Text

Description automatically generated**LOCAL GOVERNMENT FUNDING AGREEMENT**

[<COUNCIL LETTERHEAD AND LOGO>]

<INSERT NAME AND ADDRESS OF FUNDING RECIPIENT>

Dear <name>

**Re: Letter of Agreement – Grant Funding for <insert description of Funded Activities>**

I am writing to offer the party named in Item 1 of Attachment 1 to this letter grantfunding in the amount of $< insert amount> (GST exclusive) (‘**Funding**) on behalf of <insert name of Council>('**Council**') to undertake the Funded Activities as set out in the Funding Details at Attachment 1 to this letter.

To accept this offer and enter into an agreement with the Council in relation to the Funding, you must sign the attached Acknowledgment and Acceptance of Funding and send or email a scanned copy to the address below. If your acceptance is not received by <insert date> this offer will lapse.

If you accept this offer you are legally bound by the terms of this Funding Agreement. The following documents make up the Funding Agreement:

* This Letter of Offer
* Your signed acceptance of this offer
* The Funding Details (Attachment 1)
* The Standard Terms and Conditions (Attachment 2)
* The Special Conditions (Attachment 3)
* The Acquittal Form (Attachment 4) (if applicable)

If you have any queries regarding this offer, please do not hesitate to contact <insert name and contact phone number of Council contact officer>.

Yours sincerely

<insert authorised Council representative's sign off>

<insert date>

Enclosure. **Attachment 1: Funding Details**

**Attachment 2: Funding Terms and Conditions**

**Attachment 3: Special Conditions**

**Attachment 4: Acquittal Form**

**ACKNOWLEDGEMENT & ACCEPTANCE OF OFFER**

**OF FUNDING FOR FUNDED ACTIVITIES**

**Executed as an Agreement:**

<insert full name of recipient and ABN (if applicable)> ('**Recipient'**) acknowledges and accepts the terms and conditions specified in this Letter of Agreement and in Attachments 1, 2 and 3.

*[Select the appropriate signature block depending on the nature of the Recipient. Delete all signature blocks that are not used.]*

**Recipient:**

*If Recipient is an Incorporated Association]*

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of **THE PARTY NAMED IN ITEM 2 OF ATTACHMENT 1** by a duly authorised officer in the presence of: |  |  |
| Witness signature    Witness name | | Authorised officer signature    Authorised officer name |

*[If Recipient is an Individual / natural person]*

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by **THE PARTY NAMED IN ITEM 2 OF ATTACHMENT 1** in the presence of: |  |  |
| Witness signature    Witness name | | Party signature    Party name |

*[If Recipient is a Company, choose one of the options below depending on the applicable (or Company's preferred) execution method]*

Option 1: where the Recipient has two directors (or one director and a company secretary) and signs under section 127 of the Corporations Act

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by **THE PARTY NAMED IN ITEM 2 OF ATTACHMENT 1** in accordance with section 127 of the *Corporations Act 2001* (Cth) by two directors or by one director and the company secretary: |  |  |
| Director signature    Director name | | Director/Company Secretary signature    Director/Company Secretary name |

Option 2: where the Recipient is a sole director company signing under section 127 of the Corporations Act

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by **THE PARTY NAMED IN ITEM 2 OF ATTACHMENT 1** in accordance with section 127 of the *Corporations Act 2001* (Cth): |  |  |
| Director and Sole Company Secretary signature    Director and Sole Company Secretary name | |  |

Option 3: where the recipient is a Company executing by affixing its common seal

|  |  |  |
| --- | --- | --- |
| **THE COMMON SEAL** of **THE PARTY NAMED IN ITEM 2 OF ATTACHMENT 1** was affixed in the presence of: |  |  |
| Witness signature    Witness name | |  |

