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## **AGREEMENT**

between

**STATE OF QUEENSLAND**

**acting through the Department of Transport and Main Roads**

and

**Sunshine Coast Regional Council**

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## AGREEMENT

### Cycle Network Local Government Grants Program

This Agreement is made this.....17<sup>th</sup>..... day of  
.....SEPT..... 2014.

**BETWEEN:** **THE STATE OF QUEENSLAND** acting through the Department of Transport and Main Roads, 85 George Street, Brisbane in the State of Queensland.

**['the State']**

**AND:** Sunshine Coast Regional Council a local government established under the *Local Government Act 2009* having its public office at 1 Omrah Avenue, Caloundra in the State of Queensland.

**['the Council']**

## RECITALS

- A.** The Council wishes to undertake the following projects:
- (i) Beerburrum Street Cycle Lanes Design & Construction;
  - (ii) Brisbane Road Cycleway Stage 4 Design & Construction;
  - (iii) Eudlo Creek Bridge Approaches Cycle Facilities Design & Construction; and
  - (iv) Windsor Road Cycle Lanes Design & Construction.
- B.** The estimated total cost for the Projects is detailed in Schedule 3.
- C.** The Council has requested a capital grant from the State under the Department of Transport and Main Roads Cycle Network Local Government Grants Program ['CNLGG'] to undertake and complete the Projects.
- D.** The State has assessed and weighted the Projects against the key selection criteria for projects funded by the CNLGG.
- E.** To promote and extend the cycle network in the Sunshine Coast Regional Council region, the State has agreed to make funding available to the Council in the sum detailed in Schedule 3 through the CNLGG in order to facilitate the Projects.
- F.** Over and above the State's contribution of the amounts detailed in Schedule 3, the Council will fund all other costs involved in the realisation of the Projects.

- G. The Parties have agreed to record the terms of their agreement in this Agreement.

## THE PARTIES AGREE AS FOLLOWS:

### 1. INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires or the contrary intention appears, the following terms shall have the meanings respectively assigned to them –

**'Adjustment Note'** has the meaning given by the GST legislation;

**'Agreement'** means this document and the Schedules to it;

**'CNLGG'** means the Department of Transport and Main Roads Cycle Network Local Government Grants Program;

**'Commencement Date'** means the date on which the last Party to this Agreement executes this Agreement;

**'Council'** means Sunshine Coast Regional Council its officers, employees, duly authorised agents, successors and assigns;

**'Deliverables'** means those obligations to be effected by the Council and services to be provided by the Council to the State for each relevant Project as specified in Schedule 2;

**'Ex gratia basis or ex gratia funding'** means a financial contribution made as a concession without legal compulsion or admission of liability;

**'Expiry Date'** means the date when the last Project in Schedule 3 is completed;

**'Facilities'** means the infrastructure constructed, used and maintained under Schedule 3 of this Agreement for which the State contributes the Funds in accordance with this Agreement and supporting infrastructure;

**'Final Project Report'** means a report for the relevant Project which includes a schedule of expenses, identifies how the Funds have been expended on that Project, the entire Project works undertaken, the time taken to complete the Project works, the Unexpended Funds and any other matters relevant to providing a full and complete financial appraisal of the Funds expended on the Project;

**'Funds'** mean those monies to be paid by the State to the Council under this Agreement to assist the Council to undertake and complete the Projects;

**'GST'** means any tax imposed on the supply of goods or services as defined under the GST legislation;

**'GST legislation'** means a tax imposed by A New Tax system (Goods and Services Tax) Act 1999 and all related ancillary legislation;

**'Incident Report'** means a report that details the media issue/incident or crisis about the relevant Project including copies of any newspaper articles and containing an outline of the known media interest;

**'Media Event'** means any launch, opening, event, activity, function or other promotional event about the Projects;

**'Media Release'** means any publications, promotional and advertising materials and public announcements or media statements about the Projects;

**'Milestone Completion Date'** means the dates for completion for each milestone in a relevant Project specified in Schedule 3 to this Agreement.

