

5.13. RESOURCE AND PERFORMANCE AGREEMENT - MOSSMAN AND DISTRICT SHOW SOCIETY

REPORT AUTHOR	Paul Smyth, Events Officer
MANAGER	Lisa Golding, Acting Manager People and Community Services
DEPARTMENT	People and Community Services

RECOMMENDATION

That Council:

1. **Enters into a Resource and Performance Agreement with Mossman and District Show Society for a term of three years to 30 July 2024, to a value of \$20,000 (ex GST) per annum In-Kind; and**
2. **Delegates authority under section 257 of the *Local Government Act 2009* to the Chief Executive Officer to finalise any and all matters in relation to the Agreement.**

EXECUTIVE SUMMARY

It is proposed that Council enter into a Resource and Performance Agreement with the Mossman and District Show Society to provide support for the Mossman Show.

The Agreement is for a period of three years and encompasses Council's In-Kind support of the Mossman Show, which has been determined in consultation with the president of the Mossman and District Show Society.

BACKGROUND

The Mossman and District Show has been a feature of the community Events Calendar in the Douglas Shire for more than 60 years. It has become an institution, showcasing the community's achievements and encouraging opportunities for community participation and development.

Attendance at the 2021 Show saw approximately 7,500 people through the gates, with 112 sole traders attend along with 1,131 assorted entries across Agriculture, Horticulture, Culinary, Needlework, Arts and Crafts and Photography categories.

Council has previously funded this event under a Resource and Performance Agreement for the amount of \$15,500 (ex GST) In-kind Assistance which expired on 31 July 2019.

COMMENT

To ensure Mossman and District Show Society is provided with the support required from Douglas Shire Council to stage the annual Mossman and District Show, a Resource and Performance Agreement formalising arrangements from the signed date of the agreement to 31 July 2024 will give the organisation certainty for their future planning.

The period of the Resource and Performance Agreement between Council and Mossman and District Show Society will secure Council's In-kind Assistance up to and including the 2024 Mossman and District Show.

Council support of the Mossman and District Show Society is intended to advance the growth of the Mossman and District Show in participation and attendance as well as assist in securing sponsorship from other sources.

The Agreement also establishes the level of support provided by Council (\$20,000 in-kind – including venue hire) and performance and reporting to be provided by Mossman and District Show Society.

PROPOSAL

That Council:

1. Enters into a Resource and Performance Agreement with Mossman and District Show Society for a term of three years to 30 July 2024, to a value of \$20,000 (ex GST) per annum In-Kind; and
2. Delegates authority under section 257 of the *Local Government Act 2009* to the Chief Executive Officer to finalise any and all matters in relation to the Agreement.

FINANCIAL/RESOURCE IMPLICATIONS

Funding for the proposed sponsorship will come out of annual Operational budgets. Council officers will be responsible for administering support and acquittal.

RISK MANAGEMENT IMPLICATIONS

Council incurs a cost in the waiving of fees and charges and the provision of services to the Mossman and District Show Society to the amount of \$20,000.

SUSTAINABILITY IMPLICATIONS

- Economic:** Council's In-kind contribution is in line with previous years and is considered appropriate and achievable without placing strain on Council's resources.
- Environmental:** Mossman and District Show Society has a track record of environmental management.
- Social:** Mossman and District Show is an inclusive event which provides opportunities for access to people with a disability or those who are financially disadvantaged

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2019-2024 Initiatives:

Theme 1 - Celebrating Our Communities

Douglas Shire Council embraces the diversity of our communities and values the contribution that all people make to the Shire. We recognise that it is a core strength of the region. We acknowledge our past so that it may guide us in the future. We recognise the wrongs done to our Indigenous community and we actively seek to reconcile so that we may all benefit from and enjoy our Shire. We acknowledge early European settlers who forged an agricultural base for our economy and we welcome all new arrivals as part of our broader community.

Goal 4 - *We will promote arts and cultural programs and events that bring vibrancy to the community and compliment the tourist experience.*

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Funder	Council often partly funds services, events or community organisations through grants, donations, subsidies and in-kind support. Council will apply robust governance to ensure that such funding is fair and appropriate.
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CONSULTATION

Internal: Reference to previous agreements and correspondence between Council and Mossman and District Show Society. Open Spaces to ensure funds are sufficient to complete in-kind works for the event.

