

**FINAL**  
**COMMUNITY INFRASTRUCTURE PROGRAM**  
**STRATEGIC PROJECTS**

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**PROJECT DETAILS**

**Project ID:** 2SP-740  
**Organisation Name:** Hobsons Bay City Council      **Location:** Altona, VIC  
**Project Title:** Regional Kitchen Project      **Primary Electorate:** Gellibrand

**Recommended Project**

This project has been selected for assessment in accordance with the Community Infrastructure Program – Strategic Projects guidelines and the requirements of the Cabinet Decision of 19 March 2009 on projects to be considered under the Community Infrastructure Program – Strategic Projects, in that this project:

- a. has partnership funding of greater than or equal to 1 per cent of project cost; and
- b. is from a local council with a population of more than 100,000.

This project will deliver a large scale kitchen facility to be used to provide meals under the Home and Community Care (HACC) Program. The proposed kitchen facilities will produce up to 1.3 million meals each year for the aged and disabled across 14 partner councils in Victoria. It is expected that the facility could expand production capacity to up to two million meals per year.

Community Infrastructure Program – Strategic Projects funding will go towards construction, fit out and project management costs.

The Department and IVA provider have identified nine risks to the successful implementation of the project that require treatment as listed in the risk analysis. Based on the information presented by the proponent and subject to the implementation of any risk treatments and the imposing of any funding approval conditions noted in this brief, the Department considers that provision of funding for this project in its current form represents an efficient and effective use of public money.

**Project Funding - Total Project Cost Table**

Name of Partner	Value of Contribution \$	Status of contribution (confirmed, received or in negotiation)	Cash or In-kind
CIP-SP	14,761,000	In negotiation	Cash
Hobsons Bay City Council	200,000	Confirmed	Cash
Hobsons Bay City Council	66,791	Confirmed	In-kind
Banyule City Council	200,000	Confirmed	Cash
Banyule City Council	29,425	Confirmed	In-kind
Brimbank City Council	20,602	Confirmed	In-kind
City of Greater Dandenong	200,000	Confirmed	Cash
City of Greater Dandenong	66,793	Confirmed	In-kind
Darebin City Council	200,000	Confirmed	Cash
Darebin City Council	66,793	Confirmed	In-kind
City of Greater Geelong	200,000	Confirmed	Cash
City of Greater Geelong	20,602	Confirmed	In-kind
Hume City Council	250,000	Confirmed	Cash
Hume City Council	25,013	Confirmed	In-kind
Macedon Ranges Shire Council	20,602	Confirmed	In-kind
Maribyrnong City Council	20,602	Confirmed	In-kind
Melton Shire Council	200,000	Confirmed	Cash
Melton Shire Council	25,013	Confirmed	In-kind
Moonee Valley City Council	200,000	Confirmed	Cash
Moonee Valley City Council	29,425	Confirmed	In-kind
Moreland City Council	200,000	Confirmed	Cash
Moreland City Council	29,425	Confirmed	In-kind
Stonnington City Council	200,000	Confirmed	Cash
Stonnington City Council	57,969	Confirmed	In-kind
Yarra City Council	200,000	Confirmed	Cash
Yarra City Council	20,602	Confirmed	In-kind

Name of Partner	Value of Contribution \$	Status of contribution (confirmed, received or in negotiation)	Cash or In-kind
Stonnington City Council	200,000	Confirmed	Cash
Stonnington City Council	57,969	Confirmed	In-kind
Yarra City Council	200,000	Confirmed	Cash
Yarra City Council	20,602	Confirmed	In-kind
Department of Human Services	6,000,000	Confirmed	Cash
Lease and Loan Arrangement	4,000,000	Confirmed	Cash
<b>Total:</b>	27,510,657		

### Corporate and Personnel

The Department considers, based on the information provided by the proponent and publicly available information, that there are no known factors that would suggest Community Infrastructure Program – Strategic Projects funding will be misused or misappropriated.

Identified Risk	Treatment
No risk identified.	N/A

The Department established that the proponent's corporate and personnel risk to the project is LOW. No risk treatments are required.

### Management of Grant Funds

The Department considers the proponent has the necessary skills and experience to manage Community Infrastructure Program – Strategic Projects funding and the Funding Agreement (contract). This is supported by the proponent's history of successfully managing grant funds.

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### Project Delivery

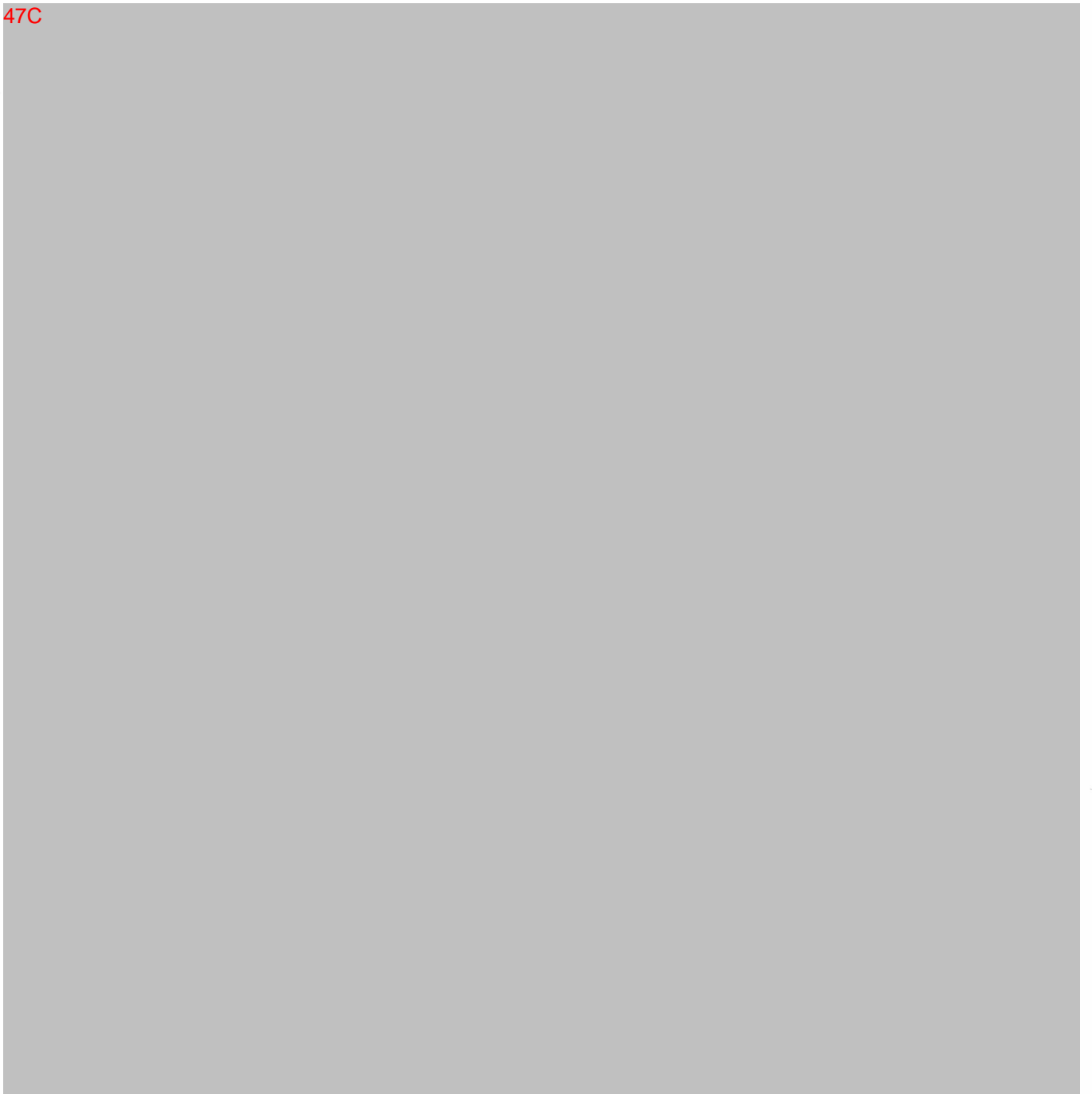
The IVA provider notes that the proponent has engaged an independent project manager and a detailed feasibility assessment has been undertaken by the proponent and cost estimates have been prepared by a quantity surveyor. \$6.0 million has been secured from the Victorian Government for this project and a number of project milestones have been achieved.

Based on its analysis, the IVA provider has identified risks to Project Delivery.

The risks and risk treatments suggested by the IVA provider are as follows:

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### Proponent's Financial Position

The IVA established that the proponent has generated sound profits in recent years, has minimal interest bearing liabilities and at 30 June 2008 the proponent holds a significant amount of net assets including \$11.2 million in cash.

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### Other Issues

Nil

### Indicative Funding:

<b>FY 2008-09</b>	<b>FY 2009-10</b>	<b>Total</b>
\$ 3,150,000	\$5,850,000	\$9,000,000

### RECOMMENDED ACTION

That you:

1. APPROVE under Regulation 9 of the Financial Management and Accountability Regulations 1997 a spending proposal relating to the Community Infrastructure Program – Strategic Projects, funding of up to \$9,000,000 to the Hobsons Bay City Council for the Regional Kitchen Project, subject to the Hobsons City Council providing a formal undertaking prior to signing the Funding Agreement (contract) that all funding shortfalls will be met.
2. NOTE the Department will treat risks identified using current controls in the Funding Agreement (contract).