**'Minister'** means the Minister for Transport and Main Roads;

**'Parties'** means the State of Queensland acting through the Department of Transport and Main Roads and the Council, their employees, duly authorised agents, successors and assigns;

**'Progress Report'** means a report for the relevant Project identifying the works undertaken in the previous Quarter, the timeframe taken to reach each milestone, where a Milestone Completion Date has not been met the reason for failing to meet the Milestone Completion Date and where it is anticipated that a Milestone Completion Date will not be met the revised Milestone Completion Date;

**'Project'** means the feasibility study, planning, design and construction (or any part thereof) of the Facilities detailed in Schedule 3 to this Agreement described as either one or several individual projects, and any other supporting infrastructure provided for bicycle and pedestrian traffic in accordance with the Project Works Schedule;

**'Project Works Schedule'** means the schedule which has been approved by the State for each Project identifying the scope of the work to be undertaken, the manner in which that work is to be undertaken, the construction and design/planning works, commencement and completion dates for each Project, the relevant milestones, the Milestone Completion Dates and any other matter relevant to each Project;

**'Quarter'** means the periods 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December;

**'Statutory Approvals'** include -

- (a) Acts, ordinances, regulations, by-laws, local laws, orders, awards and proclamations of the jurisdiction where the construction of the Facility or particular part of it will be carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Projects; and
- (c) fees and charges payable in connection with the foregoing;

**'Tax Invoice'** has the meaning given by the GST legislation;

**'Unexpended Funds'** mean those Funds paid or payable by the State to the Council, in respect of each relevant Project, which are not required to successfully complete that Project, that is, the difference between the total costs of each Project and the Funds advanced in relation to each Project under this Agreement.

- 1.2 Any agreement on the part of two or more persons will be deemed to bind them jointly and severally.
- 1.3 A reference to a person includes a reference to corporations and other entities recognised by law.
- 1.4 The singular includes the plural and vice versa.
- 1.5 Words importing one gender shall include a reference to all other genders.
- 1.6 In this Agreement, the headings to the clauses have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.
- 1.7 A reference to a statute, regulation, ordinance or local law shall be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing the same.
- 1.8 This Agreement shall commence and take effect from the Commencement Date.

## 2. TERM

- 2.1 This Agreement will commence on the Commencement Date and will expire on the Expiry Date unless otherwise extended or terminated pursuant to this Agreement.
- 2.2 If work on a Project is delayed for any reason, the Council shall promptly notify the State indicating reasons for the delay, its actions to resolve the delay, the anticipated time of recommencement of work and will provide to the State revised Milestone Completion Dates for that relevant Project.

### 3. OBLIGATIONS OF THE COUNCIL

In consideration of the State providing the Funds to the Council, the Council acknowledges and agrees as follows:

- 3.1 The Council shall provide to the State the Deliverables detailed in Schedule 2 and report to the State in accordance with Project reporting requirements as defined in Clause 9. Failure to do so will constitute a material breach of this Agreement.
- 3.2 The Council acknowledges that the State does not owe, nor will it ever owe, to the Council or any other third parties any duties, liabilities, obligations or responsibilities in connection with any Project or the Facilities, including in relation to any encumbrances, current or in the future, over any Project or the Facilities and/or any obligations that may be owed or become owing to any mortgagee, owner, leaseholder, licensee, or to any other parties in connection with any Project or the Facilities by virtue of its agreement to provide Funds under this Agreement.
- 3.3 If the State provides the Funds for the Council to conduct feasibility studies and/or Project design, the Council acknowledges that the State is not legally responsible to fund any subsequent works to construct or perform any Project or the Facilities related to the feasibility study or which may be the subject of the design.
- 3.4 The Council acknowledges that the Funds shall be paid progressively in accordance with Schedule 1, Clause B subject to this Agreement and to the Council providing the following valid tax invoices to the State:
  - 3.4.1 within fourteen (14) days of the Commencement Date, an invoice for 50% of the Funds for each Project;
  - 3.4.2 within thirty (30) days of the commencement of site works for construction Projects or commencement of preparation of detailed plans for design and feasibility Projects, an invoice for 25% of the Funds for that Project; and
  - 3.4.3 within thirty (30) days of completing a Project in accordance with the Project Works Schedule and the terms of this Agreement, an invoice for 25% of the Funds for that Project less any Unexpended Funds.
- 3.5 The granting of the Funds to the Council is conditional on the Council:
  - 3.5.1 observing all relevant laws and obtaining all necessary Statutory Approvals and relevant State design standards and requirements;
  - 3.5.2 obtaining written approval from the State for the Project Works Schedule prior to commencement of construction;
  - 3.5.3 obtaining written approval from the State of the construction