External Input from the Mossman and District Show Society to identify the level of support requested of Council and may specific actions required of Council.

COMMUNITY ENGAGEMENT

Nil

ATTACHMENTS

1. DRAFT Agreement Mossman Show 2022 - 2024 [5.13.1 - 16 pages]



Event Strategy

Resource & Performance Agreement

**Mossman Show
2022-2024**

Douglas Shire Council
("Council")

and

Mossman & District Show Society
("Recipient")

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Parties

Douglas Shire Council (ABN 71 241 237 800) PO Box 723 MOSSMAN QLD 4873	("Council")
Mossman & District Show Society Coronation Park Mossman QLD 4873	("Recipient")

Background

- A. The Recipient intends to organise, promote and deliver the Event or Project described herein and has sought financial assistance from Council to do so.
- B. Council has agreed to provide In Kind Assistance to the Recipient towards the Event or Project and the Recipient has agreed to accept the In-Kind Assistance on the terms and conditions set out in this Agreement.

The Parties Agree:

1. SPECIFIC INFORMATION

ITEM NO.	DATA	DETAILS
Item 1	Recipient:	Mossman & District Show Society
	Address for Notices:	Coronation Park, Mossman QLD 4873
	Email:	Secretary.mossmanshow@tesltra.com
	Telephone:	07 4098 1477
Item 2	Commencement Date:	Upon Signature
	Expiry Date:	31 July 2024
Item 3	Funding:	\$20,000 In-kind per anum
Item 4	Description of the Event or Project to be organised, promoted and delivered by the Recipient:	Annual Community Show held in Mossman

	Description of how the Assistance will be used:	<p>Assisting with the needs and tasks to present the show grounds and surrounds in a suitable order to hold the show at the Mossman show grounds.</p> <p>Including:</p> <ul style="list-style-type: none"> • Waiving Of fees for Show ground hire. • Waiving of fees for permit approvals for show activities. • Show Grounds specific preparation. • Required repairs where necessary. • Slashing of adjoining grounds for parking. • Wood chip area preparation and removal. • Spray / prepare Animal Stalls. • Supply and spread topsoil where required after show. • Erect Safety Fencing (Wood Chop Area) • Assist with Cane Display preparations
Item 5	Performance Indicators or Measures	<ul style="list-style-type: none"> • Reporting on number of exhibitors, participants, sponsors, and attendees in comparison to previous years. • Copy of Annual return as forwarded to Queensland Chamber of Agricultural Societies

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 & Performance Agreement including its schedules, attachments and exhibits;

"Approvals" means any approvals required to be issued by any Authority in connection with the Event or Project and all changes to those Approvals which may need to be agreed to by that Authority;

"Authority" means any federal, state or local government, semi government, quasi-government, administrative, fiscal, judicial or quasi-judicial, department, commission, authority, tribunal, agency, entity, statutory authority or regulator;

"Business Day" means between 9am and 4pm on a day other than a Saturday, Sunday or public holiday on which the Council is open for business at the Council's address;

"Commencement Date" means the 'Commencement Date' in Item 2;

"Corporations Act" means *Corporations Act 2001* (Cth);

"Council Logo" means the current graphic representation/symbol of the Council (as updated by the Council by notice to the Recipient from time to time);

"Event or Project" means the 'Event or Project' in Item 4;

"Event Photos" means any photographs or footage of the Event or Project, which photographs or footage are owned by the Recipient or any Recipient official third-party photo or footage service provider, subject to any third-party intellectual property rights therein;

"Expiry Date" means the 'Expiry Date' in Item 2;

"Force Majeure" means an act, omission or circumstance over which the party could not reasonably have exercised control, including without limitation:

- a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, or insurrection of military or usurped power;
- b) an act of God, fire, storm, flood, cyclone, earthquake, explosion, epidemic, quarantine restriction, declared disaster weather event or other natural disaster; and
- c) strikes or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, and which affect an essential portion of the Agreement, but excluding any industrial dispute which is specific to the performance of this Agreement;

