amount is final, as stated in this document.
- The RECIPIENT will provide all the relevant paperwork for required event related permits and applications.
- COUNCIL will assist with processing the completed paperwork and will promote the event to residents through the COUNCIL website prior to the event.
- COUNCIL holds no responsibility for the successful delivery of events coordinated outside of COUNCIL such as the event described herein.
- Inclusion of Cairns Regional COUNCIL's logo and the following wording acknowledgment statement. "Proudly supported by Cairns Regional Council on all printed material produced by the RECIPIENT, including its website.
- Invitations and tickets to the event for Councillors and appropriate staff of COUNCIL; and
- Opportunities for COUNCIL representatives to speak at key ANZAC day activities.

3 KEY PERFORMANCE INDICATORS (KPIs)

| |
|---|
| KPIs to be addressed in the Acquittal Email by the RECIPIENT |
| 1. Provide the Funding Agreement |
| 2. Provide the permits, applications, proposed budget and invoice in a timely manner. |
| 3. Ensure the event complies with COUNCIL permits |
| 4. Provide evidence that COUNCIL received acknowledgement for its support through marketing and promotional activities, MC acknowledgements or onsite signage |
| 5. Provide a formal acquittal to COUNCIL |
| 6. Provide an outcomes report to COUNCIL |

4 REPORTING REQUIREMENTS AND PAYMENT SCHEDULE

| ANZAC Day Event Milestones | Due Date | Cash (excl GST) | In-kind (excl GST) |
|---|------------|--------------------|-----------------------|
| 1 Funding Agreement submitted by the RECIPIENT. | 11/03/2024 | | |
| 2 All permits, Public Liability Insurance, applications and invoices submitted by the RECIPIENT. | 31/03/2024 | | |
| 3 Invoices will be settled 30 days following receipt by COUNCIL. | 01/04/2024 | \$1,000.00 | |
| 4 Internal services organised by COUNCIL. | 15/04/2024 | | Up to \$5,000.00 |
| 5 Acquittal submitted by the RECIPIENT: including evidence of how Funding was spent, including income and expenditure (budgeted versus actuals) and copies of expenditure receipts for items paid for using the Funding. | 01/06/2024 | | |
| 6 Outcomes report submitted by the RECIPIENT: Funds returned to COUNCIL if budget not spent in full and a written debrief provided to COUNCIL including attendance numbers and evidence of acknowledgement of COUNCIL's support. | 30/06/2024 | | |

Executed As An Agreement

SIGNED for and on behalf of **CAIRNS
REGIONAL COUNCIL ABN 24 310 025 910** by
its delegated officer,
in the presence of:

Witness Name

Name (COUNCIL's Representative)

Witness Signature

Signature

Signature Dated: ____/____/____

Signature Dated: ____/____/____

EXECUTED by **Edge Hill ANZAC Day Event
Organiser** in accordance with its constitution and
the *Associations Incorporation Act 1981* in the
presence of:

Name (Committee Member)

Signature (Committee Member)

Signature Dated: ____/____/____

Witness Name

Name (Committee Member)

Witness Signature

Signature (Committee Member)

Signature Dated: ____/____/____

Signature Dated: ____/____/____



Resource and Performance Agreement

Cairns Regional COUNCIL

("COUNCIL")

Stratford ANZAC Day Event Organiser

("RECIPIENT")

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Parties

| | |
|---|----------------------|
| Cairns Regional COUNCIL ABN 24 310 025 910 | ("COUNCIL") |
| Stratford ANZAC Day Event Organiser | ("RECIPIENT") |

Background

- A. The RECIPIENT intends to deliver the RECIPIENT's Obligations and requires the Funding from COUNCIL to do so.
- B. COUNCIL has agreed to provide Funding to the RECIPIENT in consideration for the RECIPIENT delivering the RECIPIENT's Obligations, and the RECIPIENT has agreed to accept and acquit the Funding on the terms and conditions set out in this Agreement.
- C. This report aims to ensure clarity regarding the financial support provided by COUNCIL to the RECIPIENT and the responsible utilisation of funds for the successful execution of the ANZAC Day event.

The Parties Agree:

INTRODUCTORY PROVISIONS

1. APPLICATION DATA

| ITEM NO. | DATA | DETAILS |
|----------|--|---|
| Item 1 | RECIPIENT: | |
| | ABN: | |
| | Address for Service: | <u>Postal Address:</u> <u>Email Address:</u> |
| | Contact Name: | |
| | Email: | |
| | Telephone: | |
| Item 2 | Commencement Date of agreement: | 1 March 2024 |
| | Expiry Date: | 30 June 2024 |

| | | |
|--------|----------------|--|
| Item 3 | Funding | <p>\$4,500.00 cash (excl GST) - Per calendar year</p> <p>This report outlines the financial support extended to the RECIPIENTS upcoming ANZAC Day event. The Funding has been allocated to assist in covering expenses associated with ensuring the safe and successful execution of the event for the local community.</p> <p>Utilisation of cash Funds:</p> <p>The provided funding is earmarked for specific purposes crucial to the safe delivery of the ANZAC Day event. It is imperative that the expenses incurred align with the event's safety requirements. The designated areas for spending include:</p> <p>Traffic Management Services First Aid Services Hydration Stations Security Personnel Event Hire Equipment Assistance with Event Coordination Audio-Visual Equipment</p> <p>Financial Accountability:</p> <p>In the event that the total expenditures remain below the allocated funding amount, we request that any surplus funds be promptly returned to the COUNCIL. This measure ensures transparency and responsible financial management.</p> <p>Ineligible Funding Items:</p> <p>It is essential to note that the allocated funds cannot be utilised for certain items. Ineligible expenses include:</p> <p>Gifts Prize Money Alcohol Tobacco Items purchased for events not held on ANZAC Day, specifically on 25 April 2024.</p> <p>Up to \$5,000.00 in-kind Funding:</p> |
|--------|----------------|--|

| | | |
|--------|---------------------------------------|---|
| | | <p>In addition to the monetary support, in-kind funding has been allocated. This may cover various aspects such as:</p> <p>Free hire of COUNCIL-owned event spaces Associated cleaning and maintenance of these spaces Electrical works required for these event spaces Bin orders</p> <p>Detailed Information:</p> <p>For a comprehensive understanding of the funding details, please refer to the Schedule 1.</p> |
| Item 4 | COUNCIL's Address for Service: | <p><u>Address for Hand Delivery:</u> Attn: Chief Executive Officer, 119 – 145 Spence Street, Cairns Qld 4870</p> <p><u>Postal Address:</u> PO Box 359, Cairns Qld 4870</p> <p><u>Email Address:</u> council@cairns.qld.gov.au</p> |
| Item 5 | COUNCIL Contact: | <p><u>COUNCIL Contact Name:</u> Chrystal Neeve, Senior Events Officer</p> <p><u>Email Address:</u> c.neeve@cairns.qld.gov.au</p> <p><u>Telephone Number:</u> 07 4044 3477</p> |

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless inconsistent with the context or subject matter:

Address for Service means the address of each party appearing in this Agreement or any other address nominated in writing by a party to the other party as its new address for notices or service.

Agreement means this Resource and Performance Agreement.

Application Data means the table in Clause 1 of this Agreement.

Authority means any federal, state or local government or regulator which is required to approve all or any aspect of the RECIPIENT's Obligations.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Cairns.

Commencement Date means the date this Agreement will start, as specified in Item 2.

Confidential Information means documents and information provided or made available by COUNCIL or obtained by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations which are of their nature confidential or which COUNCIL has identified to the RECIPIENT as being confidential but does not include documents and information which are in the public domain other than through a breach of this clause.

Expiry Date means the date the Agreement will end, as specified in Item 2.

Funding means the payment and/or other consideration to be provided by COUNCIL to the RECIPIENT under this Agreement, as specified in Item 3, and which shall be paid and/or provided in accordance with the terms of this Agreement.

GST, Supply, Supplier and Tax Invoice have the same meaning as given to these terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, management of the RECIPIENT's Obligations, industrial, scientific, literary or artistic fields.

In-Kind Support means COUNCIL resources, materials and/or services that are provided to the RECIPIENT in accordance with this Agreement. Services that are outsourced by COUNCIL are not considered in-kind.

Insolvency Event occurs if the RECIPIENT becomes the subject of bankruptcy proceedings, winding up proceedings, is declared bankrupt, has a winding up order made against it, has a receiver and/or manager or administrator appointed or enters into a scheme of arrangement with creditors.

Item means the item number in the Application Data.

Laws means any statute, regulation or ordinance made by any Authority and where appropriate, includes the applicable common law.

Option means any option or options to renew this Agreement for a further term, as specified in Item 2.

Personal Information has the meaning given to that term by the *Information Privacy Act 2009*.

Public Health Directions means directions given by the Chief Health Officer under section 362B of the *Public Health Act 2005* and, if applicable, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020* (Cth), or any other legislation pursuant to which a local, State or Commonwealth Government can give directions for public health purposes.

RECIPIENT's Obligations means those obligations that the RECIPIENT is required to carry out in consideration for the RECIPIENT receiving the Funding, which are particularised in Schedule 1. Reference to the RECIPIENT's Obligations throughout this Agreement is to be construed to include all or any part of them.

Schedule means a schedule to this Agreement.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, and including any Option if exercised in accordance with this Agreement.

Unexpended Funds means any part of the Funding which has been paid to the RECIPIENT but which has not been spent or committed by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations.

2.2 This Agreement is to be construed as follows unless the context requires otherwise:

- a) Reference to one gender includes all genders;
- b) Reference to the singular includes the plural and vice versa;
- c) Reference to a person includes a corporation or other entity and vice versa;
- d) Reference to a schedule means a schedule to this Agreement;

- e) Reference to money is to Australian dollars;
- f) Where the RECIPIENT is more than one party, the obligations under this Agreement bind the RECIPIENT jointly and severally;
- g) Reference to the RECIPIENT includes its personnel or authorised subcontractors.

FUNDING

3. FUNDING

- 3.1 COUNCIL will provide the Funding to the RECIPIENT, and in consideration, the RECIPIENT will comply with the terms and conditions set out under this Agreement. COUNCIL is not obliged to provide any Funding to the RECIPIENT unless the RECIPIENT has complied with each of its obligations under the Agreement at the time at which payment is sought.
- 3.2 The RECIPIENT must only use the Funding towards the delivery of the RECIPIENT's Obligations and in the manner otherwise required by this Agreement. COUNCIL will provide the Funding to the RECIPIENT in accordance with the provisions outlined in Schedule 1, subject to the following:
- a) The RECIPIENT has shown to COUNCIL's satisfaction that it has satisfied the requirements set out in this Agreement, including in Schedule 1;
 - b) The RECIPIENT has issued a Tax Invoice, (unless GST is not applicable, upon which the RECIPIENT will provide COUNCIL with an invoice) to COUNCIL for the instalment;
 - c) COUNCIL is reasonably satisfied that the RECIPIENT is not otherwise in breach of this Agreement.
- 3.3 Any payment to the RECIPIENT by COUNCIL is not an admission or acceptance by COUNCIL that the RECIPIENT has complied with this Agreement.
- 3.4 **Unexpended Funds**
- a) The RECIPIENT must refund any Unexpended Funds to COUNCIL within fourteen (14) Business Days of the Expiry Date;
 - b) COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpended Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL;
 - c) Where the RECIPIENT's expenditure for the Funding is more than the amount of Funding allocated for the activity, the RECIPIENT must bear the difference between these amounts.
- 3.5 **No Further Funding**
- a) The RECIPIENT acknowledges that COUNCIL has no obligation to provide the RECIPIENT with funding or assistance of any kind:
 - i) in excess of the Funding; or
 - ii) beyond the Term.
 - b) For the avoidance of doubt, the RECIPIENT is responsible for acquiring and/or providing any additional funds, materials or equipment in excess of the Funding required to carry out or complete the RECIPIENT's Obligation.

