ORDINARY MEETING
27 MAY 2009

CAIRNS REGIONAL GALLERY RESOURCE AND PERFORMANCE AGREEMENT

Leslie Sparkes 10/25/1: #2012839

RECOMMENDATION:

That Council:

a) approve the attached agreement with the Cairns Regional Gallery Ltd for the period 1 July 2009 to 30 June 2013, including annual funding of $831,444 (ex GST) indexed for cost increases in years two to four of the agreement; and

b) delegate authority to the Mayor and Chief Executive Officer pursuant to section 472 of the Local Government Act 1993 to finalise any and all matters in relation to the agreement.

INTRODUCTION:

Council’s funding agreement with the Cairns Regional Gallery Ltd (CRG) will expire on 30 June 2009. A new draft agreement has been prepared based on initial Council budget discussions.

BACKGROUND:

CRG operates as a not-for-profit company limited by guarantee, under the direction of a Board of Directors. Five Councillors currently serve as Board members.

The current agreement covers the term 1 July 2006 to 30 June 2009. It contains a set of funding levels as well as a number of other duties and responsibilities which were not costed. The Director of the Regional Gallery and the Manager of Cultural Services and Facilities have attempted to make the agreement easier to understand and more inclusive in the capturing of costs so that the Council can clearly see what the costs are for the Regional Galley and set the appropriate budget.

COMMENT:

In the new draft agreement, the CRG has incorporated the costs of the Gallery’s annual audit, directors’ insurance and engineering insurance into the base funding of the agreement. This has brought the operating funding agreement up to $831,444 for the first year.
<table>
<thead>
<tr>
<th>Funding Element</th>
<th>08-09</th>
<th>09-10</th>
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</thead>
<tbody>
<tr>
<td>Base funding</td>
<td>$777,200.00</td>
<td>$797,166.50</td>
</tr>
<tr>
<td>Annual Audit</td>
<td>$13,260.00</td>
<td>-</td>
</tr>
<tr>
<td>Directors’ Insurance</td>
<td>$1,589.75</td>
<td>-</td>
</tr>
<tr>
<td>Engineer’s Insurance</td>
<td>$5,116.72</td>
<td>-</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>$797,166.50</td>
<td>$831,444.00</td>
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<td>Indexation at 4.3%</td>
<td></td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>$797,166.50</td>
<td>$831,444.00</td>
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</tbody>
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It is also determined that the Gallery’s main glass doors will in future not be considered as major plant and equipment and that the Gallery, rather than the Council, will take care of their maintenance from now on.

In past agreements, a clause was included that the CEO of Cairns Regional Council would pay the Gallery Secretary an honorarium to fulfil the CEO’s secretarial duties but looking back through the records there does not seem to be any legal or constitutional requirement for this. It is proposed that this honorarium of $5,000 be removed.

With the grouping of the additional costs directly into the quarterly payments of the funding agreement, administration of the agreement will be much easier to manage and the costs clear and defined.

While this proposal does not completely simplify the funding agreement, it still goes a long way towards centralising most charges at the Gallery and should reduce the number of separate bills being sent to Council.

**Other Funding Sources**

Council’s annual contribution represents approximately 75% of the total annual operating revenue for the CRG. The balance of funds are derived from earned income such as entry fees and rental.

However, in addition to this the Gallery raises money for programs separately. Additional projects such as gallery openings, public programs and acquisitions are funded from alternative sources, for example from the Foundation, Friends of the Gallery, donations or grants. These monies equate to somewhere in the region of $50-80,000 per annum.

**CONSIDERATIONS:**

**Corporate and Operational Plans:**

Council’s operational plan states that the Cultural Services and Facilities branch of Council are responsible for the management of the funding agreement of the Cairns Regional Gallery

**Statutory:**

Council has no statutory obligation to provide support to the Regional Gallery.
Policy:
It is intended that the provision of ongoing support to the Cairns Regional Gallery be recognised in a new Arts and Cultural Support Policy to be brought to Council in the near future.

Financial and Risk:
It should be noted that in addition to the proposed allocation of $831,444 for 2009/2010 the following costs will be incurred by Council directly:

- Building insurance – approximately $9,600
- Building maintenance of up to $50,000 in Council operational funding
- Secretarial support for the Board
- Major structural repairs particularly to the air conditioning – estimates of costs are being obtained but it is anticipated that the costs will be approximately $250,000.
- Other structural repairs may need to be factored into the five year capital works program.