"Funding" means the payment and/or other consideration in Item 3;

"Funding Schedule" means the schedule in Item 3A;

"GST" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes an amount payable under or in accordance with section 5 of the *GST and Related Matters Act 2000* (Qld) or equivalent legislation;

"Insolvency Event" occurs if with respect to the Recipient:

- a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property; or
- c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement); or
- d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- f) it is the subject of an event described in section 459C(2)(b) or 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject); or
- g) it is otherwise unable to pay its debts when they fall due; or
- h) something having a substantially similar effect to (a) to (g) happens in connection with that person or entity under the Laws of any jurisdiction;

"Intellectual Property Rights" means all copyright, trade mark, design, patents, semiconductor or circuit layout rights, plant breeders rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the Commencement Date.

"Item" means the item number in Clause 1 Specific Information;

“Key Performance Indicators” or **“KPIs”** are the key performance indicators in Schedule Two;

“Laws” means acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and Queensland and where appropriate, includes the applicable common law;

“Partnership Benefits” means the ‘Partnership Benefits’ in Schedule One;

“Information Privacy Act” means *Information Privacy Act 2009* (Qld).

“Personal Information” has the meaning given:

- a) for the purpose of the Information Privacy Act – in that Act; or
- b) for the purposes of the Privacy Act – in that Act.

“Privacy Act” means *Privacy Act 1988* (Cth).

“Recipient’s Application” means the Recipient’s application as per Attachment One;

“Safety Laws” means a Law regulating or otherwise relating to safety including:

- a) *Work Health and Safety Act 2011* (Qld); and
- b) *Work Health and Safety Regulation 2011* (Qld);

“Specific Information” means the information table in Clause 1 of this Agreement;

“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); and

“Term” has the meaning in clause 3.1.

3. AGREEMENT

- 3.1 The Agreement commences on the Commencement Date and remains in full force and effect until the Expiry Date, unless terminated earlier under this Agreement (“Term”).
- 3.2 The Agreement may not be varied other than by written agreement between and signed by the parties expressly stating that the terms of this Agreement are varied.
- 3.3 Any waiver or relaxation by Council partly or wholly of any provision of this Agreement is valid only if in writing and signed by Council. Any such waiver or relaxation is restricted to its written terms and unless expressly stated otherwise applies to that particular occasion only, is not continuing and does not constitute a waiver or relaxation of any other provision.
- 3.4 Reference to \$ or money in this Agreement is to Australian dollars.

4. FUNDING

- 4.1 Council will provide the Funding to the Recipient, and in consideration, the Recipient will comply with the conditions imposed by Council under this Agreement.
- 4.2 The Recipient must only use the Funding towards the operation (including but not limited to the promotion, planning, registration, and implementation) of the Event or Project.
- 4.3 Council will provide the Funding to the Recipient in accordance with the Funding Schedule subject to the Recipient
 - (a) providing a valid Tax Invoice (unless GST is not applicable, upon which the Recipient will provide Council with an invoice) for the Funding; and
 - (b) demonstrating to Council’s satisfaction and providing evidence to Council of same, that the Funding is due and payable by Council.

4.4 Notwithstanding Clause 4.3:

Where the Recipient's expenditure for a particular Event or Project is less than the amount of Funding allocated for that Event or Project, or Council has provided Funding to the Recipient which the Recipient has not outlaid on the Event or Project,

- (a) Council will only provide the Recipient with the portion of Funding that is equal to the Recipient's expenditure for that Event or Project; OR
- (b) Council may require the Recipient deduct or set off the portion of Funding that is equal to the Recipient's expenditure for that Event or Project against a future Funding for an Event or Project; OR
- (c) if Council has already provided the full amount of Funding, then Council may require the Recipient to repay to Council unexpended Funding.

4.5 Where the Recipient's expenditure for a particular Event or Project Milestone is more than the amount of Funding allocated for that Event or Project Milestone, the Recipient must bear the difference between these amounts.

