



Late Agenda Items Ordinary Meeting of Council

Tuesday 28 April 2020

Ordinary Meeting 6.00pm

Council Chambers, Civic Centre,
Stuart Highway, Katherine

- 15.1 Funding and Management of Katherine CBD and Hot Springs Revitalisation
Projects _____ 1-13
- 15.2 KTC Showgrounds – Replace Non-Compliant Underground Cables and
Switchboard _____ 14-16



FOLDER: Local Governance / Council Meetings / Funding Agreement

MEETING: ORDINARY MEETING OF COUNCIL – 28 APRIL 2020

REPORT TITLE: FUNDING AND MANAGEMENT OF KATHERINE CBD AND HOT SPRINGS REVITALISATION PROJECTS

Purpose of the Report

To seek Council approval to accept the Deed of Agreement Funding and Management of Katherine CBD and Hot Springs Revitalisation Projects and authorise the Mayor and CEO to affix the common seal and sign the Agreement.

Background

On 14 August 2017 the Council and the Territory entered into an agreement titled “*Capital Grant Funding Agreement*” for the Hot Springs Revitalisation Project, for \$797,200.

On 25 June 2018 the Council and the Territory entered into an agreement titled “*Funding and Project Management Agreement*” for the CBD Project, for \$5,000,000.

By an exchange of letters, the Council and the Territory agreed that \$1,500,000 of the \$5,000,000 in Funding set out in the CBD Agreement would be transferred to the Hot Springs Project in order to facilitate its completion of the milestones.

The “*Funding and Management of Katherine CBD and Hot Springs Revitalisation Projects*” Agreement confirms the contractual arrangements and variations to the Agreements.

Report

In order to formalise the acceptance of the “*Funding and Management of Katherine CBD and Hot Springs Revitalisation Projects*” Agreement, Council will need to affix the common seal and authorise the Mayor and CEO to sign the Agreement.

OFFICER RECOMMENDATION

That it be recommended to Council that:

- Council accept the “*Funding and Management of Katherine CBD and Hot Springs Revitalisation Projects*” Agreement and authorise the Mayor and CEO to affix the common seal and sign the Agreement.

A handwritten signature in black ink, appearing to be 'Ian Bodill', written over the list item.

Ian Bodill
CHIEF EXECUTIVE OFFICER

Delegation: Chief Operations Officer – Claire Johansson
Schedule of Attachments: Funding and Management of Katherine CBD and Hot Springs Revitalisation Projects Agreement

DEED OF AGREEMENT FUNDING AND MANAGEMENT OF KATHERINE CBD AND HOT SPRINGS REVITALISATION PROJECTS

BETWEEN:

**NORTHERN TERRITORY OF AUSTRALIA CARE OF ITS AGENCY THE
DEPARTMENT OF INFRASTRUCTURE, PLANNING AND LOGISTICS**

AND:

KATHERINE TOWN COUNCIL

DATED THE _____ DAY OF _____ 2020

Solicitor for the Northern Territory

68 The Esplanade, Darwin

Telephone: 08 8935 7809

File reference: 20193176

Document reference: Deed of Agreement – Funding and Management of Katherine CBD and Hot Springs Revitalisation Projects

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DRAFT

DETAILS

PARTIES

NORTHERN TERRITORY OF AUSTRALIA care of its agency the Department of Infrastructure, Planning and Logistics (ABN 84 085 734 992) ("Territory/ DIPL")

Address for service of notices: Contact Person: Mr Andrew Kirkman, Chief Executive Officer
Department of Infrastructure, Planning and Logistics
Physical address: Level 5, Energy House
18-20 Cavenagh Street, Darwin NT 0800
Postal address: GPO Box 1680, Darwin NT 0801
Telephone: 08 8927 7029
Email: Andrew.kirkman@nt.gov.au

AND

KATHERINE TOWN COUNCIL (ABN 47 836 889 865) ("Council")

Address for service of notices: Contact Person: Mr Ian Bodill, Chief Executive Officer
Katherine Town Council
Physical address: Civil Centre
Lot 1865 Stuart Highway, Katherine NT 0850
Postal address: PO Box 1071, Katherine NT 0851
Telephone: 08 8972 5515
Email: ceo@ktc.nt.gov.au