3.6 Misapplied Funds

- a) If the RECIPIENT uses the Funding other than in accordance with this Agreement, including but not limited to using the Funding in contravention of any part of Schedule 1 (“**Misapplied Funds**”):
 - i) COUNCIL may, by written notice, require the RECIPIENT to refund the Misapplied Funds; and
 - ii) If COUNCIL exercises its rights under the preceding subclause, then the RECIPIENT must within ten (10) Business Days of receipt of the notice refund the Misapplied Funds plus any interest on it calculated on daily balances at the rate per annum determined by the Supreme Court of Queensland on judgments by default as applicable at the date of COUNCIL’s notice and is fully capitalised on the last Business Day of each month if unpaid; and
 - iii) If the Misapplied Funds are not repaid in accordance with the preceding subclause, COUNCIL may:
 - A. Recover the amount as a liquidated debt due to COUNCIL; or
 - B. Set the amount off against any other amount payable by COUNCIL to the RECIPIENT, whether under this Agreement or otherwise.
- b) Nothing in this Clause 0 affects the accrued rights or remedies of COUNCIL, including the right to terminate this Agreement in accordance with Clause 7.
- c) This clause survives the expiration or termination of this Agreement for any reason, and applies where COUNCIL becomes aware of the Misapplied Funds after the end of the Term.

3.7 In-Kind Support

- a) This clause applies to any In-Kind Support provided by COUNCIL pursuant to this Agreement, but only to the extent expressly specified in Schedule 1.
- b) COUNCIL’s obligation to deliver In-Kind Support shall be limited to circumstances where:
 - i) The RECIPIENT makes a request for In-Kind Support;
 - ii) The nature of the In-Kind Support requested is fully particularised, is directly connected to the delivery of the RECIPIENT’s Obligations, and is compliant with the terms of this Agreement (including but not limited to in relation to any funding threshold for the In-Kind Support);
 - iii) COUNCIL, acting reasonably, considers that it can provide the In-Kind Support, having regard to its resources and other commitments and statutory obligations.
- c) The provision of In-Kind Support will not in any way give rise to any responsibility on the part of COUNCIL to carry out any role or discharge any responsibility with respect to the overall management or delivery of the RECIPIENT’s Obligations, irrespective of the nature of the In-Kind Support provided.

RECIPIENT'S OBLIGATIONS

4. RECIPIENT'S OBLIGATIONS

- 4.1 In exchange for the provision of the Funding, the RECIPIENT shall comply with the requirements set out in Schedule 1.
- 4.2 In delivering the RECIPIENT's Obligations, the RECIPIENT must:
- a) Ensure the RECIPIENT's Obligations are fully delivered by the Expiry Date;
 - b) Engage and/or retain personnel who are able to competently deliver and perform the RECIPIENT's Obligations;
 - c) Ensure that all personnel or authorised subcontractors engaged in the delivery of the RECIPIENT's Obligations have all the skills and qualifications necessary to deliver the RECIPIENT's Obligations, including but not limited to ensuring any personnel or authorised subcontractors hold all competencies, licenses, accreditations and qualifications which may be required;
 - d) Consult regularly during the Term with COUNCIL;
 - e) Comply with any applicable Laws, requirements from Authorities or industry standards relating to the RECIPIENT's Obligations;
 - f) Adhere to and comply with any reasonable direction issued by COUNCIL in relation to the performance of the RECIPIENT's Obligations.
- 4.3 The RECIPIENT must promptly notify COUNCIL:
- a) Of any matters that the RECIPIENT reasonably considers may affect the RECIPIENT's ability to meet any obligation under this Agreement;
 - b) Of any matter that may affect the RECIPIENT's eligibility to continue receiving the Funding;
 - c) Of any allegation of misconduct or dishonesty concerning the RECIPIENT; or
 - d) Of any change to its details in the Application Data.
- 4.4 The RECIPIENT must not make any public statement concerning the Funding, any In-Kind Support or COUNCIL's contribution to the delivery of the RECIPIENT's Obligations generally, without first obtaining the written approval of COUNCIL.
- 4.5 COUNCIL may at any time during the Term request that the RECIPIENT provide to it details in relation to the acquittal of the Funding and the RECIPIENT must promptly comply with any such request.
- 4.6 The RECIPIENT must maintain and retain for five (5) years following the Expiry Date, accurate records of how the Funding was acquitted.
- 4.7 **COUNCIL Contact**
- a) If the RECIPIENT wishes to liaise with COUNCIL about the performance of the RECIPIENT's Obligations or in relation to this Agreement generally, the RECIPIENT may liaise with the COUNCIL Contact nominated in Item 5 of the Application Data, and using the contact details nominated in Item 5 of the Application Data.

- b) Nothing in the preceding subclause affects the RECIPIENT's obligations to issue notices pursuant to Clause 13.

WARRANTIES, INSURANCES AND INDEMNITIES

5. WARRANTIES

- 5.1 The RECIPIENT warrants that as at the date of this Agreement, the RECIPIENT and/or its personnel (as the case may be) hold all necessary competencies, accreditations, qualifications, permits, clearances or other authorisations which are required for the RECIPIENT to comply with its obligations under this Agreement, and will maintain such competencies, accreditation, qualifications, permits, clearances or other authorisations at all times during the Term.
- 5.2 The RECIPIENT must ensure that, in performing work associated with the RECIPIENT's Obligations, it complies with:
- a) This Agreement;
 - b) All applicable Law;
 - c) All relevant industry standards, codes and guidelines;
 - d) All policies, requirements and procedures of COUNCIL which are applicable to the RECIPIENT's Obligations and which are publicly available or otherwise made known to the RECIPIENT, including but not limited to COUNCIL's work health and safety policies and procedures. The RECIPIENT warrants that it has reviewed copies of COUNCIL's policies and procedures, understands them and agrees to comply with them.
- 5.3 The RECIPIENT warrants that it has the necessary skills and expertise to be able to competently deliver the RECIPIENT's Obligations, in accordance with this Agreement and any applicable industry standard.
- 5.4 Without limiting the generality of the preceding subclauses, the RECIPIENT warrants to COUNCIL that:
- a) The RECIPIENT at all times shall exercise due skill, care and diligence in delivery of the RECIPIENT's Obligations and otherwise discharging its obligations under this Agreement;
 - b) The RECIPIENT shall deliver the RECIPIENT's Obligations and otherwise discharge its obligations under this Agreement so that the RECIPIENT's Obligations, when delivered, are:
 - i) Fit for their stated purpose; and
 - ii) Compliant with all the requirements of the Agreement; and
 - c) The RECIPIENT has undertaken all necessary enquiries and investigations to satisfy itself as to:
 - i) The nature and extent of its obligations under the Agreement; and
 - ii) The completeness and accuracy of the Agreement.
- 5.5 The warranties set out in this clause remain unaffected notwithstanding any variation.

6. INSURANCES AND INDEMNITIES

- 6.1 The parties acknowledge and agree that COUNCIL's obligations are limited to the provision of Funding only. The RECIPIENT is solely responsible for performing the RECIPIENT's Obligations consistently with the terms of this Agreement.
- 6.2 The RECIPIENT must, prior to the Commencement Date, take out and maintain insurance for the Term for public liability to the value of \$20,000,000.00 per incident in respect of the RECIPIENT's activities, including but not limited to potential liabilities to COUNCIL and third parties under this Agreement and the RECIPIENT must cause COUNCIL's interests to be noted on its insurance policies. The RECIPIENT must provide COUNCIL with evidence of these insurances prior to the Commencement Date.
- 6.3 The RECIPIENT must ensure that it holds workers' compensation insurance in respect of any personnel engaged by the RECIPIENT as required by Law. The RECIPIENT must provide COUNCIL with evidence of this insurance prior to the Commencement Date.
- 6.4 The parties acknowledge that COUNCIL is self-insured.
- 6.5 COUNCIL will not in any way be liable to the RECIPIENT for loss or damage the RECIPIENT suffers in connection with this Agreement.
- 6.6 The RECIPIENT releases to the full extent permitted by law, COUNCIL and its representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with any of the RECIPIENT's Obligations or this Agreement.
- 6.7 The RECIPIENT indemnifies COUNCIL against all losses, claims or damages COUNCIL incurs as a result of the performance of its obligations under this Agreement, or its negligence or failure to comply with the terms of this Agreement, except to the extent that any such losses claims or damages are caused by any negligent act or omission of the COUNCIL or any of its personnel and the amount of all claims, damages, costs and expenses which may be paid, suffered or incurred by COUNCIL in respect of any such loss, damage or injury will be made good at the RECIPIENT's expense and may be deducted from any moneys due or becoming due to the RECIPIENT.
- 6.8 COUNCIL and its representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of bargain, loss or denial of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of production, loss of data or goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this Agreement.

END OF AGREEMENT

7. DEFAULT AND TERMINATION

- 7.1 Where a party ("**defaulting party**") fails to comply with any term of this Agreement and fails to remedy that non-compliance within five (5) Business Days of receiving notice from the other party ("**non-defaulting party**") to do so, then the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party.
- 7.2 Where:
 - a) COUNCIL considers, acting reasonably, that this Agreement is no longer desirable having regard to adverse publicity relating to or associated with the RECIPIENT; or

- b) The control or beneficial ownership of the RECIPIENT changes; or
- c) The RECIPIENT becomes subject to any Insolvency Event during the Term;

then COUNCIL may terminate this Agreement by giving written notice to the RECIPIENT.

7.3 Termination for convenience

- a) Notwithstanding any other provision of the Agreement, COUNCIL may terminate this Agreement at any time, for any reason or without cause in its absolute discretion, upon providing the RECIPIENT with no less than 60 days' written notice ("**Notice Period**").
- b) If COUNCIL exercises its rights pursuant to the preceding subclause, the RECIPIENT must cease expenditure of any Funding immediately upon receipt of the notice referred to in the preceding subclause, and COUNCIL will not be required to provide any further Funding to the RECIPIENT.
- c) Notwithstanding the preceding subclause, the RECIPIENT may continue to utilise the Funding during the Notice Period in respect of property, materials or services which have been ordered and for which the RECIPIENT is legally bound to pay (but, in the case of property or materials, only if legal title to the property or material will pass to COUNCIL on payment).

7.4 Upon termination of this Agreement, COUNCIL will not be required to provide any further Funding to the RECIPIENT and may require the RECIPIENT to refund COUNCIL all or part of the Funding (at COUNCIL's discretion) within ten (10) Business Days of COUNCIL's request to do so.

8. OPTION

8.1 This clause applies only if an Option is specified in the Application Data. If there is no Option specified in the Application Data, then this clause has no effect.

8.2 If the RECIPIENT:

- a) Throughout the term of the Agreement has performed its obligations and met all Key Performance Indicators to the satisfaction of COUNCIL; and
- b) Is not in default under this Agreement; and
- c) COUNCIL has received written notification from the RECIPIENT regarding their commitment to continue to deliver the RECIPIENT's Obligations;

then COUNCIL, at its discretion, at any time before the Expiry Date, may renew this Agreement for a further term, the duration of which is specified in the Application Data as the Option. If multiple terms are specified in the Application Data as the Option, COUNCIL may, at its discretion, renew this Agreement for as many terms as are specified.

8.3 If COUNCIL exercises the Option, this Agreement shall be renewed on the same terms and conditions.

9. FORCE MAJEURE

9.1 Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to anything beyond that party's (the "**Affected Party**") reasonable control and occurs without the fault or negligence of that party, including, but not limited to, fire, storm, flood, earthquake, explosion, war, terrorism, invasion, rebellion, sabotage, pandemic, epidemic, law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application ("**Force Majeure Event**"), provided that any such event was not reasonably capable of being contemplated at the date of this Agreement. However, the Affected Party must:

- (a) Notify the non-affected party in writing as soon as practicable, describing in a reasonable level of detail the nature of the Force Majeure Event and its likely effect on the Affected Party's obligations under this Agreement;
 - (b) Continue to perform all unaffected obligations in accordance with this Agreement;
 - (c) Where possible, use reasonable endeavors to continue to perform the affected obligations, whether by way of a work-around or other methods agreed with the non-affected party;
 - (d) Use reasonable endeavors to overcome the effects of the Force Majeure Event as soon as possible (which may include negotiating, in good faith, revisions to the RECIPIENT's Obligations); and
 - (e) Notify the non-affected party as soon as it is no longer affected by the Force Majeure Event.
- 9.2 If that failure or delay exceeds twenty (20) consecutive Business Days, either party may immediately terminate this Agreement (without affecting the accrued rights and obligations of the parties as at the date of termination) by giving written notice to the other party without any liability to the other party for any loss or damage suffered as a result of the termination. Termination shall be effective on and from the date the notice is given to the other party.
- 9.3 In the event a party exercises its right to terminate this Agreement pursuant to the preceding subclause, then any Unexpended Funds already paid by COUNCIL to the RECIPIENT shall be immediately repayable to COUNCIL by the RECIPIENT, and COUNCIL shall not be liable to pay any further instalments of Funding on and from the date the termination of this Agreement is effective. COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpected Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL.
- 9.4 The parties acknowledge and agree that the COVID-19 pandemic is a Force Majeure Event, except to the extent provided under Clause 9.5.
- 9.5 The RECIPIENT acknowledges and agrees that:
- (a) It has taken into account the circumstances of the COVID-19 pandemic Force Majeure Event and practical and legal requirements in relation to that pandemic, including Public Health Directions in force as at the date of this Agreement;
 - (b) Despite any other clause, the Public Health Directions in force as at the date of this Agreement will not constitute a Force Majeure Event; and
 - (c) Without limiting Clause 9.2, if the RECIPIENT cannot deliver any of the RECIPIENT's Obligations on the basis of the Public Health Directions in force as at the date of this Agreement constituting a Force Majeure Event, the RECIPIENT will be in breach of this Agreement and, in addition to any other rights of COUNCIL in relation to that breach, COUNCIL may require the RECIPIENT, upon demand, to refund any Funding.