5. EVENT OR PROJECT; APPROVALS

5.1 The Recipient must:

- (a) complete the Event or Project during the Term;
- (b) conduct the Event or Project in accordance with the details set out in the Recipient's Application (although the Recipient may make minor changes to the Event or Project without Council's consent if such changes do not alter the level of community benefit that the Event or Project will deliver compared to that contained in the Recipient's Application);
- (c) obtain, maintain, hold and comply with all Approvals required for the Event or Project;
- (d) use its best endeavours to promote the Event or Project to potential participants within a reasonable time before the Event or Project is held;
- (e) conduct the Event or Project in accordance with good industry practice, professionalism and competence and in a manner that protects people and property, prevents injury to or death of persons, and prevents damage to property;
- (f) conduct the Event or Project in compliance with all Laws including the Safety Laws and in accordance with the requirements of all applicable Authority;
- (g) conduct the Event or Project in a manner that discharges its obligations for the health and safety and security of all persons and members of the public under its duty of care at common law and all applicable Approvals and Laws; and
- (h) comply with any reasonable requests or directions by Council in respect of the Event or Project.

5.2 The Recipient must provide, or must procure the provision of, the Partnership Benefits to the Council during the Term.

5.3 The Recipient warrants to Council that the contents of the Recipient's Application (subject to any change under clause 5.1(b)), reports and all other information provided by it to Council are true and correct, and the Recipient must notify Council within 24 hours of any changes to the details of these.

- 5.4 Each party warrants to the other party that:
- (a) Such party has the full right and legal authority to enter into and fully perform this Agreement in accordance with its terms;
 - (b) This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against it in accordance with the terms hereof;
 - (c) Neither the execution, delivery nor performance of this Agreement by such party breaches or violates, or will breach or violate any other agreement or obligation to which such party is a party or to which it is bound; and
 - (d) Such party is duly organised and validly existing under the laws of its jurisdiction of incorporation or formation, with full power and authority to conduct its business as it is now being conducted and to own or to use the properties and assets that it purports to own or use.

6. REPORTING

- 6.1 Prior to the Commencement Date, the Recipient must conduct, on terms satisfactory to Council, a thorough assessment of risks of any nature in respect of the Event or Project which could impose liability on the Recipient, and provide a report detailing these risks to Council.
- 6.2 The Recipient must maintain and retain, for seven (7) years following the Event or Project, accurate records of the information described in clause 6.3(a) and (c).
- 6.3 Within twelve (12) weeks of the completion of the Event or Project, the Recipient must provide, on terms satisfactory to Council, a final report to Council containing the following in respect of the Event or Project:
- (a) the income, expenditure and any other details necessary to ascertain the financial performance of the Event or Project;
 - (b) statistical data in respect of the participants and spectators at the Event or Project (including the number of and locality of these persons) and other pertinent details regarding the Event or Project;
 - (c) a financial statement (including evidence of expenditure reports);
 - (d) a report quantifying the performance of the Event or Project (both financial and otherwise) against the projections and Key Performance Indicators;
 - (e) economic impact summary to the region;
 - (f) any other pertinent information in respect of the performance of the Event or Project (including but not limited to copies of media coverage, date list of television and radio interview and publications regarding the Event or Project).
- 6.4 Council may at any time during the Term reasonably request that the Recipient provide to it other details in respect of the Event or Project and the Recipient must promptly comply with any such request to the extent the Recipient is reasonably able to do so.
- 6.5 To the extent Council has prior written approval from the Recipient, Council may use the Recipient's reporting information and any other details in respect of the Event or Project for any promotional and other purposes as Council considers appropriate.