**Council:**

<Insert applicable Council Execution Block>

**Attachment 1 – Funding Details**

|  |  |  |
| --- | --- | --- |
|  | **Council** | <insert name>, being a body corporate established under the *Local Government Act 1999* (SA)  <insert ABN>  <insert address> |
|  | **Recipient** | <insert name>  <insert address> |
|  | **Recipient’s ABN** | Recipient has an ABN  <Yes/No>  <insert ABN >  Registered for GST:  <Yes/No> |
|  | **Commencement Date** | <insert date> |
|  | **Expiry Date** | <insert date> |
|  | **Extension Period(s)** | <insert period(s) or “not applicable”> |
|  | **Contact Persons** | Council: <insert contact details>  Recipient: <insert contact details> |
|  | **Funded Activities** | <insert detail of the activities for which the Funding must be used > |
|  | **Reports and Meetings** | <insert description>  <insert dates> |
|  | **Funding** | $<insert>  GST exclusive  no GST |
|  | **Payment Details** | |  |  | | --- | --- | | **<Milestone/Date>** | **Funding Payment** | | <Insert Payment Milestone/Date> | $<Insert Funding Amount> | | <Insert Payment Milestone/Date> |  | | <Insert Payment Milestone/Date> |  | | <Insert Payment Milestone/Date> |  | | **Total** | $<Insert total Funding> | |
|  | **Insurances**  Public Liability Insurance  Professional Indemnity Insurance | Not less than $<insert required amount or "not applicable">  Not less than $<insert required amount or "not applicable"> |
|  | **Applicable Policies and Guidelines** | <insert relevant Council policies and guidelines or "not applicable">  *See Clause 11* |
|  | **Grant Reconciliation Date(s)** | <insert dates or "not applicable">  *See Special Condition 5* |
|  | **Additional Recipient Financial Information** | Yes  No  *See Special Condition 5* |

**Attachment 2 - Standard Terms & Conditions**

# AGREED TERMS

# Term

## This Agreement commences on the Commencement Date and continues until the Expiry Date, unless terminated earlier or extended under clause 1.2.

## This Agreement may be extended by the Council for the Extension Period(s) by giving reasonable notice in writing prior to the Expiry Date.

# contact persons

The persons named in Attachment 1 as the Contact Persons are the first point of contact between the Parties and are responsible for overseeing the effective administration of this Agreement including variations and extensions.

# payment of the funding

## Subject to the Recipient complying with its obligations in this Agreement at all times during the Term, the Council will pay the Funding to the Recipient as specified in Attachment 1.

# GST

## Subject to this clause, if Goods and Services Tax (GST) is payable by a supplier on any supply made under this Agreement, the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

## Subject to clause 4.3 and 4.4 the Recipient represents that:

### the ABN shown in Attachment 1 is the Recipient’s ABN; and

### it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth).

## If the Recipient is not registered for GST, then GST must not be charged on supplies made under this Agreement.

## If the Recipient does not have an ABN, the Council may be obliged under the *Taxation Administration Act 1953* to deduct a withholding from the Funding and will not be obliged to gross up the Funding or provide any other compensation to the Recipient.

# invoicing

## Each party agrees to do all things, including providing valid tax invoices and other documentation necessary to enable the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST in respect of any supply made in connection with this Agreement.

## The Recipient may invoice the Council for payment in respect of the Funding after the Commencement Date and the Council will not be obliged to pay any amount under this Agreement until it receives the applicable tax invoice.

# use of the funding

## The Recipient agrees to use the Funding for the sole purpose of undertaking the Funded Activities.

# Provision of Information

## The Recipient must immediately inform the Council of anything reasonably likely to affect the performance of the Funded Activities, including:

### any significant changes to the nature and/or scope of the activities conducted by the Recipient;

### any actual, perceived or potential conflict of interest arising in relation to this Agreement (and must notify what actions have been taken to address that conflict).

## At the conclusion of the Term, the Recipient must provide a statement, in the form required by the Council and signed by the Recipient, verifying that the Funded Activities have been undertaken and the Funding was spent In accordance with this Agreement.