GENERAL PROVISIONS

10. ASSIGNMENT

- 10.1 The RECIPIENT may not assign, sell, subcontract or otherwise transfer its rights, interests and obligations under this Agreement without the prior written consent of COUNCIL, which may be given, withheld or given subject to conditions, in COUNCIL's absolute discretion.

- 10.2 Where the RECIPIENT is a corporation, an assignment, sale, subcontract or other transfer of rights will include any arrangement whereby the controlling shareholders of the RECIPIENT as at the Commencement Date are changed.

11. INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

- 11.1 The RECIPIENT warrants to COUNCIL that it has not infringed any Intellectual Property Rights of a third party in connection with this Agreement or generally in the delivery of the RECIPIENT's Obligations.
- 11.2 The RECIPIENT agrees to maintain the confidence of any Confidential Information and to prevent its unauthorised disclosure to or use by any other person.
- 11.3 The RECIPIENT warrants that it will not do anything to infringe COUNCIL's Intellectual Property Rights in any material, whether that material is provided by COUNCIL in accordance with this Agreement, or whether the material is identified by the RECIPIENT during the course of the performance of its obligations.
- 11.4 The RECIPIENT warrants that it will deal with any Personal Information in accordance with the *Information Privacy Act 2009* as though the RECIPIENT were bound by the *Information Privacy Act 2009*.

12. APPLICABLE LAW

- 12.1 This Agreement is governed by, and is to be construed in accordance with, the law of the State of Queensland, Australia.
- 12.2 The parties agree that the courts of the State of Queensland will have exclusive jurisdiction to hear disputes arising out of or relating to either this Agreement or the formation of this Agreement.

13. NOTICES

- 13.1 Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 13.2 Any notice may be served by delivery in person or by post or transmission by email to the Address for Service of the RECIPIENT specified in the Application Data.
- 13.3 If a party's Address for Service change from what is specified in the Application Data, that party must advise the other party of the address change as soon as practicable, and the newly notified address shall be the party's Address for Service.
- 13.4 Notice is effective for the purposes of this Agreement:
- a) If delivered by hand to the RECIPIENT's address for hand-delivery:
 - i) If delivered before 5.00pm on a business day: immediately upon delivery;
 - ii) If delivered after 5.00pm on a business day, or if delivered on a day that is not a business day: 8.30am the following business day;
 - b) If delivered by post to the RECIPIENT's postal address:
 - i) If the notice was posted before 5.00pm on a business day: three (3) business days after the date the notice was posted;
 - ii) If the notice was posted after 5.00pm on a business day, or if posted on a day that is not a business day: three (3) business days after the next business day;

- c) If transmitted by email to the RECIPIENT's email address:
 - i) If transmitted before 5.00pm on a business day: immediately upon transmission, unless the sender receives a notification of failed transmission immediately following transmission;
 - ii) If transmitted after 5.00pm on a business day, or if transmitted on a day that is not a business day: at 8.30am on the next business day.

14. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties in relation to the Funding.

15. FURTHER ASSURANCES

Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this Agreement.

16. LEGAL AND OTHER COSTS

- 16.1 Each party is responsible for its own legal costs in relation to the negotiation, preparation and execution of this Agreement.
- 16.2 Unless specified otherwise, the RECIPIENT must comply with its obligations under this Agreement at its own cost.

17. DISPUTE RESOLUTION

- 17.1 If a dispute arises between the parties in connection with this Agreement then a party may only deal with that dispute in the manner set out in this clause.
- 17.2 The party claiming a dispute has arisen in connection with this Agreement must give to the other party a notice specifying the nature of the dispute and requiring its resolution under this clause.
- 17.3 Within ten (10) Business Days after a notice is given under Clause 17.2 (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use their best efforts to resolve the dispute in good faith.
- 17.4 If the dispute is not resolved within ten (10) Business Days, either party may take legal proceedings to resolve the dispute.
- 17.5 The provisions of this clause do not prevent either party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

18. RELATIONSHIP OF PARTIES

18.1 Unless otherwise stated:

- a) nothing in this Agreement shall, in any way, give rise to a relationship between COUNCIL and the RECIPIENT beyond that which is expressly contemplated by this Agreement, and does not create a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- b) neither party has the authority to bind the other party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other party or to pledge the other party's credit.

19. TIME OF THE ESSENCE

- 19.1 Time shall be of the essence of this Agreement.

20. GOODS AND SERVICES TAX

- 20.1 The amounts payable by COUNCIL under this Agreement are exclusive of GST unless otherwise provided. If GST is to be assessed on the provision of goods, services or any other Supply under this Agreement, then the Supplier must provide the RECIPIENT with a Tax Invoice.

21. DISCLOSURE OF INFORMATION

- 21.1 Other than as provided in this Agreement, the RECIPIENT must not disclose the terms of this Agreement to any third party without COUNCIL's written consent.
- 21.2 Without limiting any specific clauses of this Agreement COUNCIL may disclose the terms of this Agreement as it sees fit.
- 21.3 This clause survives the termination of this Agreement.

22. VARIATIONS TO THIS AGREEMENT

- 22.1 This Agreement may not be varied other than in writing, signed by or on behalf of the parties.

Schedule 1 – RECIPIENT's Obligations

1 FUNDING AIMS / OBJECTIVES

COUNCIL seeks to work in partnership with the RECIPIENT in order to provide a safe and successful ANZAC Day Service that supports the growing population of Cairns to commemorate this important nationally recognised day.

This document represents a mutual agreement between Cairns Regional COUNCIL (COUNCIL) and the RECIPIENT. The function of the Agreement is to establish the level of cash Funding and in-kind Funding provided by COUNCIL and the minimum performance and reporting to be provided by the RECIPIENT.

2 SCOPE OF WORKS

- The RECIPIENT intends to organise, promote and deliver the ANZAC Day event described herein and has sought financial assistance from COUNCIL to do so.
- COUNCIL has agreed to provide funding to the RECIPIENT towards the ANZAC Day event, the RECIPIENT has agreed to accept the funding on the terms and conditions set out in this agreement. The funding amount is final, as stated in this document.
- The RECIPIENT will provide all the relevant paperwork for required event related permits and applications.
- COUNCIL will assist with processing the completed paperwork and will promote the event to residents through the COUNCIL website prior to the event.
- COUNCIL holds no responsibility for the successful delivery of events coordinated outside of COUNCIL such as the event described herein.
- Inclusion of Cairns Regional COUNCIL's logo and the following wording acknowledgment statement. "Proudly supported by Cairns Regional Council on all printed material produced by the RECIPIENT, including its website.
- Invitations and tickets to the event for Councillors and appropriate staff of COUNCIL; and
- Opportunities for COUNCIL representatives to speak at key ANZAC day activities.

3 KEY PERFORMANCE INDICATORS (KPIs)

| |
|---|
| KPIs to be addressed in the Acquittal Email by the RECIPIENT |
| 1. Provide the Funding Agreement |
| 2. Provide the permits, applications, proposed budget and invoice in a timely manner. |
| 3. Ensure the event complies with COUNCIL permits |
| 4. Provide evidence that COUNCIL received acknowledgement for its support through marketing and promotional activities, MC acknowledgements or onsite signage |
| 5. Provide a formal acquittal to COUNCIL |
| 6. Provide an outcomes report to COUNCIL |

4 REPORTING REQUIREMENTS AND PAYMENT SCHEDULE

| ANZAC Day Event Milestones | Due Date | Cash (excl GST) | In-kind (excl GST) |
|---|------------|--------------------|-----------------------|
| 1 Funding Agreement submitted by the RECIPIENT. | 11/03/2024 | | |
| 2 All permits, Public Liability Insurance, applications and invoices submitted by the RECIPIENT. | 31/03/2024 | | |
| 3 Invoices will be settled 30 days following receipt by COUNCIL. | 01/04/2024 | \$4,500.00 | |
| 4 Internal services organised by COUNCIL. | 15/04/2024 | | Up to \$5,000.00 |
| 5 Acquittal submitted by the RECIPIENT: including evidence of how Funding was spent, including income and expenditure (budgeted versus actuals) and copies of expenditure receipts for items paid for using the Funding. | 01/06/2024 | | |
| 6 Outcomes report submitted by the RECIPIENT: Funds returned to COUNCIL if budget not spent in full and a written debrief provided to COUNCIL including attendance numbers and evidence of acknowledgement of COUNCIL's support. | 30/06/2024 | | |

Executed As An Agreement

SIGNED for and on behalf of **CAIRNS
REGIONAL COUNCIL ABN 24 310 025 910** by
its delegated officer,
in the presence of:

Witness Name

Name (COUNCIL's Representative)

Witness Signature

Signature

Signature Dated: ____/____/____

Signature Dated: ____/____/____

EXECUTED by **Stratford ANZAC Day Event
Organiser** in accordance with its constitution and
the *Associations Incorporation Act 1981* in the
presence of:

Name (Committee Member)

Signature (Committee Member)

Signature Dated: ____/____/____

Witness Name

Name (Committee Member)

Witness Signature

Signature (Committee Member)

Signature Dated: ____/____/____

Signature Dated: ____/____/____



Resource and Performance Agreement

Cairns Regional COUNCIL

("COUNCIL")

**Yorkeys Knob Boating Club ANZAC Day Event
Organiser**

("RECIPIENT")

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Parties

| | |
|--|----------------------|
| Cairns Regional COUNCIL ABN 24 310 025 910 | ("COUNCIL") |
| Yorkeys Knob Boating Club ANZAC Day Event Organiser | ("RECIPIENT") |

Background

- A. The RECIPIENT intends to deliver the RECIPIENT's Obligations and requires the Funding from COUNCIL to do so.
- B. COUNCIL has agreed to provide Funding to the RECIPIENT in consideration for the RECIPIENT delivering the RECIPIENT's Obligations, and the RECIPIENT has agreed to accept and acquit the Funding on the terms and conditions set out in this Agreement.
- C. This report aims to ensure clarity regarding the financial support provided by COUNCIL to the RECIPIENT and the responsible utilisation of funds for the successful execution of the ANZAC Day event.