7. PUBLICITY AND PROMOTION

- 7.1 The Recipient must gain approval from the Council for use of Council's Logo on promotional material prior to use.
- 7.2 The Recipient will promptly provide Council with copies of all promotional material.
- 7.3 **(Promotional material – by Council)** All promotional material provided by or on behalf of, or to be used for, Council in connection with this Agreement are subject to Recipient's prior written approval, which will not be unreasonably withheld. Council shall send all such approval requests to the "Approvals" email address in Exhibit A and any approval will be subject to the terms of Exhibit A including for deemed approvals. Any such item rejected by Recipient shall not be used.
- 7.4 All artwork and copy for signs are subject to the written approval of Recipient *prior* to commencement of sign writing.
- 7.5 **(Promotional material – generally)** All promotional material generated or used by either party in connection with this Agreement or any Event or Project must not include references likely to offend the general public or to reflect unfavourably on the good name, goodwill, reputation and image of either party, or, their respective affiliates, any Event or Project, or any of such entity's brand, race, or event, or be contrary to any applicable Law.
- 7.6 **(Event Marks)** During the Term, Council will have a limited, non-exclusive license to use the logos, names or marks pertaining to the Event (collectively, the "**Event Marks**"), provided that:
- (a) such use is solely for purposes of advertising Council's sponsorship of the Events; and
 - (b) such use complies fully with the terms of this Agreement, including without any limitation, Exhibit A.
- 7.7 **(Event Photos, Photo Licence)** During the Term and for 2 years after end of the Term, Recipient grants Council, and Council accepts, a license to use any Event Photos as may be provided by Recipient (in Recipient's discretion) to Council for editorial purposes or as may be sourced (at Council's cost and subject to Recipient's approval) from Recipient's official third-party photo service provider for editorial or other Recipient approved purposes, in each case, provided that:
- (a) such use is solely for purposes of advertising Council's sponsorship of the Events;
 - (b) such use is subject to Recipient's prior written approval, which will not be unreasonably withheld. Council shall send all such approval requests to the "Approvals" email address in Exhibit A and any approval will be subject to the terms of Exhibit A including for deemed disapprovals; and
 - (c) such use is subject to Recipient's third-party photo service provider's terms and conditions (if such Event Photos were sourced from them) ("**Photo License**").
- 7.8 Council shall not transfer, assign or sub licence the Photo License. The Photo License expires 2 years after the end of the Term.
- 7.9 To avoid doubt, any Event Photos purchased by Council are not subject to the Photo Licence.

8. INSURANCE AND LIABILITIES

- 8.1 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 incidence, with a reputable insurer approved by Council, in respect of the Recipient's activities and potential liabilities to Council and third parties under this Agreement and the Recipient must cause Council's interests to be noted on its relevant insurance policies. The Recipient must provide Council with evidence of these insurances prior to the Commencement Date.

- 8.2 Council will not in any way be liable to the Recipient for loss, claim or damage the Recipient suffers in connection with this Agreement to the extent any such loss, claim or damage is not caused by the intentional, reckless, or negligent conduct of Council.
- 8.3 The Recipient releases, discharges and indemnifies Council and its officers, employees, agents, independent contractors, volunteers, invitees, assigns and successors in title against all losses, claims and damages brought against, made upon or incurred by Council in connection with:
- (a) any breach of this Agreement by Recipient including any failure to comply with Laws by the Recipient or its officers, employees, agents, independent contractors, volunteers, invitees, assigns and successors in title;
 - (b) any negligent act or omission or wilful misconduct of the Recipient or its officers, employees, agents, independent contractors, volunteers, invitees, assigns and successors in title; and
 - (c) any breach of any warranty,
- except to the extent that a loss, claim, or damage is due to any intentional, reckless, or negligent conduct of Council.

9. DEFAULT AND TERMINATION

- 9.1 The obligations set out in Clauses 4 (Funding), 5 (Event or Project), 6 (Reporting), 8 (Insurance and Liabilities) and 10 (Assignment) are essential terms of this Agreement. The failure to label a clause as being essential does not in itself preclude that clause from being an essential term.
- 9.2 Where a party (“defaulting party”) fails to:
- (a) comply with an essential term of this Agreement; or
 - (b) comply with any other term of this Agreement and fails to remedy that non-compliance within 4 Business Days after receiving notice from the other party (the “non-defaulting party”) to do so,
- then the non-defaulting party may immediately terminate this Agreement by giving written notice to the defaulting party.
- 9.3 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;
 - (b) Subject to clause 10, without the prior consent of Council, which consent will not be unreasonably delayed or withheld, the beneficial ownership of the Recipient changes; or
 - (c) the Recipient is or becomes subject to any Insolvency Event during the Term,
- then Council may immediately terminate this Agreement by giving written notice to the Recipient.
- 9.4 Notwithstanding anything to the contrary herein, the Recipient may immediately terminate this Agreement at any time if the Recipient gives written notice to Council that the Recipient has determined, in its reasonable judgment and despite its best endeavours, the following has occurred:
- (a) revocation or cancellation of, or failure to timely obtain, any Approvals necessary to operate such Event or Project;