BACKGROUND

- A. On 14 August 2017 the Council and the Territory (the "parties") entered into an agreement titled "*Capital Grant Funding Agreement*" ("**Hot Springs Agreement**", a copy of which appears at Attachment A). The Hot Springs Agreement sets out the arrangements for the provision of Funding to the Council for the Katherine Hot Springs Revitalisation Project ("**Hot Springs Project**"), in the amount of \$797,200.
- B. On 25 June 2018, the parties entered into an agreement titled "*Funding and Project Management Agreement*" ("**CBD Agreement**", a copy of which appears at Attachment B). The CBD Agreement sets out the arrangements for the provision of Funding to the Council for the Katherine CBD Revitalisation Project ("**CBD Project**"), in the amount of \$5,000,000.
- C. The Projects have not yet reached completion and the Council has not provided a statement acquitting the Funding (as set out in the respective Agreements).
- D. By exchange of letters, the parties agreed that \$1,500,000 of the \$5,000,000 in Funding set out in the CBD Agreement would be transferred to the Hot Springs Project in order to facilitate its Completion of the Milestones (as defined in the Hot Springs Agreement).
- E. Without any intention of the parties to avoid or negate any of the effect of the Agreements between the parties, it is the intention of the parties to clarify and amend the Agreements as set out in this Deed, so that, as at the date of this Deed, the arrangement between the

parties in respect of management of the Projects will be in accordance with the Agreements, as varied by this Deed.

F. The parties now wish to:

- (a) confirm and consolidate all of the contractual arrangements constituted by the Agreements; and
- (b) confirm certain variations to the Agreements, on the terms and conditions contained in this Deed.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

In this Deed, unless a contrary intention appears:

- (a)
 - (i) words and expressions defined; and
 - (ii) rules of interpretationin the Agreements have the same meaning in this Deed;
- (b) **Agreements** means the CBD Agreement and the Hot Springs Agreement
- (c) **CBD Agreement** means the agreement referred to in the Background at clause B, a copy of which appears at Attachment B;
- (d) **CBD Project** means the Project (as defined in the CBD Agreement);
- (e) **Deed** means this document, and a reference to a Background clause (recital), clause, schedule, item, attachment or annexure is a reference to a recital, clause, schedule, item, attachment or annexure of or to this Deed, and all recitals, clauses, schedules, items, attachments and annexures form part of this Deed;
- (f) **Hot Springs Agreement** means the agreement referred to in the Background at clause A, a copy of which appears at Attachment A;
- (g) **Hot Springs Project** means the Project referred to in the Background at clause A, (as defined in the Hot Springs Agreement);
- (h) **PCG** means the Project Control Group (as defined in the CBD Agreement); and
- (i) **Projects** means Hot Springs Project and the CBD Project.

1.2 Interpretation

- (a) This Deed is to be interpreted in accordance with clause 1.2 of the Agreements, unless a contrary intention appears.

2. CONFLICT AND PRECEDENCE

2.1 Conflict Within this Deed

If there is a conflict between any Background clause (recital), clause, schedule, item, attachment or annexure in this Deed, the provisions or documents will be interpreted in the following order of priority from highest to lowest, and the terms of a higher ranked provision or document will prevail over a lower ranked provision document to the extent of the inconsistency:

- (a) clauses of this Deed;

- (b) Background clauses (recitals);
- (c) attachments or annexures;
- (d) documents incorporated into this Deed by reference.

2.2 Conflict Between Deed, Hot Springs Agreement and CBD Agreement

If there is a conflict between the terms of any of the following documents, the documents will be interpreted in the following order of priority from highest to lowest, and the terms of a higher ranked document will prevail over a lower ranked document to the extent of the inconsistency:

- (a) this Deed;
- (b) the Agreements.

3. CONFIRMATION

3.1 Adoption of Background

The parties acknowledge the accuracy of the Background (recitals), and the Background is incorporated into and forms part of the terms of this Deed.