It should be noted that the CRG requested an increase of $45,000 to cover additional staff salaries at the Gallery over and above levels covered by the current agreement. This request is not supported due to competing priorities identified in the 2009-10 budget development process.

Sustainability:
The new four year Funding Agreement will enable the Cairns Regional Gallery to have the security of a set agreement that will enable better business planning and sustainable development.

CONSULTATION:
Five Councillors are members of the Board and have provided input into the draft agreement.

OPTIONS:

Option 1:
That Council enter into a new four year Agreement with Cairns Regional Gallery with funding in the first year based on indexed 2008-09 budget allocation; or

Option 2:
As per Option 1 with an additional $45,000 provided in response to the CRG request for additional salaries funding; or

Option 3:
As per Option 1 with amendments to the Agreement as determined by Council; or

Option 4:
Discontinue support to the Gallery.
CONCLUSION:

It is recommended that Council proceed with Option 1, specifically, that Council:

a) approve the attached agreement with the Cairns Regional Gallery Ltd for the period 1 July 2009 to 30 June 2013, including annual funding of $831,444 (ex GST) indexed for cost increases in years two to four of the agreement; and

b) delegate authority to the Mayor and Chief Executive Officer pursuant to section 472 of the Local Government Act 1993 to finalise any and all matters in relation to the agreement.

ATTACHMENTS:

Cairns Regional Gallery Funding Agreement (#2043412)

Leslie Sparkes
Manager Cultural Services and Facilities

Ian Lowth
General Manager Community and Cultural Services
July 2009-June 2013

Resource and Performance Agreement

Between

Cairns Regional Council
ACN 310 025 910

And

Cairns Regional Gallery Limited
ACN 062 537 259
1. Cairns Regional Council  
   PO Box 359  
   CAIRNS QLD 4870  
   ACN 310 025 910

AND

Cairns Regional Gallery Limited  
PO Box 7784  
CAIRNS QLD 4870  
ACN 062 537 259

2. Purpose of Agreement

2.1 This document represents a mutual agreement between Cairns Regional Council (Council) and Cairns Regional Gallery Ltd (the Gallery) establishing the nature, extent, quality and cost of core Gallery services. The function of this Agreement is to establish the level of funding provided by Council and the minimum performance and reporting to be provided by the Gallery.

3. Period of Agreement

3.1 This Agreement is for the period 1 July 2009 to 30 June 2013.

4. Outcomes Sought by Cairns Regional Council

4.1 Council seeks to work in partnership with the Gallery to fulfil the Gallery’s mission:

> Through art we will continue to show the people, places and events of Far North Queensland; we will stimulate the development of the visual arts in the region and we will present the best art in the world to our visitors.

5. Agreed Program

5.1 The aim of the agreed program is to provide an innovative art gallery showing quality exhibitions, involving the community and contributing to the promotion of the Cairns region.

5.2 Cairns Regional Gallery will achieve this by:

- i) Presenting a continuous and balanced program of local, national and international exhibitions.
- ii) Developing, preserving, researching and displaying a distinctive and valuable art collection.
- iii) Stimulating enjoyment and understanding of the visual arts within the wider community of the Cairns region and ensuring that all aspects of the Gallery’s programs enhance access for the community.
- iv) Initiating, developing and maintaining profitable and complementary marketing activities and ensuring a positive profile.
- v) Ensuring the on-going financial support of government agencies, Gallery members, benefactors and donors.
- vi) Efficiently and effectively managing administrative systems and resources (physical, human and financial).
- vii) Ensuring Gallery building tenancy (Cafe) is supported and sustained.
6. **Conditions of the Agreement**

**Council**

6.1 Commencing from 1 July 2009, Council will provide funding for a four-year period. The amount of funding for the first year will be $831,444. The funding amount will be paid quarterly in advance against presentation of a Gallery tax invoice.

6.2 The financial year 2009/10 is the base year, and no increases are payable until the commencement of the 2010/11 year. For each of the three years subsequent to 2009/10, the base value will be adjusted by an appropriate index as determined by Council.

6.3 Council will maintain and insure the main structure and external walls of the Gallery building, including the major plant and equipment of the elevator and air-conditioning systems.