- drawings and plans for the Project prior to commencement of construction;
- 3.5.4 conducting community and stakeholder (if applicable) consultation;
- 3.5.5 providing the Deliverables and completing the Projects prior to the relevant Project Completion Date;
- 3.5.6 allowing the State to conduct an independent audit of a Project before, during or after completion of that Project; and
- 3.5.7 complying with the terms and conditions of this Agreement.
- Failure to comply with this clause 3.5 will constitute a material breach of this Agreement.
- 3.6 Neither the granting nor the receipt of the Funds relieves the Council from obtaining or complying with all Statutory Approvals nor does the granting or receipt of the Funds imply that any Statutory Approvals will be granted, or that agencies will make policy decisions favourable to the Council or any Project.
- 3.7 The Council must not make announcements about the provision of the Funds by the State towards any Project or the involvement of the State with any Project without prior written agreement from the State.
- 3.8 The Council agrees to use the Funds solely and exclusively to undertake and complete the Projects in accordance with the Project Works Schedule.
- 3.9 The Council agrees to carry out the Projects in a manner that strictly complies with all relevant standards, including but not limited to:
- 3.9.1 Australian Standard, AS 5100 Bridge Design;
- 3.9.2 Guide to Road Design Austroads 2009;
- 3.9.3 Crime Prevention through Environmental Design Principles;
- 3.9.4 Queensland Cycle Network Directional Signage Guidelines;
- 3.9.5 *Disability Discrimination Act 1992 (C'th)*; and
- 3.9.6 any other relevant legislation.
- 3.10 The Council shall not, within five years of the completion of the Projects, decommission or reconstruct the completed Facilities funded by the State in accordance with this Agreement without the prior written consent of the State. This clause shall not apply to changes which expand the capacity of the Council's or the State's cycle network. This clause shall not apply to



works undertaken to maintain the Facilities in good order, renewal of the Facilities or replacement of 'like for like' components of the Facilities.

- 3.11 In the event of a breach of clause 3.10 of this Agreement, the Council shall be liable to repay a percentage of the Funds (to be agreed between the Parties) to the State.
- 3.12 If the Parties cannot reach the agreement required pursuant to clause 3.11 of this Agreement, the State may refer the dispute for mediation. The president from time to time of the Queensland Law Society will nominate an independent mediator to conduct the mediation, and the Parties will bear the costs of the mediation in equal shares.
- 3.13 The provisions of clauses 3.10 to 3.12 will survive the termination or expiration of this Agreement.
- 3.14 The Council acknowledges and agrees that it is committed to the expedition of connecting adjoining cycle networks to the Facilities (including design and feasibility of connecting those networks) and shall, at all times, act in a manner consistent with this commitment and do all acts that are reasonably necessary to bring about this objective.
- 3.15 The Council shall acknowledge the payment of the Funds by the State to the Projects through a number of communication mediums including onsite signage, Media Events and Media Releases. The form and content of such acknowledgements must be approved in advance by the State.
- 3.16 The Council shall not later than thirty (30) days prior to commencing construction work on each relevant Project under this Agreement install on-site signage in accordance with corporate templates provided by the State. The on-site signage shall remain on the site for a minimum of one (1) year after the Project has been completed unless otherwise agreed by the State.
- 3.17 The Council shall consult with the State about the staging of any Media Event at least fourteen (14) days prior to the Media Event. The Council shall provide to the State all material requested by the State in relation to the Media Event at least fourteen (14) days prior to the Media Event for the State's approval. The Council shall invite the Minister to the Media Event when requested by the State.
- 3.18 The Council must inform the State of any Media Release at least thirty (30) days prior to the release;
- 3.19 The Council must, in all Media Events and Media Releases, acknowledge the financial and other support received from the State:
- (a) by reference to the support including through statements which have been approved by the Minister; and
  - (b) through prominent display of the corporate templates provided by the State; and

(c) as otherwise approved by the State.

- 3.20 The Council shall account to the State, in accordance with clauses 8.4, 8.5 and 8.6, for the Unexpended Funds.
- 3.21 The Council authorises the State to include details of any Project and Funds in any internal or external reports, media statements or other publications at the discretion of the State.
- 3.22 The Council will be solely responsible for the management of the Projects, including any necessary ongoing funding for the Projects and any resultant Facilities.
- 3.23 The Council will accept full responsibility for general, structural and/or ongoing operation, maintenance of, and will be solely liable for any damage or loss incurred through use by the public of, any Projects or any resultant Facilities.