3.2 Confirmation of Agreements and Incorporation of Deed

- (a) Without any intention of the parties to avoid or negate the Agreements, the parties intend for this Deed to clarify and amend the Agreements so that, as at the date of this Deed (being the date this Deed is executed by the last party to do so), the arrangement between the parties is in accordance with the terms and conditions as set out in this Deed.
- (b) This Deed is to be read and construed with the Agreements, and all provisions of this Deed which are capable of being incorporated into the Agreements are hereby incorporated.
- (c) The parties confirm the terms and conditions of the Agreements, and all of the terms and conditions of the Agreements not varied by this Deed shall continue in full force and effect.
- (d) The parties agree that of the \$5,000,000 in Funding paid by the Territory to the Council under the CBD Agreement, the Council will spend:
 - (i) \$3,500,000 on the CBD Project under the CBD Agreement; and
 - (ii) the balance of \$1,500,000 on the Hot Springs Project under the Hot Springs Agreement.
- (e) The Council will expend a total of \$2,300,000 in funding from the Territory on the Hot Springs Project under the Hot Springs Agreement, being \$800,000 already expended and the additional \$1,500,000.
- (f) The parties confirm that the Territory is not providing Funding (as set out in the Agreements) beyond the amounts already provided in the Agreements.

4. REPORTING

- (a) The Council must acquit the Hot Springs Funding of \$2,300,000 and the CBD Funding of \$3,500,000 under the respective Agreements.

5. VARIATIONS TO THE HOT SPRINGS AGREEMENT

- (a) Notwithstanding the provisions of the Hot Springs Agreement (including clause 5), the Council will complete the following Milestones:

- (i) landscaping to playground area and Gabion walls, and concrete paving to the upper level by 31 July 2020 and
- (ii) demolition and bulk excavation to Gabion Tiers 2 and 3, construction of a new Tier 3, remedial works to Tiers 1 and 2, and hand railing to Tiers 1, 2 and 3 by 31 July 2020

6. VARIATIONS TO THE CBD AGREEMENT

6.1 General

- (a) The parties acknowledge that at the time they entered into the CBD Agreement, the intention was that DIPL (the Territory) was to project manage the CBD Project for the Council.
- (b) Notwithstanding the provisions of the CBD Agreement (including clauses 3, 4, 5 and 7), the Council has project managed the CBD Project itself, with DIPL acting in a secondary role as a PCG member only.
- (c) The parties agree that the:
 - (i) Funding (as defined in the CBD Agreement) will remain with the Council;
 - (ii) Council will carry out the CBD Project, engage contractors, and have full control and management of the CBD Project to the standard set out in clause 4.1(a) of the CBD Agreement;
 - (iii) Council is responsible for the payment of contractors it engages to carry out the CBD Project;
 - (iv) Chief Executive Officer of the Council will chair all future PCG meetings;
 - (v) Territory will be a member of the PCG and have oversight of the Project;
 - (vi) The Territory is not required to provide any reports to the Council or the PCG;
 - (vii) Territory will not provide the Council with a Project Plan;
 - (viii) Council will not pay DIPL a Project Fee; and
 - (ix) Council will report monthly to the PCG.
- (d) The parties will continue to comply with all other provisions of the CBD Agreement as far as possible, except where a provision conflicts with the terms of this Deed.

6.2 Council Warranties and liability

- (a) Clause 16 of the CBD Agreement is deleted and replaced with:
 - “(a) The Council warrants that:*
 - (i) the Site is, and will at all times be, fit for the purposes of carrying out the Project;*
 - (ii) the undertaking of the Project does not, and will not, infringe any condition of ownership or occupation of the Site;*
 - (iii) any use of the Site for the Project does not, and will not, infringe any legislative requirements; and*
 - (iv) the Site, after completion of the Project, will comply with all Australian Standards and any other standards or requirements which relate to the ongoing use of the Site for the purposes of this Agreement.*
 - (b) During the Project, the Council must safeguard the Site against loss, damage or unauthorised use, and maintain the Site in good condition.*

- (c) *The Council must not assign, transfer, abandon or otherwise dispose of the Site or the Council's right to occupy the Site at any time during the Project without the prior written approval of the Territory. The Territory may give approval subject to any conditions, including the condition that part or all of the Funding must be repaid to the Territory.*
- (d) *Except with the Territory's prior written approval, the Council must not use the Site as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest."*