# Record keeping and Reporting

## The Recipient agrees to maintain records of the performance of the Funded Activities and the expenditure of the Funding throughout the Term.

## The Recipient must:

### submit the reports and other documents and must attend meetings, as specified in Attachment 1; and

### provide any other report as reasonably required by the Council (including as to the form and content of that report) in relation to the Funded Activities.

## Where the report is a financial acquittal report, the Council, in its absolute discretion may require that the Recipient procure that the acquittal report be independently audited. The Recipient must pay the cost of any audit required by the Council in accordance with this clause 8.3.

# repayment of funding

## If at the expiry or termination of this Agreement any part of the Funding:

### has been spent other than on the Funded Activities; or

### remains unexpended or is otherwise additional to the requirements of the Funded Activities,

### the Recipient agrees to repay that amount to the Council, unless the Council agrees otherwise in writing.

## The Recipient may submit a written request for retention or carryover of any unexpended amounts of the Funding specifying:

### the amount to be retained or carried over; and

### the purpose or activities for which the unexpended amount will be used.

## The Council must consider the Recipient's request and notify the Recipient in writing whether it:

### agrees that the Recipient may retain or carry over all or part of the unexpended amount; or

### requires the Recipient to repay all or part of that amount as notified by the Council, to the Council within 30 days of receipt of the notice from the Council.

# acknowledgement of Council

## The Recipient will acknowledge the Council's support in any material published in connection with this Agreement and agrees to use any form of acknowledgment the Council reasonably specifies.

# Compliance with Laws AND policies

## The Recipient must comply with:

### the laws in force in the State of South Australia in performing its obligations under this Agreement; and

### any other policies notified by the Council in writing at the Commencement Date, including without limitation the Policies and Guidelines specified in Attachment 1.

## The Recipient must ensure that all persons engaged to work on the Funding Activities obtain and maintain all relevant licences, registrations or other approvals required by applicable laws or as directed by the Council, including but not limited to police checks and working with children checks.

# CONFIDENTIAL INFORMATION

## Subject to this clause 12, neither Party may disclose any Confidential Information belonging to the other Party without prior written consent, except:

### as genuinely and necessarily required for the purpose of this Agreement;

### to an employee, agent or adviser of that Party, on a “need to know” and confidential basis;

### as required by law or a court order;

### in accordance with Council policies or practice; or

### for the purposes of prosecuting or defending proceedings.

# privacy

## The Recipient must comply with the *Privacy Act 1988* (Cth) (“**Privacy Act**”) and the Australian Privacy Principles established under that Act in undertaking its obligations under this Agreement including in relation to all Personal Information received created or held by it for the purposes of this Agreement.

## The Recipient must promptly notify the Council if it fails to comply with this clause or if it becomes aware of any actual or threatened disclosure of or unauthorised access to Personal Information.

## For the purposes of this clause, “**Personal Information**” has the same meaning as in the Privacy Act.

# INSURANCE

## The Recipient must effect and maintain the insurance specified in Attachment 1 for not less than the amount specified in Attachment 1 during the Term.

# dispute resolution

## Either Party may give the other a notice in writing (“**dispute notice**”) setting out the details of the dispute.

## Within seven days or such other period as may be agreed by the Parties, the Contact Persons must meet and use reasonable endeavours to resolve the dispute.

## Subject to clause 15.4 the parties agreed not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.

## The procedure for dispute resolution does not apply to action relating to termination or urgent litigation.

# termination for default

## Where the Council reasonably believes the Recipient has:

### breached this Agreement, including by misapplication of the Funding; or

### provided false or misleading statements in its application for the Funding; or

### become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration,

### then the Council may, upon giving written notice to the Recipient:

### withhold funds not already paid;

### withhold future funding from the Recipient; and/or

### terminate this Agreement.

# EFFECT OF ending THIS agreement

## Any termination of this Agreement does not affect any accrued right of either Party.

## Despite termination or expiry of this Agreement, this clause 17 and clauses, 6, 7, 8, 9, 10, 12, 13, 14 and those Special Conditions that by their nature remain in force, will survive.