- (1) APPROVED/NOT APPROVED
- (2) NOTED/NOT NOTED

ANTHONY ALBANESE

/ / 2009





**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Local Government**

**COMMUNITY INFRASTRUCTURE PROGRAM  
STRATEGIC PROJECTS 2008-09  
FUNDING AGREEMENT**

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA  
as represented by the**

**Department of Infrastructure, Transport, Regional  
Development and Local Government**

ABN 86 267 354 017

**AND**

**HOBSONS BAY CITY COUNCIL**

ABN 24 936 107 898

in relation to the Regional Kitchen Project

(Community Infrastructure Program – Strategic Project 740)

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**PARTIES**

**COMMONWEALTH OF AUSTRALIA** ('Commonwealth'), represented by and acting through the Department of Infrastructure, Transport, Regional Development and Local Government, 111 Alinga Street, Canberra ACT 2601 ABN 86 267 354 017 ('Us' or 'We' or 'Our' as the case requires)

AND

**HOBSONS BAY CITY COUNCIL**, Level 1, 104 Ferguson Street, Williamstown VIC 3015, ABN 24 936 107 898, ('You' or 'Your' as the case requires)

**BACKGROUND**

- A. The Commonwealth intends for the Community Infrastructure Program - Strategic Projects 2008-09 to deliver regional development and partner activities and projects.
- B. You are committed to helping achieve the objectives of the Program, through the completion of the Project and Your conduct of the Activity.
- C. As a result of this commitment, We have agreed to support the Activity and the Project by providing Funding to You, subject to the terms and conditions of this Agreement.
- D. The parties have entered into this Agreement on the basis that Funds paid under this Agreement are specifically covered by an appropriation under an Australian law. The parties have relied on GSTR 2006/11 for the Funds not being consideration for any supply and for no GST being imposed by reference to them.
- E. We are required by law to ensure accountability for public money and to be accountable for all Funds provided by Us.
- F. You agree to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.

**1. INTERPRETATION**

- 1.1 In this Agreement, unless the contrary intention appears:

**ABN** has the same meaning as it has in section 40 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

**Activity** means the activity described in the Schedule and includes the completion of the Milestones and the provision of Activity Material;

**Activity Material** means all Material:

- (a) brought into existence as part of performing the Activity;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b);

**Activity Period** means the period specified in the Schedule during which the Activity must be completed;

**Adjustment Note** has the same meaning as it has in section 195-1 of the GST Act;

**Agreement** means this document and includes any Schedules and Annexures;



**Approved Auditor** means a person who is:

- (a) registered as a company auditor under the *Corporations Act 2001* (Cth), or a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants; and
- (b) not a principal, member, shareholder, officer or employee of Yours or of a Related Body Corporate;

and, subject to any limitation in any relevant state or territory law, includes the Auditor-General of the state or territory in which the Activity is being undertaken;

**Asset** means any item of tangible property, purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funds, which has a value of over \$5,000 inclusive of GST but does not include Activity Material;

**Auditor-General** means the office established under the *Auditor-General Act 1997* (Cth) and includes any other entity that may, from time to time, perform the functions of that office;

**Australian Accounting Standards** refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth);

**Australian Auditing Standards** refers to the standards set by the Auditor-General under section 24 of the *Auditor-General Act 1997* (Cth) and generally accepted audit practices to the extent they are not inconsistent with such standards;

**Budget** refers to a budget for expenditure of the Funding for the purposes of conducting the Activity or performing obligations under this Agreement, stipulated in Annexure B;

**Business Day** means in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place;

**Commence Construction** means to begin a continuous program of on-site construction. Only significant and continuous site preparation work such as major clearing or excavation or placement, assembly, or installation of facilities or equipment at the site are considered to constitute a program of on-site construction.

**Commonwealth Material** means any Material provided by Us to You for the purposes of this Agreement or which is copied or derived from Material so provided, except for Activity Material;

**Completion Date** means, unless a date is specified in the Schedule, the day after You have done all that You are required to do under this Agreement to Our satisfaction;

**Conflict** refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any activity or obtaining any interest that is likely to conflict with or restrict You in carrying out the Activity fairly and independently;

**Constitution** means (depending on the context):

- (a) a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution; or
- (b) in relation to any other kind of body:
  - (i) the body's charter, rules or memorandum; or

(ii) any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members;

**Date of this Agreement** means the date written on the execution page of this Agreement, and if no date or more than one date is written there, then the date on which this Agreement is signed by the last Party to do so;

**Depreciated** means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;

**Electronic Communication** has the same meaning as in the *Electronic Transactions Act 1999* (Cth);

**Existing Material** means all Material in existence prior to the Date of this Agreement:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of;

the Activity Material;

**Financial Audit** means an audit undertaken in accordance with subclause 11.3;

**Financial Year** means each period from 1 July to the following 30 June (or other period You use for regular formal financial reporting) occurring during the Activity Period, or any part of such a period occurring at the beginning or end of the Activity Period;

**Funding or Funds** means the amount or amounts (in cash or in kind) payable under this Agreement by Us as specified in the Schedule, including interest earned on that amount;

**GST** has the meaning as given in section 195-1 of the GST Act;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Information System** has the same meaning as in the *Electronic Transactions Act 1999* (Cth);

**Intellectual Property Rights** includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**Interest** means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Tax Administration Act 1953* (Cth), on a daily compounding basis;

**Material** includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

**Milestone** means a stage of completion of the Activity, as identified at item 1.5 of the Schedule;

**Operational** means that the completed Project is operating in a way that enables it to achieve its intended Purpose, as identified at item 1.2 of the Schedule;

**Operational Period** means the period during which the completed Project must remain Operational, commencing from the date We accept the Project Completion Report to Our satisfaction. The duration of the Operational Period is set out at item 1.3 of the Schedule;

**Other Contributions** means financial or in-kind resources (with in-kind resources valued at market rates) used by You for the Activity and the Project, other than the Funding, including but not limited to the Other Contributions specified in Annexure B;

**Party** means a party to this Agreement;

**Personal Information** has the same meaning as under the *Privacy Act 1988* (Cth), which currently is information or an opinion (including information or an opinion forming part of a data base), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

**Privacy Commissioner** means the Office of the Privacy Commissioner established under the *Privacy Act 1988* (Cth) and includes any other entity that may, from time to time, perform the functions of that Office;

**Program** means the Community Infrastructure Program - Strategic Projects 2008-09;

**Progress Report** means the report(s) as set out at item 3.2 and item 3.3 of the Schedule;

**Project** means the project identified in the Schedule and includes the Activity;

**Project Completion Date** means the date specified in the Schedule by which the Project must be completed;

**Project Completion Report** means the report as set out at item 3.4 of the Schedule;

**Purpose** means the purpose for which the output of the Project must be used, as set out at item 1.2 of the Schedule;

**Records** includes documents, information and data stored by any means and all copies and extracts of the same;

**Related Body Corporate** has the meaning given in section 9 of the *Corporations Act 2001* (Cth);

**Repayment Event** means any of the following events:

- (a) termination of this Agreement;
- (b) failure to Commence Construction within six months of the Date of this Agreement;
- (c) failure to commence using the Asset within three months of its acquisition, or the cessation of using the Asset, in the manner and within the timeframe specified in item 1.7 of the Schedule;
- (d) failure to commence using the Upgraded Item within three months of the completion of its upgrade, or the cessation of using the Upgraded Item, in the manner and within the timeframe specified in item 1.7 of the Schedule;
- (e) failure to deal with the Asset as directed under subclauses 8.5, 8.6 and 8.7; and



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- (f) failure to deal with the Upgraded Item as directed under subclauses 9.3, 9.4 and 9.5.

**Report** means Activity Material that is provided to Us for reporting purposes on matters including the use of the Funding, whether or not Activity Milestones have been achieved, progress reports and evaluations of the Activity, Project or obligations of this Agreement, as stipulated in the Schedule or as specified by Us at any time;

**Schedule** refers to the schedule to this Agreement;

**Specified Personnel** means the personnel (whether Your employees or subcontractors), or people with specific skills, specified in the Schedule as personnel required to undertake the Activity or any part of the work constituting the Activity;

**Taxable Supply** has the same meaning as it has in the *GST Act*;

**Term of this Agreement** refers to the period described in subclause 2.1;

**Undepreciated** in relation to the value of an Asset, means the value of the Asset, which has not been Depreciated;

**Upgraded Item** means any item of tangible property, which has been upgraded either wholly or in part with use of the Funds and has a value of over \$5,000 inclusive of GST, but does not include an Asset;

**Us, We and Our** includes Our officers, delegates, employees and agents, and Our successors; and

**You and Your** includes, where the context admits, Your officers, employees, agents and subcontractors, and Your successors.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) all references to clauses are clauses in this Agreement;
- (e) all references to dollars are to Australian dollars and this Agreement uses Australian currency;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended;
- (g) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision; and
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

- 1.3 The Schedule (and annexure and documents incorporated by reference, if any) form part of this Agreement. In the event of any conflict or inconsistency between any part of:
- (a) the terms and conditions contained in the clauses of this Agreement;
  - (b) the Schedule;
  - (c) the annexure, if any;
  - (d) documents incorporated by reference, if any;

then the material mentioned in any one of paragraph (a) to (d) of this subclause 1.3 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

## 2. TERM OF THIS AGREEMENT

- 2.1 The Term of this Agreement commences on the Date of this Agreement and, unless terminated earlier, it expires on the Completion Date.