#### **4. OBLIGATIONS OF THE STATE**

- 4.1 Subject to the specific requirements of this Agreement and in particular Clauses 3, 4, 7 and 9, the State will contribute to the Council, on an ex gratia basis, the Funds detailed in Schedule 3 to this Agreement to financially assist the Council to meet the expense of undertaking and completing the Projects provided that:
- 4.1.1 the Council will meet any Project costs over and above the Funds paid by the State; and
- 4.1.2 the State is not, nor will ever be, liable for any monies expended by the Council on:
- (a) the management, control and administration of any Project;
  - (b) general and or structural maintenance of any Project;
  - (c) any administration or other costs incurred in managing, controlling, maintaining and/ or administration of any Project; and
  - (d) any Media Event related to the Project, unless the Media Event is required by the State.
- 4.2 The payment of each progressive instalment of the Funds shall be subject to -
- 4.2.1 verification by authorised officers of the State that a Project or its milestones have been satisfactorily completed in accordance with the Project Works Schedule and the Deliverables;

- 4.2.2 receipt by the State of a valid GST tax invoice from the Council for the amount of the installment; and
- 4.2.3 the Council complying with the terms and conditions of this Agreement.
- 4.3 Payment of the Funds by the State under this Agreement is in full and final satisfaction of any agreement by the State to contribute to any Project detailed in Schedule 3 to this Agreement.
- 4.4 Subject to the receipt of valid GST tax invoices from the Council in accordance with clause 3.4, the State will pay the Council the Funds by way of progressive instalments in accordance with Schedule 1, Clause B to this Agreement.

## 5. EFFECT OF PAYMENT

- 5.1 Payment of the Funds or part of the Funds by the State will not constitute an admission or acceptance by the State of any liability for any Project or the resultant Facilities, that the Deliverables have been supplied in accordance with this Agreement or that the Council has complied with the terms and conditions of this Agreement.

## 6. GST

- 6.1 The Parties acknowledge that the Funds are exclusive of GST.
- 6.2 If any supply in respect to this Agreement is subject to GST, the Parties agree the State will pay the GST, in addition to the Funds, on receipt of a valid Tax Invoice.
- 6.3 If, for any reason, including without limitation:
  - 6.3.1 any amendment to the GST legislation;
  - 6.3.2 the issue of a ruling or advice by the Commissioner for Taxation;
  - 6.3.3 a refund to the State or Council in respect of a supply made under this Agreement; or
  - 6.3.4 a decision of any tribunal or court,

the amount of GST paid by the State differs from the amount of GST paid or payable by the Council to the Commissioner of Taxation, then the Council must issue an appropriate GST Adjustment Note and any difference must be paid by or to the State as the case may be.

- 6.4 The Parties agree to exchange such information as is necessary to enable each party to accurately assess its rights and obligations under this clause 6.

## 7. SOURCE OF FUNDING

- 7.1 The funding for the CNLGG is covered by an appropriation (refer to the State's *Budget Paper No. 3 – Capital Statement 2013-2014*) under an Australian law for the purposes of sections 9-17(3)(b)(i) of the GST legislation. Other requirements in sections 9-17 of the GST legislation need to be considered when determining if GST applies.

## 8. FINANCIAL REPORTING

- 8.1 If requested by the State, the Council shall, within thirty (30) days of that request, provide the State with a full financial report detailing how the Funds have been expended on the Project.
- 8.2 The Council shall, within thirty (30) days of the completion of each Project provide the State with a Final Project Report detailing how the Funds have been expended on the Project.
- 8.3 The financial reports to be provided by the Council pursuant to clause 8 shall be delivered in a manner consistent with the Council's financial and accounting obligations under the *Local Government Act 2009*.
- 8.4 As part of its reporting obligations under clause 8, the Council shall account to the State for any remaining Unexpended Funds upon the completion of any Project.
- 8.5 In the event there are Unexpended Funds at the completion of any Project the Funds payable by the State to the Council under Schedule 1, Clause B for that Project will be reduced by the amount of the Unexpended Funds.
- 8.6 In the event there are Unexpended Funds at the completion of all of the Projects the Unexpended Funds shall be repaid to the State within thirty (30) days after the completion of the latest Project.

## 9. PROJECT REPORTING

- 9.1 The Council shall provide to the State the written reports on each separate Project in accordance with the milestones and Deliverables as specified in Schedule 2.
- 9.2 The Council must provide a Progress Report for any Project within fourteen (14) days of receiving a written request from the State.

## 10. INFORMATION PRIVACY

- 10.1 If the Council collects or has access to Personal Information in order to carry out any Project, the Council must:

- (a) because the State is an "agency" within the meaning of the *Information Privacy Act 2009* ('the Act'), comply with Parts 1 and 3 of Chapter 2 of the Act in relation to the discharge of its obligations under this Agreement;
  - (b) not use Personal Information other than for the purposes of the Project, unless required or authorised by law;
  - (c) not disclose Personal Information without the prior written consent of the individual, unless required or authorised by law;
  - (d) not transfer Personal Information outside of Australia without the prior written consent of the individual;
  - (e) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties;
  - (f) ensure that its employees and officers do not access, use or disclose Personal Information other than in the performance of their duties;
  - (g) ensure that its sub-contractors who have access to Personal Information comply with obligations the same as those imposed on the Council under this clause;
  - (h) fully co-operate with the State to enable the State to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to respond to privacy complaints; and
  - (i) comply with such other privacy and security measures as the State reasonably advises the Council in writing from time to time.
- 10.2 On request by the State, the Council must obtain from its employees, officers or sub-contractors engaged for the purposes of the Agreement, an executed deed of privacy in a form acceptable to the State.
- 10.3 The Council must immediately notify the State on becoming aware of any breach of clause 10.1.
- 10.4 This clause 10 will survive the termination or expiry of this Agreement.
- 10.5 In this clause, "*Personal Information*" is as defined in section 12 of the Act.

## 11. NO AGENCY

- 11.1 The Council is not, by virtue of this Agreement, a partner, joint venturer or the agent or representative of the State and the Council will ensure that it and its officers, employees, contractors, sub-contractors and agents conduct themselves in dealings with others in such a manner so as not to infer that the Council is the agent or representative of the State.
- 11.2 All contracts made by the Council in relation to the provision of any works and services required to effect each Project will be made by the Council as principal and not as the agent of the State.

## 12. INDEMNITY AND RELEASE

- 12.1 The Parties agree that the State provides the Funds on an ex gratia basis to the Council in order to financially assist the Council to meet the expense of the Projects detailed in Schedule 3 of this Agreement.
- 12.2 The Council agrees to release and discharge the State from any action, proceeding, claim, demand, cost, loss, damage or expense arising directly or indirectly out of any Project detailed in Schedule 3 of this Agreement.
- 12.3 The Council agrees to indemnify and keep indemnified at all times the State from and against all such actions, proceedings, claims, demands, costs (including legal costs), damages, obligations and expenses which may be brought against or incurred by the State in respect of, personal injury or death of any person, and loss or damage to any property (including the property of the State), arising, directly or indirectly from any default, unlawful act, omission or negligence by the Council, its officers, employees, agents, contractors, sub-contractors or consultants in the performance of the Agreement or in any way relating to:
- 12.3.1 the provision of Funds under this Agreement;
  - 12.3.2 any construction, maintenance or operation of any Project detailed in Schedule 3 to this Agreement or resultant Facilities, by the Council or a third party on behalf of the Council, including any works or services required to effect the Projects;
  - 12.3.3 any structural or general maintenance of any Project detailed in Schedule 3 to this Agreement or resultant Facilities, carried out by or on behalf of the Council;
  - 12.3.4 the Council's management, control and administration of any Project detailed in Schedule 3 to this Agreement or resultant Facilities;
  - 12.3.5 as a consequence of any default, unlawful or negligent act or omission by the Council, its officers, servants, employees,



- contractors, sub-contractors and agents in relation to any Facility resulting from any Project detailed in Schedule 3 to this Agreement;
- 12.3.6 any failure by the Council to observe or perform any applicable legislative requirements; or
- 12.3.7 any failure by the Council to observe or perform any of the terms and conditions of this Agreement.
- 12.4 The liability of the Council under this clause shall be reduced by the extent to which the State through its own negligent or unlawful act or omission has caused or contributed to the loss or, damage in respect of which it seeks indemnity.
- 12.5 The provisions of clauses 12.2 to 12.4 will survive the termination or expiration of this Agreement.
- 12.6 The Council and its contractors and sub-contractors engaged to effect any Project detailed in Schedule 3 of this Agreement, must hold and maintain, at all relevant times, adequate policies of insurance with a reputable insurer or insurers covering the relevant Project and the risks including the indemnity contained in Clause 12.3, and which extends to include the interests of the State, including:
- 12.6.1 public liability insurance with a minimum coverage of one hundred million dollars per occurrence with an unlimited aggregate;
- 12.6.2 professional indemnity insurance with a minimum coverage of ten million dollars per occurrence with a ten million dollar aggregate; and
- 12.6.3 insurance in accordance with any relevant statute dealing with workers' compensation or employer liability for the duration of the relevant Project to cover the Council against liability for claims arising from death of or injury of the Council's employees, workers and all other eligible persons, self-employed consultants, directors, suppliers, trustees and /or partners. Such insurance is to be for unlimited statutory and common law liability.
- 12.7 The Council is to take reasonable actions to ensure that any subcontractors carrying out any part of the services or works required to effect the relevant Project under any arrangement or agreement have obtained sufficient insurance to comply with clause 12.6.
- 12.8 The Council must provide the State with satisfactory evidence of the insurance upon request. Failure to do so by the Council constitutes a material breach of this Agreement by the Council.