The Parties Agree:

INTRODUCTORY PROVISIONS

1. APPLICATION DATA

| ITEM NO. | DATA | DETAILS |
|----------|--|---|
| Item 1 | RECIPIENT: | |
| | ABN: | |
| | Address for Service: | <u>Postal Address:</u> <u>Email Address:</u> |
| | Contact Name: | |
| | Email: | |
| | Telephone: | |
| Item 2 | Commencement Date of agreement: | 1 March 2024 |
| | Expiry Date: | 30 June 2024 |

| | | |
|--------|----------------|--|
| Item 3 | Funding | <p>\$1,500.00 cash (excl GST) - Per calendar year</p> <p>This report outlines the financial support extended to the RECIPIENTS upcoming ANZAC Day event. The Funding has been allocated to assist in covering expenses associated with ensuring the safe and successful execution of the event for the local community.</p> <p>Utilisation of cash Funds:</p> <p>The provided funding is earmarked for specific purposes crucial to the safe delivery of the ANZAC Day event. It is imperative that the expenses incurred align with the event's safety requirements. The designated areas for spending include:</p> <p>Traffic Management Services First Aid Services Hydration Stations Security Personnel Event Hire Equipment Assistance with Event Coordination Audio-Visual Equipment</p> <p>Financial Accountability:</p> <p>In the event that the total expenditures remain below the allocated funding amount, we request that any surplus funds be promptly returned to the COUNCIL. This measure ensures transparency and responsible financial management.</p> <p>Ineligible Funding Items:</p> <p>It is essential to note that the allocated funds cannot be utilised for certain items. Ineligible expenses include:</p> <p>Gifts Prize Money Alcohol Tobacco Items purchased for events not held on ANZAC Day, specifically on 25 April 2024.</p> <p>Up to \$5,000.00 in-kind Funding:</p> |
|--------|----------------|--|

| | | |
|--------|---------------------------------------|--|
| | | <p>In addition to the monetary support, in-kind funding has been allocated. This may cover various aspects such as:</p> <p>Free hire of COUNCIL-owned event spaces Associated cleaning and maintenance of these spaces Electrical works required for these event spaces Bin orders</p> <p>Detailed Information:</p> <p>For a comprehensive understanding of the funding details, please refer to the Schedule 1.</p> |
| Item 4 | COUNCIL's Address for Service: | <p><u>Address for Hand Delivery:</u> Attn: Chief Executive Officer, 119 – 145 Spence Street, Cairns Qld 4870</p> <p><u>Postal Address:</u> PO Box 359, Cairns Qld 4870</p> <p><u>Email Address:</u> council@cairns.qld.gov.au</p> |
| Item 5 | COUNCIL Contact: | <p><u>COUNCIL Contact Name:</u> Chrystal Neeve, Senior Events Officer</p> <p><u>Email Address:</u> c.neeve@cairns.qld.gov.au</p> <p><u>Telephone Number:</u> 07 4044 3477</p> |

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless inconsistent with the context or subject matter:

Address for Service means the address of each party appearing in this Agreement or any other address nominated in writing by a party to the other party as its new address for notices or service.

Agreement means this Resource and Performance Agreement.

Application Data means the table in Clause 1 of this Agreement.

Authority means any federal, state or local government or regulator which is required to approve all or any aspect of the RECIPIENT's Obligations.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Cairns.

Commencement Date means the date this Agreement will start, as specified in Item 2.

Confidential Information means documents and information provided or made available by COUNCIL or obtained by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations which are of their nature confidential or which COUNCIL has identified to the RECIPIENT as being confidential but does not include documents and information which are in the public domain other than through a breach of this clause.

Expiry Date means the date the Agreement will end, as specified in Item 2.

Funding means the payment and/or other consideration to be provided by COUNCIL to the RECIPIENT under this Agreement, as specified in Item 3, and which shall be paid and/or provided in accordance with the terms of this Agreement.

GST, Supply, Supplier and Tax Invoice have the same meaning as given to these terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, management of the RECIPIENT's Obligations, industrial, scientific, literary or artistic fields.

In-Kind Support means COUNCIL resources, materials and/or services that are provided to the RECIPIENT in accordance with this Agreement. Services that are outsourced by COUNCIL are not considered in-kind.

Insolvency Event occurs if the RECIPIENT becomes the subject of bankruptcy proceedings, winding up proceedings, is declared bankrupt, has a winding up order made against it, has a receiver and/or manager or administrator appointed or enters into a scheme of arrangement with creditors.

Item means the item number in the Application Data.

Laws means any statute, regulation or ordinance made by any Authority and where appropriate, includes the applicable common law.

Option means any option or options to renew this Agreement for a further term, as specified in Item 2.

Personal Information has the meaning given to that term by the *Information Privacy Act 2009*.

Public Health Directions means directions given by the Chief Health Officer under section 362B of the *Public Health Act 2005* and, if applicable, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020* (Cth), or any other legislation pursuant to which a local, State or Commonwealth Government can give directions for public health purposes.

RECIPIENT's Obligations means those obligations that the RECIPIENT is required to carry out in consideration for the RECIPIENT receiving the Funding, which are particularised in Schedule 1. Reference to the RECIPIENT's Obligations throughout this Agreement is to be construed to include all or any part of them.

Schedule means a schedule to this Agreement.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, and including any Option if exercised in accordance with this Agreement.

Unexpended Funds means any part of the Funding which has been paid to the RECIPIENT but which has not been spent or committed by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations.

2.2 This Agreement is to be construed as follows unless the context requires otherwise:

- a) Reference to one gender includes all genders;
- b) Reference to the singular includes the plural and vice versa;
- c) Reference to a person includes a corporation or other entity and vice versa;
- d) Reference to a schedule means a schedule to this Agreement;

- e) Reference to money is to Australian dollars;
- f) Where the RECIPIENT is more than one party, the obligations under this Agreement bind the RECIPIENT jointly and severally;
- g) Reference to the RECIPIENT includes its personnel or authorised subcontractors.

FUNDING

3. FUNDING

- 3.1 COUNCIL will provide the Funding to the RECIPIENT, and in consideration, the RECIPIENT will comply with the terms and conditions set out under this Agreement. COUNCIL is not obliged to provide any Funding to the RECIPIENT unless the RECIPIENT has complied with each of its obligations under the Agreement at the time at which payment is sought.
- 3.2 The RECIPIENT must only use the Funding towards the delivery of the RECIPIENT's Obligations and in the manner otherwise required by this Agreement. COUNCIL will provide the Funding to the RECIPIENT in accordance with the provisions outlined in Schedule 1, subject to the following:
- a) The RECIPIENT has shown to COUNCIL's satisfaction that it has satisfied the requirements set out in this Agreement, including in Schedule 1;
 - b) The RECIPIENT has issued a Tax Invoice, (unless GST is not applicable, upon which the RECIPIENT will provide COUNCIL with an invoice) to COUNCIL for the instalment;
 - c) COUNCIL is reasonably satisfied that the RECIPIENT is not otherwise in breach of this Agreement.
- 3.3 Any payment to the RECIPIENT by COUNCIL is not an admission or acceptance by COUNCIL that the RECIPIENT has complied with this Agreement.
- 3.4 **Unexpended Funds**
- a) The RECIPIENT must refund any Unexpended Funds to COUNCIL within fourteen (14) Business Days of the Expiry Date;
 - b) COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpended Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL;
 - c) Where the RECIPIENT's expenditure for the Funding is more than the amount of Funding allocated for the activity, the RECIPIENT must bear the difference between these amounts.
- 3.5 **No Further Funding**
- a) The RECIPIENT acknowledges that COUNCIL has no obligation to provide the RECIPIENT with funding or assistance of any kind:
 - i) in excess of the Funding; or
 - ii) beyond the Term.
 - b) For the avoidance of doubt, the RECIPIENT is responsible for acquiring and/or providing any additional funds, materials or equipment in excess of the Funding required to carry out or complete the RECIPIENT's Obligation.

3.6 Misapplied Funds

- a) If the RECIPIENT uses the Funding other than in accordance with this Agreement, including but not limited to using the Funding in contravention of any part of Schedule 1 (**“Misapplied Funds”**):
 - i) COUNCIL may, by written notice, require the RECIPIENT to refund the Misapplied Funds; and
 - ii) If COUNCIL exercises its rights under the preceding subclause, then the RECIPIENT must within ten (10) Business Days of receipt of the notice refund the Misapplied Funds plus any interest on it calculated on daily balances at the rate per annum determined by the Supreme Court of Queensland on judgments by default as applicable at the date of COUNCIL’s notice and is fully capitalised on the last Business Day of each month if unpaid; and
 - iii) If the Misapplied Funds are not repaid in accordance with the preceding subclause, COUNCIL may:
 - A. Recover the amount as a liquidated debt due to COUNCIL; or
 - B. Set the amount off against any other amount payable by COUNCIL to the RECIPIENT, whether under this Agreement or otherwise.
- b) Nothing in this Clause 3.6 affects the accrued rights or remedies of COUNCIL, including the right to terminate this Agreement in accordance with Clause 7.
- c) This clause survives the expiration or termination of this Agreement for any reason, and applies where COUNCIL becomes aware of the Misapplied Funds after the end of the Term.

3.7 In-Kind Support

- a) This clause applies to any In-Kind Support provided by COUNCIL pursuant to this Agreement, but only to the extent expressly specified in Schedule 1.
- b) COUNCIL’s obligation to deliver In-Kind Support shall be limited to circumstances where:
 - i) The RECIPIENT makes a request for In-Kind Support;
 - ii) The nature of the In-Kind Support requested is fully particularised, is directly connected to the delivery of the RECIPIENT’s Obligations, and is compliant with the terms of this Agreement (including but not limited to in relation to any funding threshold for the In-Kind Support);
 - iii) COUNCIL, acting reasonably, considers that it can provide the In-Kind Support, having regard to its resources and other commitments and statutory obligations.
- c) The provision of In-Kind Support will not in any way give rise to any responsibility on the part of COUNCIL to carry out any role or discharge any responsibility with respect to the overall management or delivery of the RECIPIENT’s Obligations, irrespective of the nature of the In-Kind Support provided.

RECIPIENT’S OBLIGATIONS

4. RECIPIENT’S OBLIGATIONS

- 4.1 In exchange for the provision of the Funding, the RECIPIENT shall comply with the requirements set out in Schedule 1.

4.2 In delivering the RECIPIENT's Obligations, the RECIPIENT must:

- a) Ensure the RECIPIENT's Obligations are fully delivered by the Expiry Date;
- b) Engage and/or retain personnel who are able to competently deliver and perform the RECIPIENT's Obligations;
- c) Ensure that all personnel or authorised subcontractors engaged in the delivery of the RECIPIENT's Obligations have all the skills and qualifications necessary to deliver the RECIPIENT's Obligations, including but not limited to ensuring any personnel or authorised subcontractors hold all competencies, licenses, accreditations and qualifications which may be required;
- d) Consult regularly during the Term with COUNCIL;
- e) Comply with any applicable Laws, requirements from Authorities or industry standards relating to the RECIPIENT's Obligations;
- f) Adhere to and comply with any reasonable direction issued by COUNCIL in relation to the performance of the RECIPIENT's Obligations.

4.3 The RECIPIENT must promptly notify COUNCIL:

- a) Of any matters that the RECIPIENT reasonably considers may affect the RECIPIENT's ability to meet any obligation under this Agreement;
- b) Of any matter that may affect the RECIPIENT's eligibility to continue receiving the Funding;
- c) Of any allegation of misconduct or dishonesty concerning the RECIPIENT; or
- d) Of any change to its details in the Application Data.

4.4 The RECIPIENT must not make any public statement concerning the Funding, any In-Kind Support or COUNCIL's contribution to the delivery of the RECIPIENT's Obligations generally, without first obtaining the written approval of COUNCIL.

4.5 COUNCIL may at any time during the Term request that the RECIPIENT provide to it details in relation to the acquittal of the Funding and the RECIPIENT must promptly comply with any such request.

4.6 The RECIPIENT must maintain and retain for five (5) years following the Expiry Date, accurate records of how the Funding was acquitted.

4.7 **COUNCIL Contact**

- a) If the RECIPIENT wishes to liaise with COUNCIL about the performance of the RECIPIENT's Obligations or in relation to this Agreement generally, the RECIPIENT may liaise with the COUNCIL Contact nominated in Item 5 of the Application Data, and using the contact details nominated in Item 5 of the Application Data.
- b) Nothing in the preceding subclause affects the RECIPIENT's obligations to issue notices pursuant to Clause 13.