## 3. USE OF ASSET OR UPGRADED ITEM

- 3.1 During the Activity Period, You must use any Asset or Upgraded Item in accordance with this Agreement for the Activity and Project.
- 3.2 After the Activity Period You must use the Asset or Upgraded Item in the manner and within the timeframe specified in item 1.7 of the Schedule.

## 4. PAYMENT

- 4.1 Subject to sufficient funds being available for the Program, and compliance by You with this Agreement (including the invoicing requirements, if any, specified in the Schedule) We will provide You with the Funding at the times and in the manner specified in the Schedule.
- 4.2 Without limiting Our rights, We may withhold or suspend any payment in whole or in part until You have performed Your obligations under this Agreement.
- 4.3 You must Commence Construction as required by the Activity within six months of the Date of this Agreement.
- 4.4 If You fail to Commence Construction as required by the Activity within six months of the Date of this Agreement We may, without limiting Our rights, do one or more of the following:
- (a) recover the Funding from You;
  - (b) withhold future instalments of Funding.
- 4.5 If the completed Project ceases to be Operational during the Operational Period, We reserve the right to recover the Funding from You.
- 4.6 Any payments under this Agreement may be deferred or suspended by Us if You have outstanding or unacquitted moneys under any arrangement (whether contractual or statutory) between Us and You. Notwithstanding such suspension or deferral of any payments, You must continue to perform any obligations under this Agreement, unless We agree otherwise in writing.
- 4.7 The operation of this clause 4 survives the expiration or earlier termination of this Agreement.

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- 5. MANAGEMENT OF FUNDING**
- 5.1 You must carry out the Activity within the Activity Period and in accordance with this Agreement diligently, effectively and to a high professional standard.
- 5.2 The Funding must be expended by You only for the Activity in accordance with the Budget set out at Annexure B, and with this Agreement.
- 5.3 You must:
- (a) ensure that the Funds are held in an account in Your name, and which You solely control, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia;
  - (b) if specified in the Schedule, the Funds must be held in an account that is:
    - (i) established solely for the purposes of accounting for, and administering, any Funding provided by Us to You under this Agreement; and
    - (ii) separate from Your other operational accounts;
  - (c) notify Us, in writing, prior to the receipt of any Funds, of details sufficient to identify the account;
  - (d) provide Us and the authorised deposit-taking institution with an authority for Us to obtain any details relating to the account;
  - (e) if the account changes, notify Us in writing within 10 Business Days of the change occurring providing Us with details of the new account;
  - (f) unless You are a sole director company or an individual, ensure that two signatories, who have Your authority to do so, are required to operate the account; and
  - (g) identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.
- 5.4 You must keep financial Records relating to the Activity and Project so as to enable:
- (a) all income and expenditure related to the Activity and Project to be identified in Your accounting Records;
  - (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
  - (c) the audit of those Records in accordance with Australian Auditing Standards.
- 5.5 Except with Our prior written approval, You must not use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest:
- (a) the Funds;
  - (b) this Agreement or any of Our obligations under this Agreement; or
  - (c) any Assets, Upgraded Items or Intellectual Property Rights in Activity Material.
- 5.6 If, during the Term of this Agreement, there remains an amount of Funding that has not been expended in accordance with this Agreement or not acquitted to Our satisfaction, then this amount must be refunded by You to Us within 20 Business Days, or other time period as



advised by Us in writing, of a written notice from Us or dealt with as directed in writing by Us.

- 5.6A You must complete the Project by the Project Completion Date.
- 5.7 On completion of the Project, if the cost of the completed Project is less than the initial cost estimate of the Project, We may require You to return any unexpended Funding to Us within 20 Business Days of the completion of the Project, or any other time period as advised by Us in writing.
- 5.8 If Other Contributions were obtained, and the cost of the completed Project is less than the initial cost estimate of the Project, We may require You to return to Us a proportion of the cost savings. This proportion must be determined according to the percentage of Our contribution to the total amount of contributions (excluding any in-kind contributions) obtained by You for the Project.
- 5.9 You must return the proportion of cost savings referred to in subclause 5.8 to Us within 20 Business Days of the completion of the Project, or any other time period as advised by Us in writing.
- 5.10 If We do not direct otherwise in writing and the amount is not refunded to Us within 20 Business Days, or other time period as advised by Us in writing, Interest will accrue and be payable on the amount after the expiry of the 20 Business Days, or other time period as advised by Us in writing, until the amount is paid in full.
- 5.11 Any amount owed to Us under subclauses 5.6, 5.7 and 5.8 and any Interest owed under subclause 5.10, will be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.
- 5.12 You may expend the Funds on any separate category of expenditure item within the Budget, but You must obtain prior written approval from Us for any transfer of Funds between categories of expenditure items within the Budget which exceed a percentage of the total Budget as specified in the Schedule. The total amount of transfers in any financial year must not exceed the percentage of the Budget specified in the Schedule.
- 5.13 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.
- 5.14 The operation of this clause 5 survives the expiration or earlier termination of this Agreement.

## 6. OTHER CONTRIBUTIONS

- 6.1 Where You are required to secure Other Contributions under the terms of the Project approval, You must:
- (a) within 3 months of the Date of this Agreement, secure the Other Contributions; and
  - (b) within 10 Business Days of securing the Other Contributions, notify Us that You have secured the required amount of Other Contributions.
- 6.2 As part of the notification referred to in paragraph 6.1(b), You must provide Us with satisfactory written evidence that the Other Contributions identified in Annexure B have been secured, including the amounts secured, their due dates and the terms and conditions of the provision of the Other Contributions. The terms and conditions on which the Other Contributions are secured must be satisfactory to Us.

- 6.3 If You are not able to provide or obtain Other Contributions or provide or obtain them in time to enable completion of the Activity or the Project, then We may:
- (a) suspend payment of the Funds until the evidence of the Other Contributions referred to in subclause 6.2 has been received; or
  - (b) terminate this Agreement in accordance with clause 24.
- 6.4 You must take reasonable steps to enforce any contractual arrangement under which You are entitled to receive any Other Contributions.
- 6.5 You must inform Us in writing within 10 Business Days:
- (a) of entering into any arrangement (whether contractual or statutory) under which You are entitled to receive any Other Contributions not identified in Annexure B;
  - (b) of any changes to the Other Contributions identified in Annexure B; or
  - (c) of commencing any action to enforce a contractual arrangement under which You are entitled to receive any Other Contributions.

## 7. STATUTORY APPROVAL

- 7.1 If the terms of the Project approval require You to obtain any statutory approvals, You must provide Us with satisfactory written evidence that these statutory approvals have been obtained.
- 7.2 You must provide Us with the evidence referred to in subclause 7.1 within six (6) months of the Date of this Agreement, unless stated otherwise in the Schedule.
- 7.3 If you do not comply with the requirements in subclauses 7.1 and 7.2, We may:
- (a) suspend payment of the Funds until the evidence of the statutory approvals referred to in subclause 7.1 has been received; or
  - (b) terminate this Agreement in accordance with clause 24,
- at Our sole discretion.

## 8. ASSETS

- 8.1 You must not use the Funding to acquire any Asset, apart from those detailed in the Schedule, without obtaining Our prior written approval. Approval may be given subject to any conditions We may impose.
- 8.2 Unless it is specified in the Schedule that We own the Asset then, subject to this clause 8 and the terms of any relevant lease, You own any Asset.
- 8.3 If We own the Asset, or the Asset is leased by You from a third party, then:
- (a) if We own the Asset, subclauses 8.7 and 8.9 do not apply; and
  - (b) if the Asset is leased, You must ensure that the terms of the lease are consistent with this clause 8 except for subclauses 8.7 and 8.9.

8.4 You must:

- (a) obtain good title to the Asset;
- (b) for the timeframe specified in the Schedule, not dispose of or grant any rights to any third party in or over any of the Assets without Our prior written approval until the expiry of the timeframe specified in the Schedule;
- (c) notify Us of any impending event as referred to in paragraphs 8.4(b) or (d) as soon as possible;
- (d) for the timeframe specified in the Schedule, not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with clause 3 and this clause 8, without Our prior written approval until the expiry of the timeframe specified in the Schedule;
- (e) hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- (f) maintain all Assets in good working order;
- (g) maintain all appropriate insurances for all Assets to their full replacement value noting Our interest, if any, in the Asset under this Agreement and provide satisfactory evidence of this on request from Us;
- (h) where the Asset is real property, such as land and/or a building, pay all rents, rates, taxes levies and other outgoings of any nature in relation to the Asset;
- (i) where the Asset is a building, construct the building:
  - i. in accordance with the designs and plans submitted by You to Us;
  - ii. in a good and workmanlike manner by qualified tradespeople; and
  - iii. with a minimum of delay;
- (j) where the Asset is a building, comply with all laws regarding the construction of the building;
- (k) if required by law, maintain registration and licensing of all Assets;
- (l) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets;
- (m) if specified in the Schedule, maintain an Assets register in the form and containing the details as described in the Schedule; and
- (n) as and when requested by Us, provide copies of the Assets register to Us.