- (b) an insufficient number of paid entries or sponsorships received for the Event or Project such that the Event or Project is unlikely to be profitable to the Recipient;
- (c) an occurrence of a condition with respect to the venue that could jeopardize the practicability of conducting such Event or Project as planned, or that could create a safety risk for any Event participants or other Event or Project visitors;
- (d) a determination by the Recipient, acting reasonably that such Event or Project needs to be relocated from the venue; or
- (e) Council (i) changing the venue, (ii) requiring the Recipient to change the date of an Event or Project after the date of such Event or Project has been agreed upon by the parties and/or publicly announced, or (iii) refusing to consent to a reasonable request by the Recipient to change the date of an Event or Project.

9.5 Upon termination of this Agreement, Council will not be required to provide any further Funding to the Recipient and Recipient may retain any Funding received by it from Council for the Event or Project up to the date of termination under this Clause 9.

9.6 The parties' rights under this clause are in addition to that at Law.

10. ASSIGNMENT

10.1 Subject to clause 10.2, this Agreement may not be assigned by either party without the other party's prior written consent, which consent may not be unreasonably withheld but may be granted with any conditions that that party may reasonably impose.

10.2 Any change of ownership as a result of a public offering will not be treated as assigning this Agreement.

11. FORCE MAJEURE

11.1 If either party is rendered unable, wholly or in part, by an event of Force Majeure to carry out or observe any of its obligations under this Agreement, that party shall give to the other party prompt written notice providing full details of the event of Force Majeure.

11.2 Subject to Clause 11.1, the obligations of affected parties under this Agreement, to the extent affected by Force Majeure, will be suspended and no claim by either of the parties against the other party will avail by reason of such Force Majeure provided that the affected party must, to the extent practicable, take all reasonable steps to remove the Force Majeure as soon as possible. Such reasonable steps will not require such party to settle any reasons for the Force Majeure on unfavourable terms.

11.3 On completion of the event of Force Majeure the party affected must, as soon as reasonably practicable, recommence the performance of its obligations under this Agreement.

11.4 This clause 11 applies to an obligation to pay money.

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

A notice will be deemed to be served on a party if it is addressed to that party at its Address for Service (and if the notice is to be served on the Recipient, marked to the attention of the Chief Legal Officer) and it is delivered by email. A notice given by email is deemed to have been delivered on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered. The parties consent, for the *Electronic Transactions (Queensland) Act 2001* (Qld), to the issue or giving of information or notices under this Agreement by email.

14. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties in relation to the subject matter of this Agreement.

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 FEES

- 16.1 Each party is responsible for its own legal fees 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. DUTY

Any taxes, duties, customs fees, foreign exchange or other transaction charges in connection with this Agreement are payable by the Recipient.

18. DISPUTE RESOLUTION

- 18.1 If a dispute arises in connection with this Agreement, then a party may only deal with that dispute in the manner set out in this clause.
- 18.2 A party to a dispute which arises in connection with this Agreement may give to the other party or parties to the dispute a notice specifying the dispute and requiring its resolution under this clause.
- 18.3 Within fourteen (14) days after a notice is given under Clause 18.2 of this clause (or such longer period as is agreed in writing by the parties to the dispute), each party to the dispute must use its best efforts to resolve the dispute in good faith.
- 18.4 If the dispute is not resolved within the period under clause 18.3, any party may take legal proceedings to resolve the dispute.
- 18.5 The parties must continue to perform their obligations under this Agreement notwithstanding the existence of a dispute.
- 18.6 The provisions of this clause do not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

19. RELATIONSHIP OF PARTIES

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

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 Subject to clause 21.2, other than as provided in this Agreement (or as required by law, court order or to its professional advisors), neither party may disclose the terms of this Agreement or any information disclosed by one party to another under this Agreement, to any third party without the other party's prior written consent.