### **13. DISPUTE RESOLUTION**

- 13.1 If a dispute arises between the Parties, the party claiming that a dispute has arisen will, within a reasonable time of the dispute arising, give to the other party a notice in writing stating the nature of the dispute and the steps required to rectify the dispute.
- 13.2 After the giving of the notice pursuant to Clause 13.1, each party shall within a reasonable time nominate a representative, and shall use their best endeavours to resolve the dispute. The Parties may by mutual consent agree to hold further meetings or take any other steps including the appointment of a third party mediator in an attempt to resolve the dispute.
- 13.3 If the Parties are unable to resolve the dispute pursuant to Clause 13.2, or if a party does not use its best endeavours to resolve the dispute, the party claiming that a dispute has arisen may terminate this Agreement.

### **14. VARIATION OF AGREEMENT**

- 14.1 This Agreement may be varied at any time by an agreement or further Agreement in writing executed by both Parties.
- 14.2 It will be sufficient evidence of an agreement to vary a Schedule to this Agreement if the Parties execute and date a document that is stated to be a substituted Schedule.
- 14.3 It will be sufficient evidence of a Schedule being attached to this Agreement if the Parties execute and date a document which refers to the Commencement Date of this Agreement that is stated on its face to be a Schedule of this Agreement.

### **15. TERMINATION FOR NON-PERFORMANCE**

- 15.1 If the Council -
- a) fails to execute this Agreement and commence the relevant Project within the 2014-15 financial year; or
  - b) expends the Funds for a purpose other than to complete the relevant Project or not in accordance with the Project Works Schedule without the prior written consent of the State; or
  - c) abandons the relevant Project; or
  - d) fails to complete the relevant Project; or



- e) fails to complete a milestone for a relevant Project by the Milestone Completion Date and the State has not agreed to a variation in the Milestone Completion Date; or
- f) fails to comply with clauses 3.1, 3.5 and 3.8 to 3.15 of this Agreement,

such action or inaction shall constitute a material breach of this Agreement.

## 16. TERMINATION

- 16.1 In the event of a material breach of this Agreement, either party may, on one months' written notice sent to the address for the other Party as nominated in Schedule 1, terminate this Agreement or that part of this Agreement which relates to the Project where the material breach has occurred ('Terminated Project').
- 16.2 If this Agreement is terminated pursuant to Clause 16.1, where the Council materially breaches this Agreement, unless the State otherwise agrees in writing:
  - 16.2.1 the Council must reimburse the Funds provided by the State for the Terminated Project or for all the Projects (at the State's sole discretion);
  - 16.2.2 the Council will be required to repay the said monies to the State within three months after the date of termination;
  - 16.2.3 the State shall from the date of termination be discharged from all of its contractual obligations under this Agreement; and
  - 16.2.4 if the Council does not reimburse the Funds as provided under this clause 16.2, the State may institute proceedings to recover the Funds, as a liquidated debt due and owing.
- 16.3 The State may at any time terminate this Agreement or that part of this Agreement which relates to a Project upon one months' written notice sent to the address for the Council as nominated in Schedule 1, Clause A. Where the State has exercised its rights of termination under this clause 16.3, the Council will be liable to repay to the State the Funds for any uncompleted Projects less any amounts which have been expended or validly incurred up until the date of termination by the State.
- 16.4 Nothing in this Agreement will render the State liable for any consequential losses, loss of profits or economic losses incurred by the Council by reason of the termination of this Agreement.

## **17. FETTER**

17.1 The Council acknowledges and agrees that nothing in this document:

17.1.1 in any way affects, inhibits, restricts or otherwise fetters the exercise by the State or its chief executive of the discretion, powers, functions or rights of the State or its chief executive; or

17.1.2 purports to fetter, act as an estoppel of or act as a document in any way about the exercise of a discretion, the making of a decision or the doing of anything by the State or its chief executive,

in any regulatory capacity arising by law which the State or its chief executive may have either now or in the future.

## **18. WAIVER**

18.1 The failure of the State to enforce at any time any provision of this Agreement will in no way be interpreted as a waiver of the provision.

## **19. ENTIRE AGREEMENT**

19.1 The Parties acknowledge this Agreement constitutes the entire agreement between them in relation to cycling infrastructure in the Sunshine Coast Regional Council area. Any prior arrangements, agreements, warranties, representations or undertakings (whether written or oral) are superceded.

## **20. SEVERENCE**

20.1 If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

## **21. GOVERNING LAW**

21.1 This Agreement will be governed by and construed in accordance with the laws for the time being in force in the State of Queensland and the Parties submit to the courts of that State.