WARRANTIES, INSURANCES AND INDEMNITIES
5. WARRANTIES

- 5.1 The RECIPIENT warrants that as at the date of this Agreement, the RECIPIENT and/or its personnel (as the case may be) hold all necessary competencies, accreditations, qualifications, permits, clearances or other authorisations which are required for the RECIPIENT to comply with its obligations under this Agreement, and will maintain such competencies, accreditation, qualifications, permits, clearances or other authorisations at all times during the Term.
- 5.2 The RECIPIENT must ensure that, in performing work associated with the RECIPIENT's Obligations, it complies with:
- a) This Agreement;
 - b) All applicable Law;
 - c) All relevant industry standards, codes and guidelines;
 - d) All policies, requirements and procedures of COUNCIL which are applicable to the RECIPIENT's Obligations and which are publicly available or otherwise made known to the RECIPIENT, including but not limited to COUNCIL's work health and safety policies and procedures. The RECIPIENT warrants that it has reviewed copies of COUNCIL's policies and procedures, understands them and agrees to comply with them.
- 5.3 The RECIPIENT warrants that it has the necessary skills and expertise to be able to competently deliver the RECIPIENT's Obligations, in accordance with this Agreement and any applicable industry standard.
- 5.4 Without limiting the generality of the preceding subclauses, the RECIPIENT warrants to COUNCIL that:
- a) The RECIPIENT at all times shall exercise due skill, care and diligence in delivery of the RECIPIENT's Obligations and otherwise discharging its obligations under this Agreement;
 - b) The RECIPIENT shall deliver the RECIPIENT's Obligations and otherwise discharge its obligations under this Agreement so that the RECIPIENT's Obligations, when delivered, are:
 - i) Fit for their stated purpose; and
 - ii) Compliant with all the requirements of the Agreement; and
 - c) The RECIPIENT has undertaken all necessary enquiries and investigations to satisfy itself as to:
 - i) The nature and extent of its obligations under the Agreement; and
 - ii) The completeness and accuracy of the Agreement.
- 5.5 The warranties set out in this clause remain unaffected notwithstanding any variation.

6. INSURANCES AND INDEMNITIES

- 6.1 The parties acknowledge and agree that COUNCIL's obligations are limited to the provision of Funding only. The RECIPIENT is solely responsible for performing the RECIPIENT's Obligations consistently with the terms of this Agreement.

- 6.2 The RECIPIENT must, prior to the Commencement Date, take out and maintain insurance for the Term for public liability to the value of \$20,000,000.00 per incident in respect of the RECIPIENT's activities, including but not limited to potential liabilities to COUNCIL and third parties under this Agreement and the RECIPIENT must cause COUNCIL's interests to be noted on its insurance policies. The RECIPIENT must provide COUNCIL with evidence of these insurances prior to the Commencement Date.
- 6.3 The RECIPIENT must ensure that it holds workers' compensation insurance in respect of any personnel engaged by the RECIPIENT as required by Law. The RECIPIENT must provide COUNCIL with evidence of this insurance prior to the Commencement Date.
- 6.4 The parties acknowledge that COUNCIL is self-insured.
- 6.5 COUNCIL will not in any way be liable to the RECIPIENT for loss or damage the RECIPIENT suffers in connection with this Agreement.
- 6.6 The RECIPIENT releases to the full extent permitted by law, COUNCIL and its representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with any of the RECIPIENT's Obligations or this Agreement.
- 6.7 The RECIPIENT indemnifies COUNCIL against all losses, claims or damages COUNCIL incurs as a result of the performance of its obligations under this Agreement, or its negligence or failure to comply with the terms of this Agreement, except to the extent that any such losses claims or damages are caused by any negligent act or omission of the COUNCIL or any of its personnel and the amount of all claims, damages, costs and expenses which may be paid, suffered or incurred by COUNCIL in respect of any such loss, damage or injury will be made good at the RECIPIENT's expense and may be deducted from any moneys due or becoming due to the RECIPIENT.
- 6.8 COUNCIL and its representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of bargain, loss or denial of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of production, loss of data or goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this Agreement.

END OF AGREEMENT

7. DEFAULT AND TERMINATION

- 7.1 Where a party ("**defaulting party**") fails to comply with any term of this Agreement and fails to remedy that non-compliance within five (5) Business Days of receiving notice from the other party ("**non-defaulting party**") to do so, then the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party.
- 7.2 Where:
- a) COUNCIL considers, acting reasonably, that this Agreement is no longer desirable having regard to adverse publicity relating to or associated with the RECIPIENT; or
 - b) The control or beneficial ownership of the RECIPIENT changes; or
 - c) The RECIPIENT becomes subject to any Insolvency Event during the Term;
- then COUNCIL may terminate this Agreement by giving written notice to the RECIPIENT.

7.3 Termination for convenience

- a) Notwithstanding any other provision of the Agreement, COUNCIL may terminate this Agreement at any time, for any reason or without cause in its absolute discretion, upon providing the RECIPIENT with no less than 60 days' written notice ("**Notice Period**").
- b) If COUNCIL exercises its rights pursuant to the preceding subclause, the RECIPIENT must cease expenditure of any Funding immediately upon receipt of the notice referred to in the preceding subclause, and COUNCIL will not be required to provide any further Funding to the RECIPIENT.
- c) Notwithstanding the preceding subclause, the RECIPIENT may continue to utilise the Funding during the Notice Period in respect of property, materials or services which have been ordered and for which the RECIPIENT is legally bound to pay (but, in the case of property or materials, only if legal title to the property or material will pass to COUNCIL on payment).

7.4 Upon termination of this Agreement, COUNCIL will not be required to provide any further Funding to the RECIPIENT and may require the RECIPIENT to refund COUNCIL all or part of the Funding (at COUNCIL's discretion) within ten (10) Business Days of COUNCIL's request to do so.

8. OPTION

8.1 This clause applies only if an Option is specified in the Application Data. If there is no Option specified in the Application Data, then this clause has no effect.

8.2 If the RECIPIENT:

- a) Throughout the term of the Agreement has performed its obligations and met all Key Performance Indicators to the satisfaction of COUNCIL; and
- b) Is not in default under this Agreement; and
- c) COUNCIL has received written notification from the RECIPIENT regarding their commitment to continue to deliver the RECIPIENT's Obligations;

then COUNCIL, at its discretion, at any time before the Expiry Date, may renew this Agreement for a further term, the duration of which is specified in the Application Data as the Option. If multiple terms are specified in the Application Data as the Option, COUNCIL may, at its discretion, renew this Agreement for as many terms as are specified.

8.3 If COUNCIL exercises the Option, this Agreement shall be renewed on the same terms and conditions.

9. FORCE MAJEURE

9.1 Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to anything beyond that party's (the "**Affected Party**") reasonable control and occurs without the fault or negligence of that party, including, but not limited to, fire, storm, flood, earthquake, explosion, war, terrorism, invasion, rebellion, sabotage, pandemic, epidemic, law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application ("**Force Majeure Event**"), provided that any such event was not reasonably capable of being contemplated at the date of this Agreement. However, the Affected Party must:

- (a) Notify the non-affected party in writing as soon as practicable, describing in a reasonable level of detail the nature of the Force Majeure Event and its likely effect on the Affected Party's obligations under this Agreement;
- (b) Continue to perform all unaffected obligations in accordance with this Agreement;

- (c) Where possible, use reasonable endeavors to continue to perform the affected obligations, whether by way of a work-around or other methods agreed with the non-affected party;
 - (d) Use reasonable endeavors to overcome the effects of the Force Majeure Event as soon as possible (which may include negotiating, in good faith, revisions to the RECIPIENT's Obligations); and
 - (e) Notify the non-affected party as soon as it is no longer affected by the Force Majeure Event.
- 9.2 If that failure or delay exceeds twenty (20) consecutive Business Days, either party may immediately terminate this Agreement (without affecting the accrued rights and obligations of the parties as at the date of termination) by giving written notice to the other party without any liability to the other party for any loss or damage suffered as a result of the termination. Termination shall be effective on and from the date the notice is given to the other party.
- 9.3 In the event a party exercises its right to terminate this Agreement pursuant to the preceding subclause, then any Unexpended Funds already paid by COUNCIL to the RECIPIENT shall be immediately repayable to COUNCIL by the RECIPIENT, and COUNCIL shall not be liable to pay any further instalments of Funding on and from the date the termination of this Agreement is effective. COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpected Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL.
- 9.4 The parties acknowledge and agree that the COVID-19 pandemic is a Force Majeure Event, except to the extent provided under Clause 9.5.
- 9.5 The RECIPIENT acknowledges and agrees that:
- (a) It has taken into account the circumstances of the COVID-19 pandemic Force Majeure Event and practical and legal requirements in relation to that pandemic, including Public Health Directions in force as at the date of this Agreement;
 - (b) Despite any other clause, the Public Health Directions in force as at the date of this Agreement will not constitute a Force Majeure Event; and
 - (c) Without limiting Clause 9.2, if the RECIPIENT cannot deliver any of the RECIPIENT's Obligations on the basis of the Public Health Directions in force as at the date of this Agreement constituting a Force Majeure Event, the RECIPIENT will be in breach of this Agreement and, in addition to any other rights of COUNCIL in relation to that breach, COUNCIL may require the RECIPIENT, upon demand, to refund any Funding.

GENERAL PROVISIONS

10. ASSIGNMENT

- 10.1 The RECIPIENT may not assign, sell, subcontract or otherwise transfer its rights, interests and obligations under this Agreement without the prior written consent of COUNCIL, which may be given, withheld or given subject to conditions, in COUNCIL's absolute discretion.
- 10.2 Where the RECIPIENT is a corporation, an assignment, sale, subcontract or other transfer of rights will include any arrangement whereby the controlling shareholders of the RECIPIENT as at the Commencement Date are changed.

11. INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

- 11.1 The RECIPIENT warrants to COUNCIL that it has not infringed any Intellectual Property Rights of a third party in connection with this Agreement or generally in the delivery of the RECIPIENT's Obligations.
- 11.2 The RECIPIENT agrees to maintain the confidence of any Confidential Information and to prevent its unauthorised disclosure to or use by any other person.
- 11.3 The RECIPIENT warrants that it will not do anything to infringe COUNCIL's Intellectual Property Rights in any material, whether that material is provided by COUNCIL in accordance with this Agreement, or whether the material is identified by the RECIPIENT during the course of the performance of its obligations.
- 11.4 The RECIPIENT warrants that it will deal with any Personal Information in accordance with the *Information Privacy Act 2009* as though the RECIPIENT were bound by the *Information Privacy Act 2009*.

12. APPLICABLE LAW

- 12.1 This Agreement is governed by, and is to be construed in accordance with, the law of the State of Queensland, Australia.
- 12.2 The parties agree that the courts of the State of Queensland will have exclusive jurisdiction to hear disputes arising out of or relating to either this Agreement or the formation of this Agreement.

13. NOTICES

- 13.1 Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 13.2 Any notice may be served by delivery in person or by post or transmission by email to the Address for Service of the RECIPIENT specified in the Application Data.
- 13.3 If a party's Address for Service change from what is specified in the Application Data, that party must advise the other party of the address change as soon as practicable, and the newly notified address shall be the party's Address for Service.
- 13.4 Notice is effective for the purposes of this Agreement:
 - a) If delivered by hand to the RECIPIENT's address for hand-delivery:
 - i) If delivered before 5.00pm on a business day: immediately upon delivery;
 - ii) If delivered after 5.00pm on a business day, or if delivered on a day that is not a business day: 8.30am the following business day;
 - b) If delivered by post to the RECIPIENT's postal address:
 - i) If the notice was posted before 5.00pm on a business day: three (3) business days after the date the notice was posted;
 - ii) If the notice was posted after 5.00pm on a business day, or if posted on a day that is not a business day: three (3) business days after the next business day;
 - c) If transmitted by email to the RECIPIENT's email address:
 - i) If transmitted before 5.00pm on a business day: immediately upon transmission, unless the sender receives a notification of failed transmission immediately following transmission;

- ii) If transmitted after 5.00pm on a business day, or if transmitted on a day that is not a business day: at 8.30am on the next business day.

14. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties in relation to the Funding.

15. FURTHER ASSURANCES

Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this Agreement.

16. LEGAL AND OTHER COSTS

- 16.1 Each party is responsible for its own legal costs in relation to the negotiation, preparation and execution of this Agreement.
- 16.2 Unless specified otherwise, the RECIPIENT must comply with its obligations under this Agreement at its own cost.

17. DISPUTE RESOLUTION

- 17.1 If a dispute arises between the parties in connection with this Agreement then a party may only deal with that dispute in the manner set out in this clause.
- 17.2 The party claiming a dispute has arisen in connection with this Agreement must give to the other party a notice specifying the nature of the dispute and requiring its resolution under this clause.
- 17.3 Within ten (10) Business Days after a notice is given under Clause 17.2 (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use their best efforts to resolve the dispute in good faith.
- 17.4 If the dispute is not resolved within ten (10) Business Days, either party may take legal proceedings to resolve the dispute.
- 17.5 The provisions of this clause do not prevent either party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

18. RELATIONSHIP OF PARTIES

18.1 Unless otherwise stated:

- a) nothing in this Agreement shall, in any way, give rise to a relationship between COUNCIL and the RECIPIENT beyond that which is expressly contemplated by this Agreement, and does not create a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- b) neither party has the authority to bind the other party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other party or to pledge the other party's credit.