8.5 You must deal with any Asset as directed by Us in Our sole discretion for the purpose of securing its ongoing use or to give any charge, mortgage or other appropriate form of security in favour of Us over it and on terms specified by Us.

8.6 Subject to subclause 8.5 and without prejudice to any other rights that arise in the event of a breach of this Agreement, if a Repayment Event occurs, You must, as We may direct in writing:

- (a) continue to use the Asset in the manner, and in accordance with any conditions, notified by Us;

- (b) pay to Us within 20 Business Days after the Repayment Event, an amount specified by Us up to the total amount of Funding; or
  - (c) sell the Asset for the best price reasonably obtainable and pay to Us, within 20 Business Days of the sale, the proportion of the proceeds of the sale that is equivalent to the proportion of the purchase price of the Asset (less an amount equal to the reasonable disposal costs incurred by You) that was funded from the Funding.
- 8.7 If You sell or otherwise dispose of an Asset during the Term of this Agreement (which must be with Our prior written consent and subject to any conditions We may impose) and at the time of the sale or disposal the Asset has not been fully Depreciated You must take the action We require (which may include paying to Us an amount equal to the proportion of the Undepreciated value of the Asset, that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funding).
- 8.8 If any of the Assets are lost, damaged or destroyed, You must reinstate the Assets including from the proceeds of the insurance and this clause 8 continues to apply to the reinstated Assets. Any surplus from the proceeds of the insurance must be notified to Us and used and accounted for as Funding under this Agreement.
- 8.9 On completion of the Activity or earlier termination of this Agreement We may require You to deal with the Asset as We may, at Our sole discretion, direct in writing.
- 8.10 If, on completion of the Activity or earlier termination of this Agreement, an Asset has not been fully Depreciated You must take the action We nominate with respect to the Asset, including:
- (a) continue to use the Asset in the manner outlined in item 1.7 of the Schedule for the period specified in that item;
  - (b) transfer ownership of the Asset to a third party nominated by Us so that they can use the Asset in the manner outlined in item 1.7 of the Schedule; or
  - (c) pay to Us, within 20 Business Days after completion of the Activity or earlier termination of this Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funding.
- 8.11 If You fail to make payment as required by subclauses 8.6, 8.7 or 8.10:
- (a) You must pay Us the Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
  - (b) the relevant amount, and Interest owed under this clause, will be recoverable by Us as a debt due to Us by You.
- 8.12 Our approvals under subclause 8.1 and paragraphs 8.4(b) and 8.4(d) will not be unreasonably withheld. A decision as to whether an approval will be provided will be made within a reasonable time of the request.
- 8.13 The operation of this clause 8 survives the expiration or earlier termination of this Agreement.
- 9. UPGRADED ITEMS**
- 9.1 You must not use the Funding to upgrade any item of tangible property, which will result in that item being valued at over \$5000, apart from those detailed in the Schedule, without



obtaining Our prior written approval. Approval may be given subject to any conditions We may impose.

9.2 You must:

- (a) have and maintain good title to the Upgraded Item;
- (b) for the timeframe specified in the Schedule, not dispose of or grant any rights to any third party in or over any of the Upgraded Items without Our prior written approval until the expiry of the timeframe specified in the Schedule;
- (c) notify Us of any impending event as referred to in paragraphs 9.2(b) or (d) as soon as possible;
- (d) for the timeframe specified in the Schedule, not encumber or dispose of any Upgraded Item, or deal with or use any Upgraded Item other than in accordance with clause 3 and this clause 9, without Our prior written approval until the expiry of the timeframe specified in the Schedule;
- (e) hold all Upgraded Items securely and safeguard them against theft, loss, damage, or unauthorised use;
- (f) maintain all Upgraded Items in good working order;
- (g) maintain all appropriate insurances for all Upgraded Items to their full replacement value noting Our interest, if any, in the Upgraded Item under this Agreement and provide satisfactory evidence of this on request from Us;
- (h) where the Upgraded Item is real property, such as land and/or a building, pay all rents, rates, taxes levies and other outgoings of any nature in relation to the Upgraded Item;
- (i) where the Upgraded Item is a building, construct the building:
  - i. in accordance with any designs and plans submitted by You to Us;
  - ii. in a good and workmanlike manner by qualified tradespeople; and
  - iii. with a minimum of delay;
- (j) where the Upgraded Item is a building, comply with all laws regarding the upgrade of the building;
- (k) if required by law, maintain registration and licensing of all Upgraded Items;
- (l) be fully responsible for, and bear all risks relating to, the use or disposal of all Upgraded Items;
- (m) if specified in the Schedule, maintain an Upgraded Items register in the form and containing the details as described in the Schedule; and
- (n) as and when requested by Us, provide copies of the Upgraded Items register to Us.

9.3 You must deal with any Upgraded Item as directed by Us in Our sole discretion for the purpose of securing its ongoing use or to give any charge, mortgage or other appropriate form of security in favour of Us over it and on terms specified by Us.

- 9.4 Subject to subclause 9.3 and without prejudice to any other rights that arise in the event of a breach of this Agreement, if a Repayment Event occurs, You must, as We may direct in writing:
- (a) continue to use the Upgraded Item in the manner, and in accordance with any conditions, notified by Us;
  - (b) pay to Us within 20 Business Days after the Repayment Event, an amount specified by Us up to the total amount of Funding; or
  - (c) sell the Upgraded Item for the best price reasonably obtainable and pay to Us, within 20 Business Days of the sale, the proportion of the proceeds of the sale that is equivalent to the proportion of the upgrade of the Upgraded Item (less an amount equal to the reasonable disposal costs incurred by You) that was funded from the Funding.
- 9.5 If You sell or otherwise dispose of an Upgraded Item during the Term of this Agreement (which must be with Our prior written consent and subject to any conditions We may impose) and at the time of the sale or disposal the Upgraded Item has not been fully Depreciated You must take the action We require (which may include paying to Us an amount equal to the proportion of the upgrade of the Upgraded Item that was funded from the Funding).
- 9.6 If any of the Upgraded Items are lost, damaged or destroyed, You must reinstate the Upgraded Items including from the proceeds of the insurance and this clause 9 continues to apply to the reinstated Upgraded Items. Any surplus from the proceeds of the insurance must be notified to Us and used and accounted for as Funding under this Agreement.
- 9.7 On completion of the Activity or earlier termination of this Agreement We may require You to deal with the Upgraded Item as We may, at Our sole discretion, direct in writing.
- 9.8 If, on completion of the Activity or earlier termination of this Agreement, an Upgraded Item has not been fully Depreciated You must take the action We nominate with respect to the Upgraded Item, including:
- (a) continue to use the Upgraded Item in the manner outlined in item 1.7 of the Schedule for the period specified in that item;
  - (b) transfer ownership of the Asset to a third party nominated by Us so that they can use the Asset in the manner outlined in item 1.7 of the Schedule; or
  - (c) pay to Us, within 20 Business Days after completion of the Activity or earlier termination of this Agreement, an amount equal to the proportion of the Undepreciated value of the Upgraded Item, that is equivalent to the proportion of the upgrade of the Upgraded Item that was funded from the Funding.
- 9.9 If You fail to make payment as required by subclauses 9.4, 9.5 and 9.8:
- (a) You must pay Us the Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
  - (b) the relevant amount, and Interest owed under this clause, will be recoverable by Us as a debt due to Us by You.
- 9.10 Our approvals under subclause 9.1 and paragraphs 9.2(b) and 9.2(d) will not be unreasonably withheld. A decision as to whether an approval will be provided will be made within a reasonable time of the request.

9.11 Unless otherwise specified in the Schedule paragraphs 9.2 (b) and (d), subclauses 9.3, 9.5 and 9.7 do not apply to this Agreement.

9.12 The operation of this clause 9 survives the expiration or earlier termination of this Agreement.

## 10. RECORDS

10.1 You must keep full and accurate Records of the conduct of the Activity and the Project including, progress against the Milestones, the receipt and use of Funding and Other Contributions (if any), the acquisition of Assets and Upgraded items and the creation of Intellectual Property Rights in Activity Material.

10.2 Records maintained under subclause 10.1 must be retained by You for a period of no less than 7 years after the end of the Activity Period.

10.3 The operation of this clause 10 survives the expiration or earlier termination of this Agreement.

## 11. REPORTING

11.1 You must provide to Us, at the times and in the manner stated in the Schedule or as requested by Us at any time:

- (a) progress reports and performance information relating to the Activity and the Project; and
- (b) financial information (including bank statements, receipts and invoices) and audited financial reports of receipt and expenditure of the Funding and Other Contributions (excluding in-kind).

11.2 You must:

- (a) within, the period stated in the Schedule after the expiry of the Activity Period or any earlier termination of this Agreement;
- (b) at the times stated in the Schedule; and
- (c) at other times notified by Us,

provide Us with a Financial Audit.