## 22. REVIEW

- 22.1 At any time during the term of this Agreement, the State will be entitled to review a Project, its delivery and outcome in any manner deemed by the State to be appropriate including evaluation by an external evaluator nominated by the State.
- 22.2 The Council will provide and ensure that its officers, employees, agents, contractors, sub-contractors and consultants provide, the State with all reasonable assistance and access to any information, plans and documents that the State reasonably requires to undertake a review under this clause 22.

**EXECUTED AS AN AGREEMENT**

SIGNED for and on behalf of the STATE OF QUEENSLAND acting through the Department of Transport and Main Roads

this ..... 20<sup>th</sup> ..... day

of ..... August ..... 2014

by ..... Ann-Maree Knox .....

[print full name]

EXECUTIVE DIRECTOR (PROGRAM DEVELOPMENT AND PERFORMANCE)  
PORTFOLIO INVESTMENT AND PROGRAMMING  
DEPARTMENT OF TRANSPORT AND MAIN ROADS

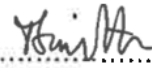
who is a duly authorised officer in the presence of:

..... Tamara Smith .....

[print full name of witness]



[signature]



[signature of witness]

SIGNED for and on behalf of the SUNSHINE COAST REGIONAL COUNCIL

this ..... 17<sup>th</sup> ..... day

of ..... SEPT ..... 2014

by ..... J. KNAGGS .....

[print full name]

..... C. E. O. ....

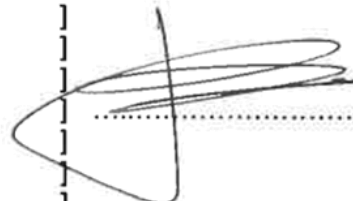
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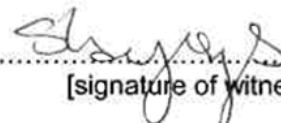
who is a duly authorised officer in the presence of:

..... Sharon Eyles .....

[print full name of witness]



[signature]



[signature of witness]

## SCHEDULE 1

### Clause A

Notices for the Parties shall be served at the following nominated postal addresses. Further contact details are included for information only:

#### For the State:

##### **Department of Transport and Main Roads**

**Attention:** Adam Rogers, Director (Cycling)  
**Postal address:** GPO Box 1412, Brisbane Qld 4001  
**Telephone number:** (07) 3066 7540  
**Email:** adam.z.rogers@tmr.qld.gov.au

#### For the Council:

##### **Sunshine Coast Regional Council**

**Attention:** Chris Lloyd  
**Postal address:** Locked Bag 72, Sunshine Coast MC Qld 4560  
**Telephone number:** (07) 5420 8723  
**Email:** Chris.lloyd@sunshinecoast.qld.gov.au

### Clause B – Payment schedule

Payment by the State to the **Sunshine Coast Regional Council** under this Agreement shall be made progressively as follows:

1. 50% of the total Funds will be payable by the State for each Project after the Commencement Date of the relevant Project detailed in the Schedule 3 to this Agreement;
2. 25% of the total Funds will be payable by the State for each Project after the commencement of site works for construction Projects or commencement of preparation of detailed plans for design and feasibility Projects; and
3. 25% of the total Funds less any Unexpended Funds will be payable by the State for each Project, after receiving written confirmation from the Council that the relevant Project has been successfully completed in accordance with the Project Works Schedule and the terms of this Agreement;

provided that:

- a. the Council submits valid tax invoices in accordance with clause 3.4 and Schedule 2;
- b. the State's authorised officers have verified that the relevant Project milestones have been completed in accordance with the Project Works Schedule; and
- c. the Council has complied with the terms and conditions of this Agreement.

## SCHEDULE 2

### DELIVERABLES FOR EACH PROJECT

Under this Agreement, Sunshine Coast Regional Council are to provide the following Deliverables to the State for each of the Projects detailed in Schedule 3 to this Agreement.