6.4 Council may dedicate additional funds to special Gallery initiatives which involve the Cairns Community.

**The Gallery**

6.5 The Gallery will pay the annual Director’s and Officers liability insurance premium.

6.6 The Gallery will pay the annual audit costs of the Gallery.

6.7 The Gallery will pay the annual engineering insurance.

6.8 Cairns Regional Gallery will open to the public as determined by the Board of Directors.

6.9 The Gallery will present a continuous program of quality exhibitions and community activities.

6.10 The Gallery will develop and maintain an outstanding art collection.

6.11 The Gallery will work within budget and in accordance with best practice museum management.

6.12 The Gallery will comply with all relevant laws, notices, orders, local laws, regulations, requirements or requisitions of any government department or agency.

6.13 The Gallery will effect and maintain insurances of loose fixtures, fittings and chattels (including artworks) and maintain a public liability insurance policy of $10 million.

6.14 The Gallery will produce an annual report.

6.15 The Gallery will report half-yearly to Council on artistic, financial and statistical performance.

6.16 The Gallery will cooperate fully with Council’s Finance Department in the preparation of accounts for the annual audit.
7. **Representation on the Gallery Board**

7.1 The Gallery’s Memorandum and Articles of Association stipulates the representation of Councillors, Council officers, and members of the community on the Gallery Board of Directors. These provisions include the following:

7.2 ARTICLE 2.2 Thereafter any person nominated by the Board of Directors and approved by the Council shall be eligible for membership of the Company to replace any subscriber who ceases to be a member provided that the membership of the Company shall comprise the following:

   i) 2.2.1 as an ex officio member the Mayor of the Cairns Regional Council or their nominee;
   
   ii) 2.2.2 as an ex officio member the Chief Executive Officer of the Cairns Regional Council or their nominee;
   
   iii) 2.2.3 a number of persons not exceeding 4 who are elected Councillors of the Cairns Regional Council
   
   iv) 2.2.4 a number of persons not exceeding 5 who are interested in or experienced in managing an arts organisation or who have appropriate business expertise, each of whom is nominated by the Cairns Regional Council.

7.3 ARTICLE 2.5 Membership of the Board will be for a period as defined below:

   i) Each of the members referred to in Article 2.2.1; 2.2.2 and 2.2.3 shall continue in office as members of the Board for a period of one-month from the date of the Local Government Election for the Region of Cairns and shall be eligible for re-appointment.
   
   ii) Each of the members referred to in Article 2.2.4 shall continue in office as members of the Board for a period not exceeding the fourth Annual General Meeting after the date of appointment and shall be eligible for re-appointment.

8. **Reporting**

**Annual Report**

8.1 The Gallery will provide Council with a copy of its annual report within two months of the Gallery Board adopting the audited financial statements.

**Evaluation Report**

8.2 The Gallery will provide Council with a report every six-months on the preceding six-month’s activities. This report will include information relating to the specified performance measures and outcomes as agreed. The evaluation report shall address:

   i) Program/Artistic Report evaluating the Gallery’s performance in achieving its stated aims;
   
   ii) Marketing Report on the Gallery’s marketing and promotional activities for the previous year. This report will include an assessment of program impact on visitors, media response and feedback from members and visitors;
iii) Financial Report on Gallery’s fiscal management for the preceding financial year;

iv) Performance Measurement Report providing statistical information relating to the specified performance measures agreed to in Schedule 1;

v) Grants Acquittal Report detailing activities and outcomes of special initiatives funded by government or philanthropic grants;

vi) Business Plan will be reviewed by the Board each year and any variations submitted to Council.

9. Acknowledgement of Cairns Regional Council Support

9.1 The Gallery acknowledges that the financial support it receives from Council is funded by rates revenue and will therefore provide acknowledgement in the following ways:

i) Inclusion of Cairns Regional Council’s logo on material produced by the Gallery including major publications (may exclude events where special sponsorship arrangements apply);

ii) Invitations and tickets to major exhibitions/events for Councillors and appropriate staff of Council;

iii) Reference to Council support in press releases and speeches (may exclude events where special sponsorship arrangements apply);

iv) Opportunities for Council representatives to speak at key activities (may exclude events where special sponsorship arrangements apply).

10. Variation of Agreement

A variation of this Agreement will only be made in writing between Cairns Regional Council and Cairns Regional Gallery Ltd.

11. Confidentiality of Information

Cairns Regional Council acknowledges that information provided to Council by Cairns Regional Gallery may be of a commercial-in-confidence nature and as such Council will treat all documentation as confidential. All documents held by Council are subject to the Freedom of Information Act 1982. In the event that Council receives a Freedom of Information request relating to the Gallery, Council will consult with the Gallery to determine whether documentation should be exempted from the Act on the grounds of commercial-in-confidence consideration.

The parties executed this Agreement on the ………… day of…………………………. 20………..