11.3 The Financial Audit referred to in subclause 11.2 must contain:

- (a) an audited statement of receipts and expenditure in respect of the Funding and Other Contributions (excluding in-kind) which must include a definitive statement made by an Approved Auditor as to whether:
  - (i) the statements of receipts and expenditure are fair and true; and
  - (ii) Funding and Other Contributions (excluding in-kind) were held and expended in accordance with this Agreement; and
- (b) a certificate that:
  - (i) all Funding and Other Contributions (excluding in-kind) received was expended for the purpose of the Activity and Project and expended and held in a manner in accordance with this Agreement; and

- (ii) salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations.
- 11.4 The audited statement referred to in paragraph 11.3(a) and the certificate referred to in paragraph 11.3(b), must comply with the requirements, if any, described in the Schedule.
- 11.5 The audited statement referred to in paragraph 11.3(a) must be carried out by an Approved Auditor and must comply with the Australian Auditing Standards.
- 11.6 The certificate referred to in paragraph 11.3(b) must be provided by Your Chief Executive Officer, Chief Financial Officer or a person authorised by You to execute documents and legally bind You by their execution.
- 11.7 The operation of this clause 11 survives the expiration or earlier termination of this Agreement.

## **12. TAXES, DUTIES AND GOVERNMENT CHARGES**

- 12.1 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by You.
- 12.2 Unless otherwise indicated, all consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 12.3 If one party (supplier) makes a taxable supply to the other party (recipient) under this Agreement, the recipient on receipt of a tax invoice from the supplier must pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 12.4 No party may claim or retain from the other party any amount in relation to a supply made under this deed for which the first party can obtain an input tax credit or decreasing adjustment.
- 12.5 You should be aware that, generally:
  - (a) Funding received by You is included in Your assessable income if it is received in relation to the carrying on of a business, unless You are specifically exempt from income tax;
  - (b) any capital gain on disposal of an Asset or Upgraded item is included in Your assessable income, unless You are specifically exempt from income tax; and
  - (c) You may be required, in respect to employees, to pay fringe benefits tax and make superannuation contributions to a complying superannuation fund or pay the superannuation guarantee charge to the Australian Taxation Office.

## **13. COMMONWEALTH MATERIAL**

- 13.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in the Schedule.
- 13.2 Upon the expiration of the Activity Period or earlier termination of this Agreement, You must return all Commonwealth Material to Us unless otherwise specified by Us.



13.3 Subject to clause 13.2, You must keep safely and maintain Commonwealth Material You have been given for the purposes of this Agreement.

13.4 The operation of this clause 13 survives the expiration or earlier termination of this Agreement.

#### 14. INTELLECTUAL PROPERTY

14.1 Subject to this clause 14, as between Us and You (but without affecting the position between You and a third party) Intellectual Property Rights in Activity Material vest immediately in You.

14.2 You grant to Us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Activity Material for any Commonwealth purpose.

14.3 This clause 14 does not affect the ownership of any Intellectual Property Rights in any Existing Material, which is specified in the Schedule. You, however, grant to Us or must arrange for the grant to Us of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Existing Material for any Commonwealth purpose.

14.4 You:

- (a) must, if requested by Us to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 14;
- (b) warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material and the Existing Material in accordance with this clause 14; and
- (c) except as expressly provided for in this Agreement, must not deal with the Intellectual Property Rights in the Activity Material during the Term of this Agreement.

14.5 The operation of this clause 14 survives the expiration or earlier termination of this Agreement.

#### 15. MORAL RIGHTS

15.1 For this clause, the 'Specified Acts' means the following classes or types of acts or omissions by or on behalf of Us:

- (a) those which would, but for this clause infringe the author's right of attribution of authorship or the author's right of integrity of authorship;

but does not include:

- (b) those which would infringe the author's right not to have authorship falsely attributed.

15.2 You warrant or undertake that:

- (a) the author of any Activity Material, other than Existing Material, has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit; and

- (b) the author of any Existing Material has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit in relation to such material used, reproduced, adapted and exploited in conjunction with the other Activity Material.

15.3 The operation of this clause 15 survives the expiration or earlier termination of this Agreement.

## 16. DISCLOSURE OF INFORMATION

- 16.1 You acknowledge that We may be required to provide information in relation to the Funding or this Agreement, as required by the operation of any law, judicial or parliamentary body or governmental agency and accordingly We can give no undertakings to treat any of Your information or this Agreement as confidential information.
- 16.2 You are permitted to disclose Commonwealth Material, except to the extent, if any, specified in the Schedule. If We require You to keep any Commonwealth Material confidential We may permit You to disclose it subject to compliance with any conditions on that disclosure that We may impose.

## 17. PROTECTION OF PERSONAL INFORMATION

- 17.1 This clause applies only where You deal with Personal Information when, and for the purpose of, conducting the Activity under this Agreement.
- 17.2 You agree to be treated as a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (the Privacy Act), and agree in respect to the conduct of the Activity under this Agreement:
  - (a) to use or disclose Personal Information obtained during the course of conducting the Activity under this Agreement, only for the purposes of this Agreement;
  - (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
  - (c) to carry out and discharge the obligations contained in the IPPs as if You were an agency under that Act;
  - (d) to notify individuals whose Personal Information You hold, that complaints about Your acts or practices may be investigated by the Privacy Commissioner who has power to award compensation against You in appropriate circumstances;
  - (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing), a National Privacy Principle (NPP) (particularly NPPs 7 to 10) or an Approved Privacy Code (APC), where that section, NPP or APC is applicable to You, unless:
    - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Agreement; or
    - (ii) in the case of an NPP or an APC - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Agreement, and the activity or practice which is authorised by this Agreement is inconsistent with the NPP or APC;

- (f) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an NPP or an APC binding a Party to this Agreement;
- (g) to immediately notify Us if You become aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 17, whether by You or any subcontractor;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are not inconsistent with the requirements of this clause; and
- (i) to ensure that any of Your employees who are required to deal with Personal Information for the purposes of this Agreement are made aware of Your obligations set out in this clause 17.

17.3 You agree to ensure that any subcontract entered into for the purpose of fulfilling Your obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as You have under this clause, including the requirement in relation to subcontracts.

17.4 You agree to indemnify Us in respect of any loss, liability or expense suffered or incurred by Us which arises directly or indirectly from a breach of any of Your obligations under this clause 17, or a subcontractor under the subcontract provisions referred to in subclause 17.3.

17.5 In this clause 17, the terms 'agency', 'Approved Privacy Code' (APC), 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and 'subcontract' and other grammatical forms of that word has the meaning given in section 95B(4) of the Privacy Act.

17.6 The operation of this clause 17 survives the expiration or earlier termination of this Agreement.

## 18. INDEMNITY

18.1 You indemnify (and keep indemnified) Us, Our officers, employees, and agents against any:

- (a) loss or liability incurred by Us;
- (b) loss of or damage to Our property; or
- (c) loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and a cost of time spent, resources used, or disbursements paid by Us;

arising from:

- (d) any act or omission by You, or any of Your employees, agents, volunteers, or subcontractors in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
- (e) any breach by You of Your obligations or warranties under this Agreement;
- (f) the use of the Assets or Upgraded Items; or

(g) the use by Us of the Activity Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights in Activity Material or Existing Material.

18.2 Your liability to indemnify Us under this clause 18 will be reduced proportionally to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.

18.3 Our right to be indemnified under this clause 18 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant liability, damage, loss, or expense.

18.4 In this clause 18, "fault" means any negligent or unlawful act or omission or wilful misconduct.

18.5 This operation of this clause 18 survives the expiration or earlier termination of this Agreement.

## 19. INSURANCE

19.1 You must, for as long as any obligations remain in connection with this Agreement, have insurance as specified in the Schedule.

19.2 Whenever requested, You must provide Us, within 10 Business Days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

19.3 The operation of this clause 19 survives the expiration or earlier termination of this Agreement.

## 20. CONFLICT OF INTEREST

20.1 You warrant that, to the best of Your knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of Your obligations under this Agreement.

20.2 Without limiting the operation of this clause 20, You must, during the Term of this Agreement, ensure that no Conflict arises through Your involvement with the parties or programs, if any, specified in the Schedule.

20.3 If during the Term of this Agreement, a Conflict arises, You must:

(a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;

(b) make full disclosure to Us of all relevant information relating to the Conflict; and

(c) take such steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.

20.4 If You fail to notify Us under this clause 20, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate the Term of this Agreement in accordance with clause 24.

## 21. ACCESS TO PREMISES AND RECORDS

21.1 You must give the Auditor-General, the Privacy Commissioner and persons authorised by Us (referred to in this clause 21 collectively as 'those permitted') access to premises at which Records and Material associated with this Agreement are stored or work under the Activity is



undertaken at all reasonable times and allow those permitted to inspect and copy Records and Material, in Your possession or control, for purposes associated with this Agreement or any review of performance under this Agreement. You must also give those permitted access to any Assets and Upgraded Items, wherever they may be located, and reasonable access to Your employees, for the same purpose.

- 21.2 You must provide all reasonable assistance requested by those permitted when they exercise the rights under subclause 21.1.
- 21.3 The rights referred to in subclause 21.1 are subject to:
- (a) the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
  - (b) Your reasonable security procedures.
- 21.4 The requirement for access as specified in subclause 21.1 does not in any way reduce Your responsibility to perform Your obligations in accordance with this Agreement.
- 21.5 You must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause allowing those permitted to have access as specified in this clause 21.
- 21.6 This clause 21 applies for the Term of this Agreement and for a period of 7 years from the date of expiration or earlier termination of this Agreement.