19. TIME OF THE ESSENCE

- 19.1 Time shall be of the essence of this Agreement.

20. GOODS AND SERVICES TAX

- 20.1 The amounts payable by COUNCIL under this Agreement are exclusive of GST unless otherwise provided. If GST is to be assessed on the provision of goods, services or any other Supply under this Agreement, then the Supplier must provide the RECIPIENT with a Tax Invoice.

21. DISCLOSURE OF INFORMATION

- 21.1 Other than as provided in this Agreement, the RECIPIENT must not disclose the terms of this Agreement to any third party without COUNCIL's written consent.
- 21.2 Without limiting any specific clauses of this Agreement COUNCIL may disclose the terms of this Agreement as it sees fit.
- 21.3 This clause survives the termination of this Agreement.

22. VARIATIONS TO THIS AGREEMENT

- 22.1 This Agreement may not be varied other than in writing, signed by or on behalf of the parties.

Schedule 1 – RECIPIENT's Obligations

1 FUNDING AIMS / OBJECTIVES

COUNCIL seeks to work in partnership with the RECIPIENT in order to provide a safe and successful ANZAC Day Service that supports the growing population of Cairns to commemorate this important nationally recognised day.

This document represents a mutual agreement between Cairns Regional COUNCIL (COUNCIL) and the RECIPIENT. The function of the Agreement is to establish the level of cash Funding and in-kind Funding provided by COUNCIL and the minimum performance and reporting to be provided by the RECIPIENT.

2 SCOPE OF WORKS

- The RECIPIENT intends to organise, promote and deliver the ANZAC Day event described herein and has sought financial assistance from COUNCIL to do so.
- COUNCIL has agreed to provide funding to the RECIPIENT towards the ANZAC Day event, the RECIPIENT has agreed to accept the funding on the terms and conditions set out in this agreement. The funding amount is final, as stated in this document.
- The RECIPIENT will provide all the relevant paperwork for required event related permits and applications.
- COUNCIL will assist with processing the completed paperwork and will promote the event to residents through the COUNCIL website prior to the event.
- COUNCIL holds no responsibility for the successful delivery of events coordinated outside of COUNCIL such as the event described herein.
- Inclusion of Cairns Regional COUNCIL's logo and the following wording acknowledgment statement. "Proudly supported by Cairns Regional Council on all printed material produced by the RECIPIENT, including its website.
- Invitations and tickets to the event for Councillors and appropriate staff of COUNCIL; and
- Opportunities for COUNCIL representatives to speak at key ANZAC day activities.

3 KEY PERFORMANCE INDICATORS (KPIs)

| |
|---|
| KPIs to be addressed in the Acquittal Email by the RECIPIENT |
| 1. Provide the Funding Agreement |
| 2. Provide the permits, applications, proposed budget and invoice in a timely manner. |
| 3. Ensure the event complies with COUNCIL permits |
| 4. Provide evidence that COUNCIL received acknowledgement for its support through marketing and promotional activities, MC acknowledgements or onsite signage |
| 5. Provide a formal acquittal to COUNCIL |
| 6. Provide an outcomes report to COUNCIL |

4 REPORTING REQUIREMENTS AND PAYMENT SCHEDULE

| ANZAC Day Event Milestones | Due Date | Cash (excl GST) | In-kind (excl GST) |
|---|------------|--------------------|-----------------------|
| 1 Funding Agreement submitted by the RECIPIENT. | 11/03/2024 | | |
| 2 All permits, Public Liability Insurance, applications and invoices submitted by the RECIPIENT. | 31/03/2024 | | |
| 3 Invoices will be settled 30 days following receipt by COUNCIL. | 01/04/2024 | \$1,500.00 | |
| 4 Internal services organised by COUNCIL. | 15/04/2024 | | Up to \$5,000.00 |
| 5 Acquittal submitted by the RECIPIENT: including evidence of how Funding was spent, including income and expenditure (budgeted versus actuals) and copies of expenditure receipts for items paid for using the Funding. | 01/06/2024 | | |
| 6 Outcomes report submitted by the RECIPIENT: Funds returned to COUNCIL if budget not spent in full and a written debrief provided to COUNCIL including attendance numbers and evidence of acknowledgement of COUNCIL's support. | 30/06/2024 | | |

Executed As An Agreement

SIGNED for and on behalf of **CAIRNS
REGIONAL COUNCIL ABN 24 310 025 910** by
its delegated officer,
in the presence of:

Witness Name

Name (COUNCIL's Representative)

Witness Signature

Signature

Signature Dated: ____/____/____

Signature Dated: ____/____/____

EXECUTED by **Yorkeys Knob Boating Club
ANZAC Day Event Organiser** in accordance with
its constitution and the *Associations Incorporation
Act 1981* in the presence of:

Name (Committee Member)

Signature (Committee Member)

Signature Dated: ____/____/____

Witness Name

Name (Committee Member)

Witness Signature

Signature (Committee Member)

Signature Dated: ____/____/____

Signature Dated: ____/____/____



Resource and Performance Agreement

Cairns Regional COUNCIL

("COUNCIL")

Trinity Beach ANZAC Day Event Organiser

("RECIPIENT")

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Parties

| | |
|---|----------------------|
| Cairns Regional COUNCIL ABN 24 310 025 910 | ("COUNCIL") |
| Trinity Beach ANZAC Day Event Organiser | ("RECIPIENT") |

Background

- A. The RECIPIENT intends to deliver the RECIPIENT's Obligations and requires the Funding from COUNCIL to do so.
- B. COUNCIL has agreed to provide Funding to the RECIPIENT in consideration for the RECIPIENT delivering the RECIPIENT's Obligations, and the RECIPIENT has agreed to accept and acquit the Funding on the terms and conditions set out in this Agreement.
- C. This report aims to ensure clarity regarding the financial support provided by COUNCIL to the RECIPIENT and the responsible utilisation of funds for the successful execution of the ANZAC Day event.

The Parties Agree:

INTRODUCTORY PROVISIONS

1. APPLICATION DATA

| ITEM NO. | DATA | DETAILS |
|----------|--|---|
| Item 1 | RECIPIENT: | |
| | ABN: | |
| | Address for Service: | <u>Postal Address:</u> <u>Email Address:</u> |
| | Contact Name: | |
| | Email: | |
| | Telephone: | |
| Item 2 | Commencement Date of agreement: | 1 March 2024 |
| | Expiry Date: | 30 June 2024 |

| | | |
|--------|----------------|--|
| Item 3 | Funding | <p>\$4,500.00 cash (excl GST) - Per calendar year</p> <p>This report outlines the financial support extended to the RECIPIENTS upcoming ANZAC Day event. The Funding has been allocated to assist in covering expenses associated with ensuring the safe and successful execution of the event for the local community.</p> <p>Utilisation of cash Funds:</p> <p>The provided funding is earmarked for specific purposes crucial to the safe delivery of the ANZAC Day event. It is imperative that the expenses incurred align with the event's safety requirements. The designated areas for spending include:</p> <p>Traffic Management Services First Aid Services Hydration Stations Security Personnel Event Hire Equipment Assistance with Event Coordination Audio-Visual Equipment</p> <p>Financial Accountability:</p> <p>In the event that the total expenditures remain below the allocated funding amount, we request that any surplus funds be promptly returned to the COUNCIL. This measure ensures transparency and responsible financial management.</p> <p>Ineligible Funding Items:</p> <p>It is essential to note that the allocated funds cannot be utilised for certain items. Ineligible expenses include:</p> <p>Gifts Prize Money Alcohol Tobacco Items purchased for events not held on ANZAC Day, specifically on 25 April 2024.</p> <p>Up to \$5,000.00 in-kind Funding:</p> |
|--------|----------------|--|

| | | |
|--------|---------------------------------------|--|
| | | <p>In addition to the monetary support, in-kind funding has been allocated. This may cover various aspects such as:</p> <p>Free hire of COUNCIL-owned event spaces Associated cleaning and maintenance of these spaces Electrical works required for these event spaces Bin orders</p> <p>Detailed Information:</p> <p>For a comprehensive understanding of the funding details, please refer to the Schedule 1.</p> |
| Item 4 | COUNCIL's Address for Service: | <p><u>Address for Hand Delivery:</u> Attn: Chief Executive Officer, 119 – 145 Spence Street, Cairns Qld 4870</p> <p><u>Postal Address:</u> PO Box 359, Cairns Qld 4870</p> <p><u>Email Address:</u> council@cairns.qld.gov.au</p> |
| Item 5 | COUNCIL Contact: | <p><u>COUNCIL Contact Name:</u> Chrystal Neeve, Senior Events Officer</p> <p><u>Email Address:</u> c.neeve@cairns.qld.gov.au</p> <p><u>Telephone Number:</u> 07 4044 3477</p> |

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless inconsistent with the context or subject matter:

Address for Service means the address of each party appearing in this Agreement or any other address nominated in writing by a party to the other party as its new address for notices or service.

Agreement means this Resource and Performance Agreement.

Application Data means the table in Clause 1 of this Agreement.

Authority means any federal, state or local government or regulator which is required to approve all or any aspect of the RECIPIENT's Obligations.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Cairns.

Commencement Date means the date this Agreement will start, as specified in Item 2.

Confidential Information means documents and information provided or made available by COUNCIL or obtained by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations which are of their nature confidential or which COUNCIL has identified to the RECIPIENT as being confidential but does not include documents and information which are in the public domain other than through a breach of this clause.

Expiry Date means the date the Agreement will end, as specified in Item 2.

Funding means the payment and/or other consideration to be provided by COUNCIL to the RECIPIENT under this Agreement, as specified in Item 3, and which shall be paid and/or provided in accordance with the terms of this Agreement.

GST, Supply, Supplier and Tax Invoice have the same meaning as given to these terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, management of the RECIPIENT's Obligations, industrial, scientific, literary or artistic fields.

In-Kind Support means COUNCIL resources, materials and/or services that are provided to the RECIPIENT in accordance with this Agreement. Services that are outsourced by COUNCIL are not considered in-kind.

Insolvency Event occurs if the RECIPIENT becomes the subject of bankruptcy proceedings, winding up proceedings, is declared bankrupt, has a winding up order made against it, has a receiver and/or manager or administrator appointed or enters into a scheme of arrangement with creditors.

Item means the item number in the Application Data.

Laws means any statute, regulation or ordinance made by any Authority and where appropriate, includes the applicable common law.

Option means any option or options to renew this Agreement for a further term, as specified in Item 2.

Personal Information has the meaning given to that term by the *Information Privacy Act 2009*.

Public Health Directions means directions given by the Chief Health Officer under section 362B of the *Public Health Act 2005* and, if applicable, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020* (Cth), or any other legislation pursuant to which a local, State or Commonwealth Government can give directions for public health purposes.

RECIPIENT's Obligations means those obligations that the RECIPIENT is required to carry out in consideration for the RECIPIENT receiving the Funding, which are particularised in Schedule 1. Reference to the RECIPIENT's Obligations throughout this Agreement is to be construed to include all or any part of them.

Schedule means a schedule to this Agreement.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, and including any Option if exercised in accordance with this Agreement.

Unexpended Funds means any part of the Funding which has been paid to the RECIPIENT but which has not been spent or committed by the RECIPIENT in connection with the delivery of the RECIPIENT's Obligations.

2.2 This Agreement is to be construed as follows unless the context requires otherwise:

- a) Reference to one gender includes all genders;
- b) Reference to the singular includes the plural and vice versa;
- c) Reference to a person includes a corporation or other entity and vice versa;
- d) Reference to a schedule means a schedule to this Agreement;

- e) Reference to money is to Australian dollars;
- f) Where the RECIPIENT is more than one party, the obligations under this Agreement bind the RECIPIENT jointly and severally;
- g) Reference to the RECIPIENT includes its personnel or authorised subcontractors.