7. GST (GOODS AND SERVICES TAX)

- (a) Any term used in this clause that is referred to in *A New Tax System (Goods and Services Tax) Act 1999* will have the meaning which it has in that Act.
- (b) The parties acknowledge that the consideration under both Agreements, as varied by this Deed has been set exclusive of GST.
- (c) Where the consideration under this Deed becomes subject to GST, for whatever reason, the following will apply:
 - (i) the consideration under this Deed payable after the date the consideration becomes subject to GST will be increased by an amount equal to the relevant consideration multiplied by the appropriate GST Rate; and
 - (ii) the Supplier will provide the Recipient with a tax invoice and/or adjustment notes in relation to the Supply prior to an amount being paid by the Recipient under this Deed and will do all things reasonably necessary to assist the Recipient to enable it to claim and obtain any Input Tax Credit available to it in respect of a Supply; and
 - (iii) if the Supplier subsequently ceases to be registered for GST, the Supplier must immediately notify the Recipient in writing of that fact, and must repay to the Recipient within ten (10) Business Days an amount equal to 1/11 of the relevant amount paid, less the actual GST incurred by the Supplier.

8. DISPUTE RESOLUTION

8.1 Disputes

Each party must follow the procedures in this clause 8 before starting court proceedings (except for urgent injunctive or declaratory relief).

8.2 Notice of Dispute

Any party who wishes to claim that a dispute has arisen in respect of the matters set out in this Deed or the Agreements must give written notice to the other party setting out details of the dispute.

8.3 Meeting of Parties

Within 5 Business Days of the provision of the written notice, the parties must meet to take whatever actions or investigations as each deems appropriate, in order to seek to resolve the dispute, including by:

- (a) referring the matter to personnel who may have authority to intervene and direct some form of resolution; and/or
- (b) attempting to agree upon a process for resolving the whole or part of the dispute through means other than litigation, such as further negotiations, mediation, conciliation or independent expert determination.

8.4 Appointment of Mediator

- (a) If the dispute is not resolved within the following five (5) Business Days (or within such further period as the parties may agree is appropriate) then one or both parties will nominate a mediator to determine the Dispute.
- (b) If the parties fail to agree to the identity of a mediator within five (5) Business Days of a party nominating a mediator, then either or both of the parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate a mediator to mediate the Dispute.
- (c) It is a condition precedent to the right of either party to commence litigation other than for interlocutory relief that it has first offered to submit the dispute to mediation.

8.5 Legal Proceedings

If the alternative process for resolving the dispute (such as further negotiations, mediation, conciliation or independent expert determination) fails, or if either party states that it does not wish to proceed with such alternative processes or the parties cannot otherwise agree on such an alternative process, then either party may commence legal proceedings against the other.

8.6 Parties to Perform Obligations

Notwithstanding the existence of a dispute, each party must continue to perform its obligations under the Arrangement.

9. GENERAL

9.1 No Merger

Notwithstanding the termination or sooner expiry of the Agreements, all provisions of the Agreements and this Deed which are capable of taking effect after termination or sooner expiry will continue to remain in full force and effect.

9.2 Entire Agreement

The arrangement constituted by the Agreements and this Deed constitutes the entire agreement between the parties, and overrules any previous agreement or understandings between the parties in relation to its subject matter.

9.3 Amendments

This Deed cannot be amended or added to unless the amendment or addition is in writing and signed by all of the parties.

9.4 Counterparts

This Deed may be signed in any number of counterparts and all such counterparts when taken together constitute one instrument.

SIGNING

Executed by the parties as a Deed:

SIGNED by)
(print name))

for and on behalf of the **NORTHERN TERRITORY**
OF AUSTRALIA care of its agency the Department
of Arts and Museums pursuant to a delegation)
under the *Contracts Act* in the presence of:)

.....
Signature

) Date: 2020

.....
Signature of Witness

.....
Name of Witness

The **COMMON SEAL** of the **KATHERINE**)
TOWN COUNCIL was hereto affixed in)
accordance with section 26(2) of the *Local*
Government Act 2008 in the presence of:)
)

Date: 2020

.....
Signature of Chief Executive Officer

.....
Signature of Council member

.....
Print name of Chief Executive Officer

.....
Print name of Council member

ATTACHMENT A

HOT SPRINGS AGREEMENT

DRAFT

ATTACHMENT B

CBD AGREEMENT

DRAFT



REPORT

FOLDER: Local Governance/Council Meetings/Reports to Council/Chief Executive Officer

MEETING: Ordinary Meeting of Council - 28 April 2020

REPORT TITLE: KTC Showgrounds - Replace Non-compliant Underground Cables and switchboard

Purpose of Report

Council is requested to consider providing delegation to the CEO for obtaining quotes for replacing non-compliant underground cables and switchboard at the showgrounds and completing the job.