21.2 Council may:

- (a) disclose information regarding this Agreement to a Minister, their advisors or Parliament, or as required under the *Right to Information Act 2009* (Qld); and
- (b) may publish information about this Agreement on the Local Government's contract directory, where required or recommended by the Local Government Act, Regulation or procurement policy.

21.3 This clause survives the termination of this Agreement.

22. PRIVACY

22.1 If the Recipient collects or has access to Personal Information in order to perform this Agreement, when performing this Agreement, the Recipient must:

- (a) if Council is an 'agency' for the Information Privacy Act, other than for Chapter 3 of the Information Privacy Act – comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to Council, as if the Recipient were Council; or
- (b) otherwise – comply with the Australian Privacy Principles in the Privacy Act.

22.2 The Recipient must:

- (a) not transfer any Personal Information collected or accessed in connection with this Agreement, outside of Australia, except in accordance with applicable laws; and
- (b) take any commercial reasonable steps to prevent unauthorised use or disclosure of Personal Information collected or accessed in connection with this Agreement that are reasonably notified by Council.

23. INTELLECTUAL PROPERTY RIGHTS

- 23.1 **(Existing Intellectual Property Rights)** Each party retains all its Intellectual Property Rights which existed at the Commencement Date, or which are developed independently of this Agreement. Unless expressly stated otherwise, nothing in this Agreement is intended to give Intellectual Property Rights from one party to another.
- 23.2 **(New Intellectual Property Rights)** New Intellectual Property Rights created or developed in performing the Agreement will be owned by the party creating those rights.
- 23.3 **(Warranty)** Each party warrants to the other that, to the best of its knowledge, and subject to any express exclusions in this Agreement, the performance of this Agreement will not infringe the Intellectual Property Rights or other rights of any third party.
- 23.4 **(Infringement)** If a party suspects or becomes aware that the performance of this Agreement infringes any third party's Intellectual Property Rights, then the party must immediately notify the other party of the actual or potential infringement.
- 23.5 **(Photographs)** The Recipient acknowledges that Council may produce its own photographs and footage of the Event or Project and that copyright in those photographs or video is legally and beneficially owned by Council. Such photographs and footage may only be used subject to the conditions set forth in Clause 7.8(a) and (b).

Schedule 1: EG Format of Tasks associated with show.**TASKS FOR MOSSMAN SHOW**

Task	Dates	Who	Notes	Task # / Quote
Hire of Coronation Park from (Sunday preceding the show to the Friday after)				

Works to be carried out one month before Show:

Erect two frames for sugar cane exhibits (each one 2m H x 6m Long) in area in front of Victor Crees Pavilion.				
Check all lighting and power supply for problems/issues and rectify as required.				
Spray animal stalls for pests. Place sand/crusher dust in boggy areas if required.				
Fill potholes and holes in ground (particularly area west of Grandstand).				

Works to be carried out two weeks before Show:

Conduct routine ground maintenance.				
Mow grounds and pressure clean concrete walkways around canteen area				
Slash Adjoining grounds for parking				

Works to be carried out on Friday Before Show:

Erect safety fencing where required Set up for woodchops (Expose and dig out metal anchors)				
Remove Logs plus woodchips				

After show

To clean up showgrounds and pick up all rubbish after the show				
Supply and spread topsoil where required, after show.				
Clean up woodchip area				

Executed As An Agreement

SIGNED for and on behalf of DOUGLAS SHIRE)
COUNCIL by its duly authorised representative,)

in the presence of:)

Witness)

(Please Print Full Name)

) _____
) Michael Kerr
) Mayor
) Signature Dated: ____/____/____
)
)
)
) _____
) Mark Stoermer
) Chief Executive Officer
) Signature Dated: ____/____/____
)
)
)
) _____
) Witness Signature
) Signature Dated: ____/____/____

EXECUTED on behalf of the Recipient by its)
Authorised Officer)

in the presence of:)

Witness)

(Please Print Full Name)

) _____
) Name:
) Title:
) Signature Dated: ____/____/____
)
)
)