FUNDING

3. FUNDING

- 3.1 COUNCIL will provide the Funding to the RECIPIENT, and in consideration, the RECIPIENT will comply with the terms and conditions set out under this Agreement. COUNCIL is not obliged to provide any Funding to the RECIPIENT unless the RECIPIENT has complied with each of its obligations under the Agreement at the time at which payment is sought.
- 3.2 The RECIPIENT must only use the Funding towards the delivery of the RECIPIENT's Obligations and in the manner otherwise required by this Agreement. COUNCIL will provide the Funding to the RECIPIENT in accordance with the provisions outlined in Schedule 1, subject to the following:
- a) The RECIPIENT has shown to COUNCIL's satisfaction that it has satisfied the requirements set out in this Agreement, including in Schedule 1;
 - b) The RECIPIENT has issued a Tax Invoice, (unless GST is not applicable, upon which the RECIPIENT will provide COUNCIL with an invoice) to COUNCIL for the instalment;
 - c) COUNCIL is reasonably satisfied that the RECIPIENT is not otherwise in breach of this Agreement.
- 3.3 Any payment to the RECIPIENT by COUNCIL is not an admission or acceptance by COUNCIL that the RECIPIENT has complied with this Agreement.
- 3.4 **Unexpended Funds**
- a) The RECIPIENT must refund any Unexpended Funds to COUNCIL within fourteen (14) Business Days of the Expiry Date;
 - b) COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpended Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL;
 - c) Where the RECIPIENT's expenditure for the Funding is more than the amount of Funding allocated for the activity, the RECIPIENT must bear the difference between these amounts.
- 3.5 **No Further Funding**
- a) The RECIPIENT acknowledges that COUNCIL has no obligation to provide the RECIPIENT with funding or assistance of any kind:
 - i) in excess of the Funding; or
 - ii) beyond the Term.
 - b) For the avoidance of doubt, the RECIPIENT is responsible for acquiring and/or providing any additional funds, materials or equipment in excess of the Funding required to carry out or complete the RECIPIENT's Obligation.

3.6 Misapplied Funds

- a) If the RECIPIENT uses the Funding other than in accordance with this Agreement, including but not limited to using the Funding in contravention of any part of Schedule 1 (“Misapplied Funds”):
 - i) COUNCIL may, by written notice, require the RECIPIENT to refund the Misapplied Funds; and
 - ii) If COUNCIL exercises its rights under the preceding subclause, then the RECIPIENT must within ten (10) Business Days of receipt of the notice refund the Misapplied Funds plus any interest on it calculated on daily balances at the rate per annum determined by the Supreme Court of Queensland on judgments by default as applicable at the date of COUNCIL’s notice and is fully capitalised on the last Business Day of each month if unpaid; and
 - iii) If the Misapplied Funds are not repaid in accordance with the preceding subclause, COUNCIL may:
 - A. Recover the amount as a liquidated debt due to COUNCIL; or
 - B. Set the amount off against any other amount payable by COUNCIL to the RECIPIENT, whether under this Agreement or otherwise.
- b) Nothing in this Clause 3.6 affects the accrued rights or remedies of COUNCIL, including the right to terminate this Agreement in accordance with Clause 7.
- c) This clause survives the expiration or termination of this Agreement for any reason, and applies where COUNCIL becomes aware of the Misapplied Funds after the end of the Term.

3.7 In-Kind Support

- a) This clause applies to any In-Kind Support provided by COUNCIL pursuant to this Agreement, but only to the extent expressly specified in Schedule 1.
- b) COUNCIL’s obligation to deliver In-Kind Support shall be limited to circumstances where:
 - i) The RECIPIENT makes a request for In-Kind Support;
 - ii) The nature of the In-Kind Support requested is fully particularised, is directly connected to the delivery of the RECIPIENT’s Obligations, and is compliant with the terms of this Agreement (including but not limited to in relation to any funding threshold for the In-Kind Support);
 - iii) COUNCIL, acting reasonably, considers that it can provide the In-Kind Support, having regard to its resources and other commitments and statutory obligations.
- c) The provision of In-Kind Support will not in any way give rise to any responsibility on the part of COUNCIL to carry out any role or discharge any responsibility with respect to the overall management or delivery of the RECIPIENT’s Obligations, irrespective of the nature of the In-Kind Support provided.

RECIPIENT’S OBLIGATIONS

4. RECIPIENT’S OBLIGATIONS

- 4.1 In exchange for the provision of the Funding, the RECIPIENT shall comply with the requirements set out in Schedule 1.

4.2 In delivering the RECIPIENT's Obligations, the RECIPIENT must:

- a) Ensure the RECIPIENT's Obligations are fully delivered by the Expiry Date;
- b) Engage and/or retain personnel who are able to competently deliver and perform the RECIPIENT's Obligations;
- c) Ensure that all personnel or authorised subcontractors engaged in the delivery of the RECIPIENT's Obligations have all the skills and qualifications necessary to deliver the RECIPIENT's Obligations, including but not limited to ensuring any personnel or authorised subcontractors hold all competencies, licenses, accreditations and qualifications which may be required;
- d) Consult regularly during the Term with COUNCIL;
- e) Comply with any applicable Laws, requirements from Authorities or industry standards relating to the RECIPIENT's Obligations;
- f) Adhere to and comply with any reasonable direction issued by COUNCIL in relation to the performance of the RECIPIENT's Obligations.

4.3 The RECIPIENT must promptly notify COUNCIL:

- a) Of any matters that the RECIPIENT reasonably considers may affect the RECIPIENT's ability to meet any obligation under this Agreement;
- b) Of any matter that may affect the RECIPIENT's eligibility to continue receiving the Funding;
- c) Of any allegation of misconduct or dishonesty concerning the RECIPIENT; or
- d) Of any change to its details in the Application Data.

4.4 The RECIPIENT must not make any public statement concerning the Funding, any In-Kind Support or COUNCIL's contribution to the delivery of the RECIPIENT's Obligations generally, without first obtaining the written approval of COUNCIL.

4.5 COUNCIL may at any time during the Term request that the RECIPIENT provide to it details in relation to the acquittal of the Funding and the RECIPIENT must promptly comply with any such request.

4.6 The RECIPIENT must maintain and retain for five (5) years following the Expiry Date, accurate records of how the Funding was acquitted.

4.7 **COUNCIL Contact**

- a) If the RECIPIENT wishes to liaise with COUNCIL about the performance of the RECIPIENT's Obligations or in relation to this Agreement generally, the RECIPIENT may liaise with the COUNCIL Contact nominated in Item 5 of the Application Data, and using the contact details nominated in Item 5 of the Application Data.
- b) Nothing in the preceding subclause affects the RECIPIENT's obligations to issue notices pursuant to Clause 13.

WARRANTIES, INSURANCES AND INDEMNITIES**5. WARRANTIES**

- 5.1 The RECIPIENT warrants that as at the date of this Agreement, the RECIPIENT and/or its personnel (as the case may be) hold all necessary competencies, accreditations, qualifications, permits, clearances or other authorisations which are required for the RECIPIENT to comply with its obligations under this Agreement, and will maintain such competencies, accreditation, qualifications, permits, clearances or other authorisations at all times during the Term.
- 5.2 The RECIPIENT must ensure that, in performing work associated with the RECIPIENT's Obligations, it complies with:
- a) This Agreement;
 - b) All applicable Law;
 - c) All relevant industry standards, codes and guidelines;
 - d) All policies, requirements and procedures of COUNCIL which are applicable to the RECIPIENT's Obligations and which are publicly available or otherwise made known to the RECIPIENT, including but not limited to COUNCIL's work health and safety policies and procedures. The RECIPIENT warrants that it has reviewed copies of COUNCIL's policies and procedures, understands them and agrees to comply with them.
- 5.3 The RECIPIENT warrants that it has the necessary skills and expertise to be able to competently deliver the RECIPIENT's Obligations, in accordance with this Agreement and any applicable industry standard.
- 5.4 Without limiting the generality of the preceding subclauses, the RECIPIENT warrants to COUNCIL that:
- a) The RECIPIENT at all times shall exercise due skill, care and diligence in delivery of the RECIPIENT's Obligations and otherwise discharging its obligations under this Agreement;
 - b) The RECIPIENT shall deliver the RECIPIENT's Obligations and otherwise discharge its obligations under this Agreement so that the RECIPIENT's Obligations, when delivered, are:
 - i) Fit for their stated purpose; and
 - ii) Compliant with all the requirements of the Agreement; and
 - c) The RECIPIENT has undertaken all necessary enquiries and investigations to satisfy itself as to:
 - i) The nature and extent of its obligations under the Agreement; and
 - ii) The completeness and accuracy of the Agreement.
- 5.5 The warranties set out in this clause remain unaffected notwithstanding any variation.

6. INSURANCES AND INDEMNITIES

- 6.1 The parties acknowledge and agree that COUNCIL's obligations are limited to the provision of Funding only. The RECIPIENT is solely responsible for performing the RECIPIENT's Obligations consistently with the terms of this Agreement.

- 6.2 The RECIPIENT must, prior to the Commencement Date, take out and maintain insurance for the Term for public liability to the value of \$20,000,000.00 per incident in respect of the RECIPIENT's activities, including but not limited to potential liabilities to COUNCIL and third parties under this Agreement and the RECIPIENT must cause COUNCIL's interests to be noted on its insurance policies. The RECIPIENT must provide COUNCIL with evidence of these insurances prior to the Commencement Date.
- 6.3 The RECIPIENT must ensure that it holds workers' compensation insurance in respect of any personnel engaged by the RECIPIENT as required by Law. The RECIPIENT must provide COUNCIL with evidence of this insurance prior to the Commencement Date.
- 6.4 The parties acknowledge that COUNCIL is self-insured.
- 6.5 COUNCIL will not in any way be liable to the RECIPIENT for loss or damage the RECIPIENT suffers in connection with this Agreement.
- 6.6 The RECIPIENT releases to the full extent permitted by law, COUNCIL and its representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with any of the RECIPIENT's Obligations or this Agreement.
- 6.7 The RECIPIENT indemnifies COUNCIL against all losses, claims or damages COUNCIL incurs as a result of the performance of its obligations under this Agreement, or its negligence or failure to comply with the terms of this Agreement, except to the extent that any such losses claims or damages are caused by any negligent act or omission of the COUNCIL or any of its personnel and the amount of all claims, damages, costs and expenses which may be paid, suffered or incurred by COUNCIL in respect of any such loss, damage or injury will be made good at the RECIPIENT's expense and may be deducted from any moneys due or becoming due to the RECIPIENT.
- 6.8 COUNCIL and its representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of bargain, loss or denial of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of production, loss of data or goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this Agreement.

END OF AGREEMENT

7. DEFAULT AND TERMINATION

- 7.1 Where a party ("**defaulting party**") fails to comply with any term of this Agreement and fails to remedy that non-compliance within five (5) Business Days of receiving notice from the other party ("**non-defaulting party**") to do so, then the non-defaulting party may terminate this Agreement by giving written notice to the defaulting party.
- 7.2 Where:
- a) COUNCIL considers, acting reasonably, that this Agreement is no longer desirable having regard to adverse publicity relating to or associated with the RECIPIENT; or
 - b) The control or beneficial ownership of the RECIPIENT changes; or
 - c) The RECIPIENT becomes subject to any Insolvency Event during the Term;
- then COUNCIL may terminate this Agreement by giving written notice to the RECIPIENT.

7.3 Termination for convenience

- a) Notwithstanding any other provision of the Agreement, COUNCIL may terminate this Agreement at any time, for any reason or without cause in its absolute discretion, upon providing the RECIPIENT with no less than 60 days' written notice ("**Notice Period**").
 - b) If COUNCIL exercises its rights pursuant to the preceding subclause, the RECIPIENT must cease expenditure of any Funding immediately upon receipt of the notice referred to in the preceding subclause, and COUNCIL will not be required to provide any further Funding to the RECIPIENT.
 - c) Notwithstanding the preceding subclause, the RECIPIENT may continue to utilise the Funding during the Notice Period in respect of property, materials or services which have been ordered and for which the RECIPIENT is legally bound to pay (but, in the case of property or materials, only if legal title to the property or material will pass to COUNCIL on payment).
- 7.4 Upon termination of this Agreement, COUNCIL will not be required to provide any further Funding to the RECIPIENT and may require the RECIPIENT to refund COUNCIL all or part of the Funding (at COUNCIL's discretion) within ten (10) Business Days of COUNCIL's request to do so.

8. OPTION

- 8.1 This clause applies only if an Option is specified in the Application Data. If there is no Option specified in the Application Data, then this clause has no effect.