Milestone	Deliverable
Project Commencement	Within <b>fourteen (14) days</b> of the Commencement Date of the relevant Project, the Council will submit an initial valid tax invoice for 50% of the total Funds to the State for that Project.
Project Works Schedule	Within <b>fourteen (14) days</b> of the Commencement Date of the relevant Project, the Council will provide a Project Works Schedule to the State for the State's approval.
Project Signage Installation	No later than <b>thirty (30) days</b> prior to commencing construction work under this Agreement, the Council will install on-site signage in accordance with corporate templates provided by the State. The Council will ensure the on-site signage remains on the site for a minimum of one (1) year after the Project has been completed unless otherwise agreed by the State.
Submission of Plans	Prior to commencement of any construction on any Project, the Council will submit detailed specifications and plans for the Project to the State for the State's approval.
Commencement of Project Works	Within <b>thirty (30) days</b> of commencing site works for construction Projects or commencement of preparation of detailed plans for design and feasibility Projects, the Council will submit a second valid tax invoice to the State for 25% of the total Funds payable by the State for that Project.
Project Finalisation	Within <b>thirty (30) days</b> of completing a Project, the Council will submit a final valid Tax Invoice for the relevant Project for 25% of the total Funds for that Project less any Unexpended Funds.
Final Project Report	Within <b>thirty (30) days</b> of completing each Project, the Council will submit a Final Project Report and relevant photographs, designs and/or plans for that Project to the State.
Incident Report	<b>Immediately</b> upon any media issue/incident or crisis which involves a Project or the Facility in any material way, the Council will provide the State with an Incident Report.
Project Media Releases	Within <b>thirty (30) days</b> of publication, the Council will forward to the State any Media Releases concerning a Project issued before, during and up to one year after completion of that Project.


**SCHEDULE 3 - LIST OF PROJECTS**  
**SCHEDULE TO AGREEMENT SIGNED THIS 7<sup>th</sup> DAY OF SEPT 2014**

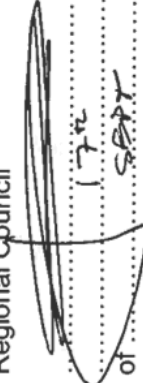
Sunshine Coast Regional Council Cycle Network Local Government Grants Program 2014-15						
Project	Total Cost	Council Contribution	CNLGG Contribution	Width in Metres	Length in Metres	Description
Beerburrum Street Cycle Lanes Design & Construction	\$220,000	\$110,000	\$110,000	1.5 - 2.5	200	This project includes the design and construction of 150m of 1.5m wide on road bike lanes along Beerburrum Street. Works include green treatments at the approaches and exits of the intersection with Nicklin Way and the installation of a pedestrian/cycle crossing facility on the northern leg of the intersection across Nicklin Way.
Brisbane Road Cycleway Stage 4 Design & Construction	\$2,000,000	\$1,000,000	\$1,000,000	3.0	900	This project includes the design and construction of Stage 4 of the Brisbane Road Cycleway, along Bindaree Crescent between the new Tuckers Creek Bridge (Stage 1) and the existing Mayes Canal bridge. This project also includes the design of Stage 5 from the end of Stage 4 through to the Mooloolaba Wharf precinct. Project works include: - Design and construction of a 3.0m wide, 400m long off road cycleway around Bindaree Crescent linking the Tuckers Creek Bridge to the Mayes Canal. - Retain existing separate footpath facilities to separate pedestrians from cyclists. - Rationalisation of car parking to accommodate maximum demand around Bindaree Crescent. - Landscaping to make the facility attractive and acceptable to the community. - Planning and design of a dedicated cycle and pedestrian bridge over Mayes canal including an approximately 500m long link to River Esplanade and



SUNSHINE COAST REGIONAL COUNCIL  
 2014-2015  
 CYCLE NETWORK LOCAL GOVERNMENT GRANTS PROGRAM

Sunshine Coast Regional Council Cycle Network Local Government Grants Program 2014-15						
Project	Total Cost	Council Contribution	CNLGG Contribution	Width in Metres	Length in Metres	Description
Eudlo Creek Bridge Approaches Cycle Facilities Design & Construction	\$1,000,000	\$500,000	\$500,000	3.0	260	This project includes the design and construction of approximately 260m of 3.0m wide off road shared path along David Low Way approaching Eudlo Creek. The approaches will connect to the new pedestrian and cyclist bridge being delivered by TMR. Project works include an off ramp for on road cyclists travelling east towards Maroochydore and an on ramp at the Fishermans Road intersection as well as an upgrade to the existing crossing facility 180m west of the bridge to include a refuge island and street lighting.
Windsor Road Cycle Lanes Design & Construction	\$1,430,000	\$900,000	\$530,000	1.5	1800	This project includes the design and construction of 1,800m of 1.5m wide on road bike lanes along Windsor Road between Mapleton Road and Nambour. Works include; road widening, line marking, green treatments and parking restrictions.
<b>TOTAL</b>	<b>\$4,650,000</b>	<b>\$2,510,000</b>	<b>\$2,140,000</b>		<b>3,160</b>	

Signed on behalf of Department of Transport and Main Roads  
  
 on this 24th day of August 2014

Signed on behalf of the Sunshine Coast Regional Council  
  
 on this 17th day of September 2014