## **22. DELAY**

- 22.1 You must take all reasonable steps to minimise delay in completion of the Activity and the Project.
- 22.2 If You become aware that You will be delayed in progressing or completing the Activity in accordance with this Agreement or the Project generally, You must immediately notify Us in writing of the cause and nature of the delay. You are to detail in the notice the steps You will take to contain the delay.
- 22.3 On receipt of a notice of delay, We may at Our option:
- (a) notify You in writing of a period of extension to complete the Activity and vary this Agreement accordingly;
  - (b) notify You in writing of reduction in the scope of the Activity and any adjustment to the Funds for You to complete the reduced Activity and vary this Agreement accordingly;
  - (c) terminate this Agreement under clause 24; or
  - (d) take such other steps as are available under this Agreement.
- 22.4 Unless We take action under subclause 22.3, You are required to comply with the time frame for progressing and completing the Activity as set out in this Agreement.

## **23. TERMINATION WITH COSTS**

- 23.1 We may, at any time by written notice to You, terminate the Term of this Agreement in whole or reduce the scope of this Agreement without prejudice to the rights, liabilities, or obligations of either Party accruing prior to the date of termination. If this Agreement is terminated or reduced in scope We will only be liable for:

- (a) subject to subclause 23.3, payments under the payment provisions of this Agreement; and
- (b) subject to subclauses 23.4, 23.5 and 23.6, any reasonable costs incurred by You and directly attributable to the termination of this Agreement or reduction in scope of this Agreement.

23.2 Upon receipt of a notice of termination or reduction in scope You must:

- (a) cease or reduce the performance of Your obligations under this Agreement in accordance with the notice;
- (b) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice; and
- (c) immediately return to Us any Funds in accordance with paragraph 23.3(b); or
- (d) deal with any such Funds as We may direct in writing.

23.3 Where We terminate the Term of this Agreement under subclause 23.1 We:

- (a) will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 23.1 is deemed to be received in accordance with subclause 38.3 [Notices]; and
- (b) will be entitled to recover from You any part of the Funds which:
  - (i) has not been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 23.1 is deemed to be received in accordance with subclause 38.3 [Notices]; or
  - (ii) has not, in Our opinion, been expended by You in accordance with the terms and conditions of this Agreement,

and all such Funds will be regarded as a debt due to Us capable of being recovered as such in any court of competent jurisdiction.

23.4 If there is a reduction in scope of the obligations under this Agreement, Our liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Agreement.

23.5 Our liability to pay any compensation under or in relation to this clause 23 is subject to:

- (a) Your strict compliance with this clause 23; and
- (b) Your substantiation of any amount claimed under paragraph 23.1(b).

23.6 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 23 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

**24. TERMINATION FOR DEFAULT****24.1 If:**

- (a) You fail to fulfil, or are in breach of any of Your obligations under this Agreement, and do not rectify the omission or breach within 10 Business Days of receiving a notice in writing from Us to do so;
- (b) You are unable to pay all Your debts as and when they become due and payable or You fail to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (c) proceedings are initiated with a view to obtaining an order for Your winding up or any shareholder, member or director convenes a meeting for the purpose of considering or passing of any resolution for Your winding up;
- (d) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in Incorporated Associations legislation of the States and Territories or Parts IV and V of the *Aboriginal Councils and Associations Act 1976* (Cth), or an order has been made for the purpose of placing You under external administration;
- (e) being an individual, You become bankrupt or enter into a scheme of arrangement with creditors;
- (f) in relation to this Agreement, You breach any law of the Commonwealth, or of a State or Territory;
- (g) You cease to carry on business;
- (h) We are satisfied that any statement made in Your application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding; or
- (i) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity,

then, in the case of any one or more of these events, We may immediately terminate the Term of this Agreement by giving written notice to You of the termination.

**24.2 Where We terminate the Term of this Agreement under subclause 24.1 We:**

- (a) will not be obliged to pay to You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date notice of termination given under subclause 24.1 is deemed to be received in accordance with subclause 38.3 [Notices]; and
- (b) will be entitled to recover from You any part of the Funds which:
  - (i) has not been legally committed for expenditure by You in accordance with this Agreement and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 24.1 is deemed to be received in accordance with subclause 38.3 [Notices]; or

(ii) has not, in Our opinion, been expended by You in accordance with the terms and conditions of this Agreement,

and all such Funds will be regarded as a debt due to Us capable of being recovered as such in any court of competent jurisdiction.

- 24.3 If You do not repay Us the amount referred to in paragraph 24.2(b) within 10 Business Days of receipt of the notice of termination (or if a different period is stated in the Schedule, that period) You must also pay Us Interest on the outstanding amount which You acknowledge represents a reasonable pre-estimate of the loss incurred by Us as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid. The amount set out in the notice, and Interest owed under this clause will be recoverable by Us as a debt due to Us by You.
- 24.4 Subclause 24.2 does not limit or exclude any of Our other rights, including the right to recover any other amounts from You on termination of this Agreement.

## 25. SUBCONTRACTING

- 25.1 You must give Us notice in writing no later than 20 Business Days prior to the entering of any subcontracting arrangement that You intend to enter into such an arrangement. We may:
- (a) prohibit You from proceeding with the subcontracting arrangement;
  - (b) impose such terms and conditions as We think fit on the subcontracting arrangement,
- by so notifying You in writing no later than 15 Business Days prior to the date you propose to enter the subcontracting arrangement.
- 25.2 Your notice to Us of the proposed subcontracting arrangement must detail:
- (a) the part of the Activity the subcontractor is to deliver;
  - (b) the name and ABN or ACN of the subcontractor;
  - (c) the date You propose to enter the subcontracting arrangement; and
  - (d) how the subcontractor was selected.
- 25.3 If Our notice under subclause 25.1 is not provided to You more than 15 Business Days prior to the date You propose to enter the subcontracting arrangement, it is deemed that Our approval of the subcontracting arrangement has been granted.
- 25.4 You are fully responsible for the performance of Your obligations under this Agreement, even though You may have subcontracted any of them.
- 25.5 Despite any approval given by Us under subclause 25.3, or any conditions imposed by Us under subclause 25.1, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement.
- 25.6 We may revoke Our approval of a subcontractor on any reasonable ground.
- 25.7 Upon receipt of a written notice from Us revoking Our approval of a subcontractor, You must, as soon as practicable (or as We may direct in the notice), cease using that subcontractor to perform any of Your obligations unless We direct that the subcontractor be replaced immediately, in which case You must comply with the direction.



- 25.8 If We withdraw Our approval of a subcontractor, You remain liable under this Agreement for the past acts or omissions of Your subcontractors as if they were current subcontractors.
- 25.9 You must, in any subcontract placed with a subcontractor, reserve a right of termination to take account of Our right of termination under clauses 23 or 24, Our right of revocation of approval under subclause 25.6 and the requirement for insurance under clause 19, and You must, where appropriate, make use of that right in the event of a termination or revocation by Us.
- 25.10 You must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

## 26. ACKNOWLEDGMENT AND PUBLICITY

- 26.1 You must acknowledge the financial and other support You have received from Us. You are required to, unless otherwise agreed to by Us:
- (a) erect and maintain a sign provided by Us at the site where construction required by the Activity is taking place; and
  - (b) display other signage, including signage marking an official opening or related events.
- 26.2 You must erect the sign referred to in clause 26.1(a) within seven days of the date on which You receive the sign from Us, unless otherwise agreed or directed by Us.
- 26.3 Unless otherwise agreed to by Us, the signage referred to in clause 26.1 must be displayed in public view on the site where construction required by the Activity is taking place and maintained by You for a period of two years from the date it was erected, or for any longer period of time (which We may nominate and advise You of in advance).
- 26.4 Where You cannot display a sign in accordance with subclause 26.3:
- (a) You may nominate other signage options, which must be approved by Us prior to display; or
  - (b) We may nominate other steps, with which You must comply, to publicise Our contribution to the Activity.
- 26.5 Where We approve a signage option under subclause 26.4, You must meet all costs associated with implementing the approved signage option.
- 26.6 We may advise You that Our logo must be included in all Your publications and promotional activities related to the Activity.
- 26.7 You must not use Our logo without Our approval. If We provide approval for Your use of Our logo, You must use it in accordance with Our branding guidelines (to be advised by Us).
- 26.8 All Your publicity, announcements and media releases relating to the Activity must be cleared through the contact officer specified at item 14 of the Schedule with appropriate notice, before release.
- 26.9 We reserve the right to publicise and report on the provision of Funding to You, including Your progress on completing the Activity and the Project. We may do this by including in media releases, general announcements about the Funding and in annual reports Your name, the amount of the Funds given to You and the title and a brief description of the Activity and the Project.

- 26.10 You must conduct an official opening of the Project unless otherwise agreed by Us.
- 26.11 You must provide to Us, at least three options for dates the official opening of the Project could take place.
- 26.12 The date of official openings or other official public function for the Project must be agreed by Us.
- 26.13 You must invite Our representative to officiate any official opening or other official public function relating to the Project. This invitation must be provided to Us no later than 4 weeks before the date of the official opening or other official public function relating to the Project.
- 26.14 Requests for Our agreement to the date of official openings and requests for Our representation at official openings or other official functions relating to the Project must be coordinated through the contact officer specified at item 14 of the Schedule.
- 26.15 This clause 26 applies for the Term of this Agreement and for a period of 5 years from the date of expiration or earlier termination of this Agreement.