- 8.2 If the RECIPIENT:

- a) Throughout the term of the Agreement has performed its obligations and met all Key Performance Indicators to the satisfaction of COUNCIL; and
- b) Is not in default under this Agreement; and
- c) COUNCIL has received written notification from the RECIPIENT regarding their commitment to continue to deliver the RECIPIENT's Obligations;

then COUNCIL, at its discretion, at any time before the Expiry Date, may renew this Agreement for a further term, the duration of which is specified in the Application Data as the Option. If multiple terms are specified in the Application Data as the Option, COUNCIL may, at its discretion, renew this Agreement for as many terms as are specified.

- 8.3 If COUNCIL exercises the Option, this Agreement shall be renewed on the same terms and conditions.

9. FORCE MAJEURE

- 9.1 Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to anything beyond that party's (the "**Affected Party**") reasonable control and occurs without the fault or negligence of that party, including, but not limited to, fire, storm, flood, earthquake, explosion, war, terrorism, invasion, rebellion, sabotage, pandemic, epidemic, law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application ("**Force Majeure Event**"), provided that any such event was not reasonably capable of being contemplated at the date of this Agreement. However, the Affected Party must:

- (a) Notify the non-affected party in writing as soon as practicable, describing in a reasonable level of detail the nature of the Force Majeure Event and its likely effect on the Affected Party's obligations under this Agreement;
- (b) Continue to perform all unaffected obligations in accordance with this Agreement;

- (c) Where possible, use reasonable endeavors to continue to perform the affected obligations, whether by way of a work-around or other methods agreed with the non-affected party;
 - (d) Use reasonable endeavors to overcome the effects of the Force Majeure Event as soon as possible (which may include negotiating, in good faith, revisions to the RECIPIENT's Obligations); and
 - (e) Notify the non-affected party as soon as it is no longer affected by the Force Majeure Event.
- 9.2 If that failure or delay exceeds twenty (20) consecutive Business Days, either party may immediately terminate this Agreement (without affecting the accrued rights and obligations of the parties as at the date of termination) by giving written notice to the other party without any liability to the other party for any loss or damage suffered as a result of the termination. Termination shall be effective on and from the date the notice is given to the other party.
- 9.3 In the event a party exercises its right to terminate this Agreement pursuant to the preceding subclause, then any Unexpended Funds already paid by COUNCIL to the RECIPIENT shall be immediately repayable to COUNCIL by the RECIPIENT, and COUNCIL shall not be liable to pay any further instalments of Funding on and from the date the termination of this Agreement is effective. COUNCIL may demand, and the RECIPIENT must provide, any information required by COUNCIL to determine the quantum of Unexpected Funds payable to COUNCIL within five (5) Business Days of any demand made by COUNCIL.
- 9.4 The parties acknowledge and agree that the COVID-19 pandemic is a Force Majeure Event, except to the extent provided under Clause 9.5.
- 9.5 The RECIPIENT acknowledges and agrees that:
- (a) It has taken into account the circumstances of the COVID-19 pandemic Force Majeure Event and practical and legal requirements in relation to that pandemic, including Public Health Directions in force as at the date of this Agreement;
 - (b) Despite any other clause, the Public Health Directions in force as at the date of this Agreement will not constitute a Force Majeure Event; and
 - (c) Without limiting Clause 9.2, if the RECIPIENT cannot deliver any of the RECIPIENT's Obligations on the basis of the Public Health Directions in force as at the date of this Agreement constituting a Force Majeure Event, the RECIPIENT will be in breach of this Agreement and, in addition to any other rights of COUNCIL in relation to that breach, COUNCIL may require the RECIPIENT, upon demand, to refund any Funding.

GENERAL PROVISIONS

10. ASSIGNMENT

- 10.1 The RECIPIENT may not assign, sell, subcontract or otherwise transfer its rights, interests and obligations under this Agreement without the prior written consent of COUNCIL, which may be given, withheld or given subject to conditions, in COUNCIL's absolute discretion.
- 10.2 Where the RECIPIENT is a corporation, an assignment, sale, subcontract or other transfer of rights will include any arrangement whereby the controlling shareholders of the RECIPIENT as at the Commencement Date are changed.

11. INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

- 11.1 The RECIPIENT warrants to COUNCIL that it has not infringed any Intellectual Property Rights of a third party in connection with this Agreement or generally in the delivery of the RECIPIENT's Obligations.
- 11.2 The RECIPIENT agrees to maintain the confidence of any Confidential Information and to prevent its unauthorised disclosure to or use by any other person.
- 11.3 The RECIPIENT warrants that it will not do anything to infringe COUNCIL's Intellectual Property Rights in any material, whether that material is provided by COUNCIL in accordance with this Agreement, or whether the material is identified by the RECIPIENT during the course of the performance of its obligations.
- 11.4 The RECIPIENT warrants that it will deal with any Personal Information in accordance with the *Information Privacy Act 2009* as though the RECIPIENT were bound by the *Information Privacy Act 2009*.

12. APPLICABLE LAW

- 12.1 This Agreement is governed by, and is to be construed in accordance with, the law of the State of Queensland, Australia.
- 12.2 The parties agree that the courts of the State of Queensland will have exclusive jurisdiction to hear disputes arising out of or relating to either this Agreement or the formation of this Agreement.

13. NOTICES

- 13.1 Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 13.2 Any notice may be served by delivery in person or by post or transmission by email to the Address for Service of the RECIPIENT specified in the Application Data.
- 13.3 If a party's Address for Service change from what is specified in the Application Data, that party must advise the other party of the address change as soon as practicable, and the newly notified address shall be the party's Address for Service.
- 13.4 Notice is effective for the purposes of this Agreement:
 - a) If delivered by hand to the RECIPIENT's address for hand-delivery:
 - i) If delivered before 5.00pm on a business day: immediately upon delivery;
 - ii) If delivered after 5.00pm on a business day, or if delivered on a day that is not a business day: 8.30am the following business day;
 - b) If delivered by post to the RECIPIENT's postal address:
 - i) If the notice was posted before 5.00pm on a business day: three (3) business days after the date the notice was posted;
 - ii) If the notice was posted after 5.00pm on a business day, or if posted on a day that is not a business day: three (3) business days after the next business day;
 - c) If transmitted by email to the RECIPIENT's email address:
 - i) If transmitted before 5.00pm on a business day: immediately upon transmission, unless the sender receives a notification of failed transmission immediately following transmission;

- ii) If transmitted after 5.00pm on a business day, or if transmitted on a day that is not a business day: at 8.30am on the next business day.

14. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties in relation to the Funding.

15. FURTHER ASSURANCES

Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this Agreement.

16. LEGAL AND OTHER COSTS

- 16.1 Each party is responsible for its own legal costs in relation to the negotiation, preparation and execution of this Agreement.
- 16.2 Unless specified otherwise, the RECIPIENT must comply with its obligations under this Agreement at its own cost.

17. DISPUTE RESOLUTION

- 17.1 If a dispute arises between the parties in connection with this Agreement then a party may only deal with that dispute in the manner set out in this clause.
- 17.2 The party claiming a dispute has arisen in connection with this Agreement must give to the other party a notice specifying the nature of the dispute and requiring its resolution under this clause.
- 17.3 Within ten (10) Business Days after a notice is given under Clause 17.2 (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use their best efforts to resolve the dispute in good faith.
- 17.4 If the dispute is not resolved within ten (10) Business Days, either party may take legal proceedings to resolve the dispute.
- 17.5 The provisions of this clause do not prevent either party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

18. RELATIONSHIP OF PARTIES

18.1 Unless otherwise stated:

- a) nothing in this Agreement shall, in any way, give rise to a relationship between COUNCIL and the RECIPIENT beyond that which is expressly contemplated by this Agreement, and does not create a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- b) neither party has the authority to bind the other party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other party or to pledge the other party's credit.

19. TIME OF THE ESSENCE

- 19.1 Time shall be of the essence of this Agreement.

20. GOODS AND SERVICES TAX

- 20.1 The amounts payable by COUNCIL under this Agreement are exclusive of GST unless otherwise provided. If GST is to be assessed on the provision of goods, services or any other Supply under this Agreement, then the Supplier must provide the RECIPIENT with a Tax Invoice.

21. DISCLOSURE OF INFORMATION

- 21.1 Other than as provided in this Agreement, the RECIPIENT must not disclose the terms of this Agreement to any third party without COUNCIL's written consent.
- 21.2 Without limiting any specific clauses of this Agreement COUNCIL may disclose the terms of this Agreement as it sees fit.
- 21.3 This clause survives the termination of this Agreement.

22. VARIATIONS TO THIS AGREEMENT

- 22.1 This Agreement may not be varied other than in writing, signed by or on behalf of the parties.

Schedule 1 – RECIPIENT's Obligations

1 FUNDING AIMS / OBJECTIVES

COUNCIL seeks to work in partnership with the RECIPIENT in order to provide a safe and successful ANZAC Day Service that supports the growing population of Cairns to commemorate this important nationally recognised day.

This document represents a mutual agreement between Cairns Regional COUNCIL (COUNCIL) and the RECIPIENT. The function of the Agreement is to establish the level of cash Funding and in-kind Funding provided by COUNCIL and the minimum performance and reporting to be provided by the RECIPIENT.

2 SCOPE OF WORKS

- The RECIPIENT intends to organise, promote and deliver the ANZAC Day event described herein and has sought financial assistance from COUNCIL to do so.
- COUNCIL has agreed to provide funding to the RECIPIENT towards the ANZAC Day event, the RECIPIENT has agreed to accept the funding on the terms and conditions set out in this agreement. The funding amount is final, as stated in this document.
- The RECIPIENT will provide all the relevant paperwork for required event related permits and applications.
- COUNCIL will assist with processing the completed paperwork and will promote the event to residents through the COUNCIL website prior to the event.
- COUNCIL holds no responsibility for the successful delivery of events coordinated outside of COUNCIL such as the event described herein.
- Inclusion of Cairns Regional COUNCIL's logo and the following wording acknowledgment statement. "Proudly supported by Cairns Regional Council on all printed material produced by the RECIPIENT, including its website.
- Invitations and tickets to the event for Councillors and appropriate staff of COUNCIL; and
- Opportunities for COUNCIL representatives to speak at key ANZAC day activities.

3 KEY PERFORMANCE INDICATORS (KPIs)

| |
|---|
| KPIs to be addressed in the Acquittal Email by the RECIPIENT |
| 1. Provide the Funding Agreement |
| 2. Provide the permits, applications, proposed budget and invoice in a timely manner. |
| 3. Ensure the event complies with COUNCIL permits |
| 4. Provide evidence that COUNCIL received acknowledgement for its support through marketing and promotional activities, MC acknowledgements or onsite signage |
| 5. Provide a formal acquittal to COUNCIL |
| 6. Provide an outcomes report to COUNCIL |

4 REPORTING REQUIREMENTS AND PAYMENT SCHEDULE

| ANZAC Day Event Milestones | Due Date | Cash (excl GST) | In-kind (excl GST) |
|---|------------|--------------------|-----------------------|
| 1 Funding Agreement submitted by the RECIPIENT. | 11/03/2024 | | |
| 2 All permits, Public Liability Insurance, applications and invoices submitted by the RECIPIENT. | 31/03/2024 | | |
| 3 Invoices will be settled 30 days following receipt by COUNCIL. | 01/04/2024 | \$4,500.00 | |
| 4 Internal services organised by COUNCIL. | 15/04/2024 | | Up to \$5,000.00 |
| 5 Acquittal submitted by the RECIPIENT: including evidence of how Funding was spent, including income and expenditure (budgeted versus actuals) and copies of expenditure receipts for items paid for using the Funding. | 01/06/2024 | | |
| 6 Outcomes report submitted by the RECIPIENT: Funds returned to COUNCIL if budget not spent in full and a written debrief provided to COUNCIL including attendance numbers and evidence of acknowledgement of COUNCIL's support. | 30/06/2024 | | |

Executed As An Agreement

SIGNED for and on behalf of **CAIRNS
REGIONAL COUNCIL ABN 24 310 025 910** by
its delegated officer,
in the presence of:

Witness Name

Name (COUNCIL's Representative)

Witness Signature

Signature

Signature Dated: ____/____/____

Signature Dated: ____/____/____

EXECUTED by **Trinity Beach ANZAC Day Event
Organiser** in accordance with its constitution and
the *Associations Incorporation Act 1981* in the
presence of:

Name (Committee Member)

Signature (Committee Member)

Signature Dated: ____/____/____

Witness Name

Name (Committee Member)

Witness Signature

Signature (Committee Member)

Signature Dated: ____/____/____

Signature Dated: ____/____/____