# No further obligation

## The Recipient acknowledges that the Grant represents a one-off contribution by the Council towards the Funded Activities, and the Recipient agrees any request for subsequent funding will require a new application to the Council. The Council is under no obligation to agree to pay any subsequent funding to the Recipient.

## The Recipient acknowledges the Council will not be liable to reimburse the Recipient for any losses or cost over runs that may result from the recipient undertaking the Funded Activities.

# COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by email.

# General provisions

## This Agreement is governed by the laws in the State of South Australia and the courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.

## This Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understanding and negotiations in respect of the matters dealt with in this Agreement.

## The Recipient must not assign, encumber or otherwise transfer any of its rights or obligations under this Agreement without the written approval of the Council which approval shall not be unreasonably withheld.

## This Agreement may only be varied by the parties' signed written agreement.

## A Party is not by virtue of this Agreement the employee, agent or partner of the other Party and is not authorised to bind or represent the other Party.

## Each word, phrase, sentence, paragraph and clause of this Agreement is severable. Severance of any part of this Agreement will not affect any other part of this Agreement.

# INTERPRETATION

## In this Agreement (unless the context requires otherwise):

### a reference to any legislation includes all legislation, regulations and other forms of statutory instrument issued under that legislation, and any modification, consolidation, amendment, re-enactment or substitution of that legislation;

### a word in the singular includes the plural and vice versa;

### a reference to two or more persons is a reference to those persons jointly and severally;

### a reference to dollars is to Australian dollars; and

### a reference to a Party includes that party’s administrators, successors and permitted assigns.

# definitions

In this Agreement:

### “**Confidential Information**”means information which is identified as confidential information by a Party, but does not include this Agreement;

### “**Extension Period(s)**” means the period(s) specified in Attachment 1;

### “**Funding**” means the funds payable under this Agreement specified in Attachment 1;

### “**GST**” means the tax imposed by the GST Law;

### “**Party**” means a party to this Agreement;

### “**Special Conditions**” means the conditions specified in Attachment 3; and

### “**Term**” means the period specified in clause 1.1, including any Extension Periods.

# special conditions

The special conditions (if any) in Attachment 3 form part of this Agreement and will take priority over this Attachment 2 to the extent of any inconsistency.

**Attachment 3 – Special Conditions**

*[The sample Special Conditions below are provided by way of example only.*

*Special Conditions may not be required at all, in which case the below sample clauses should be deleted in their entirety and "not applicable" should be inserted below the heading.*

*Alternatively, only some of the matters addressed by the sample clauses may be relevant to the Agreement under consideration, in which case those clauses which are not relevant or applicable should be deleted.*

*Finally, the nature of the Funding Agreement under consideration may require additional conditions not addressed in the below sample clauses. The below sample clauses are not exhaustive and Councils should consider whether the specific funding arrangement requires any addition or bespoke clauses]*

# Additional Contributions

## *[Where the Recipient or third parties are also contributing either cash or in-kind contributions]*

## The Recipient must provide, or must ensure the provision of, the Additional Contributions and must use them to undertake the Funded Activities.

## In this Agreement, "**Additional Contributions**" means the financial or in kind contributions other than the Funding set out in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Contributor** | **Nature of Contribution** | **Amount (GST excl)** | **Requirement** |
| *<insert Recipient or alternative third party contributor>* | *<Eg, financial, in-kind>* | *<insert amount>* | *<Insert any additional requirements which apply. Eg Milestones to which the Contribution relates, caps on Contribution etc>* |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

## If the Additional Contributions are not provided or used in accordance with this clause, then the Council may suspend payment of the Funding until they are provided.

# Agreement disclosure

*[Where the Council requires the capacity to make public material related to or arising from the Funded Activities]*

## The Council may disclose this Agreement and/or information in relation to this Agreement in either printed or electronic form, and either generally to the public or to a particular person as a result of a specific request.