## **27. SPECIFIED PERSONNEL**

- 27.1 You must ensure that the Specified Personnel, if any, listed in the Schedule undertake activities in respect of the Activity in accordance with the terms of this Agreement.
- 27.2 Where Specified Personnel are unable to undertake activities in respect of the Activity, You must notify Us immediately. You must, if so requested by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest opportunity.
- 27.3 We may give notice on reasonable grounds related to performance of the Activity requiring You to remove personnel (including Specified Personnel) from work in respect of the Activity. You must, at Your own cost, promptly arrange for the removal of such personnel from work in respect of the Activity and their replacement with personnel acceptable to Us.
- 27.4 If You are unable to provide acceptable replacement personnel We may terminate this Agreement in accordance with the provisions of clause 24.

## **28. COMPLIANCE WITH LAWS AND OUR POLICIES**

- 28.1 You must, in carrying out Your obligations under this Agreement, comply with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority, including those listed in the Schedule. You should note that under the *Criminal Code Act 1995* (Cth) section 137.1 giving false or misleading information is a serious offence.
- 28.2 You must, in carrying out Your obligations under this Agreement, comply with any of Our policies as notified by Us to You in writing, including those listed in the Schedule.
- 28.3 You must, when using Our premises or facilities, comply with all reasonable directions and procedures relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by Us or as might reasonably be inferred from the use to which the premises or facilities are being put.

## **29. NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY**

- 29.1 You, Your employees, partners and agents will not, by virtue of this Agreement, be or for any purpose be deemed to be Our legal employees, partners or agents.

29.2 You must not, and must ensure that Your employees, partners and agents do not, represent Yourself or themselves as being Our employees, partners or agents.

### **30. ENTIRE AGREEMENT, VARIATION AND SEVERANCE**

30.1 This Agreement records the entire agreement between You and Us in relation to its subject matter.

30.2 Except for action We are expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by You and Us.

30.3 If a court or tribunal says any provision of this Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.

### **31. WAIVER**

31.1 If either You or We do not exercise (or delay in exercising) any of Your or Our rights, that failure or delay does not operate as a waiver of those rights.

31.2 A single or partial exercise by You or Us of any of Your or Our rights does not prevent the further exercise of any right.

31.3 Waiver of any provision of, or right under, this Agreement:

(a) must be in writing signed by the Party entitled to the benefit of that provision or right; and

(b) is effective only to the extent set out in the written waiver.

31.4 In this clause 31, 'rights' means rights or remedies provided by this Agreement or at law.

### **32. ASSIGNMENT AND NOVATION**

32.1 You must not assign Your rights under this Agreement without prior written approval from Us.

32.2 You agree not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting Us.

### **33. INCORPORATION**

33.1 You warrant that Your Constitution is not, and will not become, inconsistent with this Agreement.

33.2 You must provide a copy of Your Constitution to Us upon request.

33.3 You must obtain Our written approval to any amendments to Your Constitution which may affect Your eligibility for the Funding or Your capacity to comply with this Agreement. If You alter Your Constitution in breach of this clause We may terminate this Agreement in accordance with clause 24.

### **34. FUNDING PRECONDITION**

34.1 You agree that it is a precondition of entitlement to the Funding that You must:

(a) have an Australian Business Number ("ABN");

- (b) immediately notify Us if You cease to be registered with an ABN;
- (c) correctly quote the ABN on all documentation to Us;
- (d) supply proof of GST status, if requested by Us; and
- (e) immediately notify Us of changes to Your GST status.

### **35. DISPUTE RESOLUTION**

- 35.1 Subject to subclause 35.3, both You and We agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.
- 35.2 Both You and We agree that any dispute arising during the course of this Agreement is dealt with as follows:
- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
  - (b) the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
  - (c) the parties have 10 Business Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
  - (d) if:
    - (i) there is no resolution of the dispute;
    - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
    - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 Business Days,

then, either You or We may commence legal proceedings.

- 35.3 This clause 35 does not apply to the following circumstances:
- (a) either You or We commence legal proceedings for urgent interlocutory relief;
  - (b) action by Us under or purportedly under clauses 4, 21, 23 or 24; or
  - (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.
- 35.4 Despite the existence of a dispute, both You and We must (unless requested in writing by the other Party not to do so) continue to perform obligations under this Agreement.
- 35.5 The operation of this clause 35 survives the expiration or earlier termination of this Agreement.

### **36. APPLICABLE LAW AND JURISDICTION**

- 36.1 The laws of the Australian Capital Territory apply to this Agreement.



36.2 Both You and We agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Agreement.

**37. LIAISON AND MONITORING**

37.1 You must:

- (a) liaise with and provide information to Us as reasonably required by Us; and
- (b) comply with all Our reasonable requests, directions, or monitoring requirements.

37.2 You may nominate, from time to time, a person who has authority to receive and sign notices and written communications for You under this Agreement and accept any request or direction in relation to the Activity and the Project.

**38. NOTICES**

38.1 A Party giving notice or notifying under this Agreement must do so in writing or by Electronic Communication:

- (a) directed to the recipient's address, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post or Electronic Communication to that address.

38.2 The parties' address details are as specified in the Schedule.

38.3 A notice given in accordance with subclause 38.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier;
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if a notice was being given under a law of the Commonwealth, which is currently when the Electronic Communication enters the addressee's Information System.

EXECUTION CLAUSES

Executed by the parties as evidence of their agreement.

SIGNED for and on behalf of the  
**COMMONWEALTH OF AUSTRALIA**  
represented by and acting through the  
**Department of Infrastructure,  
Transport, Regional Development and  
Local Government** ABN 86 267 354 017  
by s 47F Acting Executive  
Director, on the day of

47F [Redacted]

sign here

24/6/2009  
insert date

in the presence of:

47F [Redacted]

print name of witness

47F [Redacted]

witness sign here

Executed on behalf of  
**HOBSONS BAY CITY COUNCIL,**  
ABN 24 936 107 898  
on the day of  
**This Signatory** warrants that they have the  
authority to bind **Hobsons Bay City  
Council.**

47F [Redacted]

s 47F  
Acting Chief Executive Officer

47F [Redacted]

sign here

19/6/09

insert date

Signed in the presence of:

47F [Redacted]

Print name of Witness

(CPA)

Acting Director Business  
Position & Finance

47F [Redacted]

sign here

## SCHEDULE

### 1. PROJECT, ACTIVITY & PURPOSE

#### Project

1.1 The Project to be undertaken by You is the Regional Kitchen Project, a project to construct a meal production facility at Lot 10, Drake Boulevard, Altona, VIC 3018. The Project will deliver a meal production facility which will be used to provide meals across fourteen council municipalities (Hobsons Bay City, Banyule City, Brimbank City, Greater Dandenong City, Darebin City, Greater Geelong, Hume City, Macedon Ranges, Maribyrnong City, Melton Shire, Moonee Valley City, Moreland City, Stonnington City and Yarra City) under the Home and Community Care Program. The Project will include the Activity that the Program will fund, defined in more detail in item 1.4.

1.1A The Project Completion Date is 30 October 2010.

1.2 The Purpose of the completed Project, which will be used to determine its success, is:

Purpose
To provide for the construction of a meal production facility to deliver meals to the aged and disabled in fourteen municipal council areas (Hobsons Bay City, Banyule City, Brimbank City, Greater Dandenong City, Darebin City, Greater Geelong, Hume City, Macedon Ranges, Maribyrnong City, Melton Shire, Moonee Valley City, Moreland City, Stonnington City and Yarra City). The Regional Kitchen facility will consist of offices, meeting rooms, service aprons, staff change room and amenities, a canteen, food processing and dispatch areas. This will allow aged and disabled residents in the fourteen council municipalities, to continue living in their own homes. Once the Project is completed, it will offer a wide variety of culturally appropriate and nutritious meals including six three-course meal varieties to the aged and disabled across fourteen municipal council areas.

1.3 The Operational Period commences on the date We accept the Project Completion Report, to Our satisfaction. The duration of the Operational Period is five years.

#### Activity

1.4 The Activity to be undertaken by You is the construction of the Regional Kitchen facility. This will include but is not limited to:

- construction and fit-out of the facility including signage, offices, meeting rooms and amenities with an area of 530 square metres, processing, dispatching and receivables areas with an area of 1,434 square metres, service aprons with an area of 280 square metres, driveways and pavements with an area of 5,561 square metres, installation and commissioning of the boiler, compressed air plant and glycol plant systems and all necessary equipment; and
- landscaping to the Regional Kitchen Project including establishing driveways and walkways.