Background

It is not sure when the non-compliant underground cables and switchboard were placed at the showgrounds. These were recently unearthed when work began with the electrical and hydraulic works as part of the showgrounds project. Some estimates are that the non-compliant works may have been there for up to fifteen years.

Report

It is believed that it is not an option to leave the cables and switchboard as they are, and that from a safety perspective they will need to be replaced as soon as is practicable.

It is believed that modifying the switchboards would be time-consuming and costly and not viable verses installing new switchboards.

It is therefore considered that three quotes be received to complete the job as follows:

The following are the details:

Trench 235m of underground mains cables 1000mm deep using Hydro-excavation. Quote will include supply of all conduits, cables, excavation (hydro & Mechanical), excavator & bobcat hire etc. Remove all existing cables from ground during excavation process (cable cannot be re-used).

Replace all underground cables including Hydro-Excavation & mechanical excavation to 1.0m deep including cables, conduit and new Switchboards and outlets including RCD protection.
(See attached standard)



REPORT

OFFICER RECOMMENDATION

That it be recommended to Council:

That Council authorises the CEO to obtain three quotes and complete the job including replacement of the switchboard/s as required and that the funding of the job be re-allocated from council reserves.

A handwritten signature in black ink, appearing to be "Ian Bodill", written over a large, stylized "Q" or "R" shape.

Ian Bodill

CHIEF EXECUTIVE OFFICER

Delegation: Nil
Attachments: AS/NZS 3002:2008 – Electrical installations – Shows and Carnivals

SECTION 2 PERMANENT SITE LOW - VOLTAGE ELECTRICAL INSTALLATION

2.1 METHOD OF SUPPLY

2.1.1 General

The permanent low-voltage electrical installation to any concession shall be in accordance with AS/NZS 3000, and the additional requirements of this Section.

2.1.2 Underground wiring

Underground wiring within a show or carnival site should, where possible, be installed where pegs or anchor stakes are not likely to be driven. For example, outside of the area of all concessions.

If installed where pegs or anchor stakes not exceeding 400 mm are reasonably expected to be used, the relevant requirements of AS/NZS 3000 shall apply.

Where pegs or anchor stakes exceeding 400 mm are reasonably expected to be used, the following requirements shall apply in addition to those of AS/NZS 3000—

- (a) the cable shall be located at a depth of not less than 1.0 m; or
- (b) where the depth of burial is less than 1.0 m, mechanical protection greater than that required by AS/NZS 3000 shall be provided by—
 - (i) a continuous pour of concrete, which shall—
 - (A) be placed not more than 75 mm above the wiring system; and
 - (B) have a thickness of not less than 100 mm; and
 - (C) be not less than 150 mm wide and overlap the wiring system by at least 40 mm on each side; or
 - (ii) an alternative that provides an equivalent level of mechanical protection detailed in (i) above; or
- (c) where rock is encountered closer to the surface than 1.0 m, the cable may be enclosed in heavy gauge galvanized steel tube or heavy duty insulating conduit installed in a Category C underground wiring system as specified in AS/NZS 3000; or
- (d) supplementary protection of the underground site supply by an RCD Type S with a maximum rated residual current of 100 mA

NOTE: It is expected that pegs or anchor stakes longer than 400 mm would only be used on sites that have extreme weather exposure or where cyclonic wind conditions are expected. However, some larger marquees such as circus tents may use pegs longer than 400 mm.

2.1.3 Overhead wiring

Overhead wiring in areas where concessions may be located or vehicles may be parked or driven shall be installed so that electrical cables are maintained at a height of not less than 6 m above the ground or relevant elevated area. The overhead wiring should be positioned to avoid crossing roadways or access ways where cranes, high loads or heavy machinery may travel.

Where it is not possible to avoid access ways, two additional flagged cables or other material suitable for use as a catenary shall be installed across the access way, one on either side of the overhead wiring, and located 6 m along the access way from the overhead wiring and at a minimum of 0.6 m below the lowest point of the overhead wiring.