## Nothing in this clause derogates from:

### the Recipient’s obligations under any provisions of this Agreement; or

### the provisions of the *Freedom of Information Act 1991* (SA).

# INTELLECTUAL PROPERTY RIGHTS (Option 1)

*[where the Funding constitutes the sole funding source for the Funded Activities]*

## Nothing in this Agreement affects the ownership of Intellectual Property Rights created before the Commencement Date.

## The Recipient grants the Council a non-exclusive, irrevocable, perpetual, royalty free licence (including a right to sub-licence) to use, modify, communicate, reproduce, publish and adapt any intellectual property created as part of the Funded Activities for the advancement of the interests of South Australian Local Governments and their constituents, which use shall exclude use for commercial reward.

## For the purposes of this clause, “**Intellectual Property Rights**” means all intellectual property rights, including but not limited to:

### patents, copyright, registered designs, trademarks, know-how and any right to have Confidential Information kept confidential; and

### any application or right to apply for registration of any of the rights referred to in paragraph (a),

### but for the avoidance of doubt excludes moral rights and performers’ rights.

# Intellectual property rights (Option 2)

*[Where the Funding is not the sole source of funding for the Funded Activities]*

## The Recipient consents, and agrees to obtain acknowledgment and consent in writing from any person or body making Additional Contributions to the Funded Activities, that:

## All intellectual property developed as part of the Funded Activities will be subject to the grant of a non-exclusive, irrevocable, perpetual, royalty free licence (including a right to sub-licence) for the Local Government Association (LGA) of South Australia to use, modify, communicate, reproduce, publish and adapt any intellectual property created as part of the Funded Activities for the advancement of the interests of South Australian Local Governments and their constituents, which use shall exclude use for commercial reward.

## The Recipient and each of the persons or bodies making Additional Contributions will do all things necessary to enable the LGA to exercise the rights conferred by this clause.

# FINANCIAL reporting AND auditing

*[Where the Recipient is provided to prepare a formal acquittal beyond the requirements of Attachment 2]*

## The Recipient must provide an acquittal in relation to the expenditure of all funds under this Agreement using the form in Attachment 4:

### certifying that the Funding has been properly spent, in accordance with the requirements of the Agreement;

### signed by two persons authorised by the Recipient’s board of management (or equivalent); and

### within three months of the end of each Financial Year during the Term or other dates as may be specified in Attachment 1 (“**Grant Reconciliation Date(s)**”).

## If the Recipient is required by law to prepare audited financial statements, the Recipient must provide the Council with copies of such audited financial statements, within six months of the end of each Financial Year during the Term.

## If the Recipient is not required by law to prepare audited financial statements, and only if specified in Attachment 1, the Recipient must provide the Council with the following financial statements, within six months of the end of each Financial Year during the Term:

### A balance sheet;

### An income and expenditure statement; and

### A statement of changes in equity for the Financial Year,

### (together “**Additional Recipient Information**”).

## The Recipient agrees the Council may direct that the financial accounts of the Recipient be audited at the Council’s cost, and the Council may specify the minimum qualifications that must be held by the person appointed to conduct the audit.

## If the audit discloses that the Recipient has applied the Grant to activities other than the Funded Activities then the Recipient will be required to reimburse the Council the costs of the audit and clause 16.1 will apply.

## For the purposes of this clause, “**Financial Year**” means a year commencing on 1 July and ending on 30 June.

# Inspection

*[where audit and inspection rights are required in relation to the Funding]*

## The Recipient must allow any officer or person authorised by the Council on the giving of reasonable notice, to enter the premises of and to inspect the operations of the Recipient (including equipment, premises, accounting records, documents and information) and interview the Recipient’s Personnel on matters pertaining to the operations and reporting obligations of the Recipient under this Agreement.

**Attachment 4 – Acquittal Form**

<insert Council acquittal form, or enter "not applicable">