1.5 As part of the Activity You must achieve the Milestones specified in the table at Annexure A.

1.6 The Activity Period commences on the Date of this Agreement and ends 30 October 2010.

#### Use of Assets or Upgraded Item

- 1.7 You must continue to use the following Assets or Upgraded Item in the manner and within the timeframe as specified in the following table:

Asset or Upgraded Item	Use	Timeframe
Land and improvements located at Lot 10 Drake Boulevard, Altona, Victoria 3018, the site of the Regional Kitchen.	Kitchen facility to produce and deliver meals to the aged and disabled across 14 municipal council areas (Hobsons Bay City, Banyule City, Brimbank City, Greater Dandenong City, Darebin City, Greater Geelong, Hume City, Macedon Ranges, Maribyrnong City, Melton Shire, Moonee Valley City, Moreland City, Stonnington City and Yarra City).	5 years

## 2. FUNDING AND PAYMENT

- 2.1 The Funding is \$9,000,000.
- 2.2 The Budget for the Activity, identifying Program contributions and Other Contributions, is at Annexure B.
- 2.3 You must obtain written approval from Us for any transfer of Funds between cost items identified in the Budget, which exceed 10% of the Funding. The total amount of such transfers in any financial year must not exceed 20% of the Funding.
- 2.4 Subject to conditions at item 2.5, the Funding will be paid in accordance with the table at Annexure A.
- 2.5 (a) The first payment of Funding specified in the table at Annexure A will not be made until:
- (i) this Agreement has been executed by all Parties; and
  - (ii) a properly rendered invoice for the amount of the payment is received by Us.
- (b) The second payment of Funding specified in the table at Annexure A will not be made until:
- (i) all Milestones specified in the table at Annexure A that relate to the second payment have been achieved to Our satisfaction;
  - (ii) all Reports identified at item 3.1 as being due on or before the due date for the second payment have been received and accepted by Us;
  - (iii) You have provided Us with an initial cost estimate for the Project, as referred to in clauses 5.7 and 5.8; and
  - (iv) a properly rendered invoice for the amount of the payment is received by Us.
- (c) The third and subsequent payments specified in the table at Annexure A will not be made until:
- (i) all Milestones specified in the table at Annexure A that relate to the relevant payment have been achieved to Our satisfaction;
  - (ii) all Reports identified at item 3.1 as being due on or before the due date for the relevant payment have been received and accepted by Us;
  - (iii) a properly rendered invoice for the amount of the payment is received by Us.



**Bank Account**

- 2.6 You must establish an account which is separate from Your other operational accounts, and used solely for the purposes of accounting for, and administering, any Funding.

**Other Contributions**

- 2.7 You must provide Us with written confirmation of Other Contributions as required under clause 6.1 within 10 Business Days of Your securing the Other Contributions.

**3. REPORTS**

- 3.1 You must provide to Us the Reports required by the times specified in the table below.

Report	Milestone(s) covered by the Report	Due Date for Report
Progress Report 1	Milestone 2	30 July 2009
Progress Report 2	Milestone 3	1 October 2009
Progress Report 3	Milestone 4	17 November 2009
Progress Report 4	Milestone 5	10 February 2010
Progress Report 5	Milestone 6	11 June 2010
Progress Report 6	Milestone 7	29 November 2010
Project Completion Report	Milestones 8	13 January 2011

- 3.2 Each Progress Report must contain:

- (a) details of progress and performance against the Activity and Milestones that were completed, and that were due to be completed, during the period between Your previous Progress Report and the due date of this Progress Report (or in the case of the first Progress Report, the period between the Date of this Agreement and the due date of this report);
- (b) details of mitigating circumstances and remedial action undertaken in the event a Milestone is not met or completed in the manner and/or by the time specified;
- (c) copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project; and
- (d) evidence that you have obtained in-kind contributions.

- 3.3 The Progress Report(s) must also include:

- (a) a statement of receipts and expenditure to date in respect of the Funding;
- (b) a statement of receipts and expenditure to date in respect of Other Contributions (excluding in-kind) identified at Annexure B; and
- (c) an Assets register as specified in item 4 or Upgraded Items register as specified in item 5 of this Schedule.

- 3.4 The Project Completion Report must contain:

- (a) evidence that the Project specified in item 1.1, the Activity specified at item 1.4 of this Schedule, and the Milestones specified at Annexure A have been completed;
- (b) an analysis of the planning, implementation and overall process You followed to deliver the Project;

- (c) any recommendations on improved practice, relevant to Your and Our practices, that may assist in the delivery of future Projects;
  - (d) an Assets register as specified in item 4 or Upgraded Items register as specified in item 5 of this Schedule;
  - (e) evidence that You obtained in-kind contributions;
  - (f) the Financial Audit;
  - (g) copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project, not already included in the Progress Report/s; and
- 3.5 In accordance with subclause 11.4, the audited statement contained in the Financial Audit must comply with Accounting Standard ASA 700 *The Auditor's Report on a General Purpose Financial Report*.
- 3.6 You may also be required by Us during the progress of the Activity and the Project, to provide interim Reports, in addition to those Reports identified in the table at item 3.1, in the manner specified by Us.
- 3.7 You must, at any time required by Us during the Operational Period, provide evidence satisfactory to Us that your Project is Operational.
- 3.8 Unless otherwise agreed by Us, all Reports must be:
- (a) supplied in hard copy or electronic form;
  - (b) supplied in a format that is acceptable to Us; and
  - (c) signed by Your Chief Executive Officer, Chief Financial Officer or other person authorised by You to execute documents and legally bind You by their execution.
- 4. ASSETS**
- 4.1 You must maintain a register of all Assets in accordance with item 4.2 below. If an Asset is partly purchased using Funds provided under this Agreement, You must record the proportion purchased with these Funds in the Assets register.
- 4.2 The Assets register must include the following items (where applicable):
- (a) Asset description;
  - (b) Purchase price or total lease cost;
  - (c) Date of purchase or lease;
  - (d) Type and term of lease;
  - (e) Location of Asset;
  - (f) Date of disposal approval;
  - (g) Disposal date; and
  - (h) Disposal method;
- 4.3 For the purposes of clause 8.1, the following Assets may be purchased without Our prior written approval:
- Nil.

- 4.4 For the purposes of clause 8.2, We do not own any Assets.
- 4.5 You must seek Our prior written approval in accordance with clause 8 in relation to any relevant action (relating to use of the Assets) for a period of five years from the Date of this Agreement.

#### **5. UPGRADED ITEMS**

- 5.1 For the purposes of clause 9.1, the following items may be upgraded without Our prior written approval:

Land and improvements located at Lot 10 on Plan of Subdivision 619549W, contained within the Certificate of Title Volume 11117, Folio 979 known as 43-47 Drake Boulevard, Altona, Victoria 3018.

- 5.2 For the purposes of paragraph 9.2 (m), no Upgraded Items register is required.
- 5.3 The Upgraded Items register must include the following items (where applicable):
- (a) Upgraded Item description;
  - (b) Purchase price or total lease cost;
  - (c) Date of purchase or lease;
  - (d) Type and term of lease;
  - (e) Location of Upgraded Item;
  - (f) Date of disposal approval;
  - (g) Disposal date;
  - (h) Disposal method; and
  - (i) The proportion of Funds used to upgrade the Upgraded Item.

- 5.5 You must seek Our prior written approval in accordance with clause 9 in relation to any relevant action for a period of five years from the Date of this Agreement.

#### **6. COMMONWEALTH MATERIAL**

- 6.1 No Commonwealth Material specified.

#### **7. INTELLECTUAL PROPERTY**

- 7.1 No Existing Material specified.

#### **8. DISCLOSURE OF INFORMATION**

- 8.1 No confidential material has been specified.

#### **9. INSURANCE**

- 9.1 Workers' compensation insurance as required by law where You carry out activities under this Agreement.
- 9.2 Public liability insurance to the value of \$10 million per claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.
- 9.3 Insurance over any Asset or Upgraded Item for its full replacement value.

**10. CONFLICT OF INTEREST**

10.1 No conflict of interest has been identified.

**11. SUBCONTRACTORS**

11.1 No subcontracting arrangement has been approved by Us at the Date of this Agreement.

**12. SPECIFIED PERSONNEL**

No Specified Personnel have been identified.

**13. COMPLIANCE WITH LAWS AND POLICIES**

13.1 In carrying out the Activity You must comply with all relevant legislation including the following:

- *Equal Opportunity for Women in the Workplace Act 1999;*
- *Racial Discrimination Act 1984;*
- *Sex Discrimination Act 1984;*
- *Disability Discrimination Act 1992;*
- *Crimes Act 1914;* and
- *Criminal Code Act 1995.*

**14. NOTICES**

14.1 A Party giving notice or notifying under this Agreement must do so in the manner identified at Clause 38, to the following appropriate addressees:

**(a) Our contact details**

Name: General Manager, Local Government Programs  
 Address: Department of Infrastructure, Transport,  
 Regional Development and Local Government  
 GPO Box 594, CANBERRA ACT 2601  
 Telephone: 02 6274 7111  
 Fax: 02 6274 7205  
 E-mail: Regional.Grants@infrastructure.gov.au

**(b) Your contact details**

Name: Mr Bill Jaboor  
 Position: Chief Executive Officer  
 Address: Hobsons Bay City Council  
 PO Box 21 Altona VIC 3018  
 Telephone: 47F  
 Fax: 03 9932 1039  
 E-mail: 47F hobsonsbay.vic.gov.au



## ANNEXURE A

Table of Milestones relating to the Activity

Number	Milestone	Milestone Completion Date	Payment amount (GST exclusive)	Due date for payment
1	All requirements under Item 2.5(a) of the Schedule have been met.	23 June 2009	\$3,150,000	25 June 2009
2	Evidence that is acceptable to Us: <ul style="list-style-type: none"> <li>- of the precise location of the site on which the Regional Kitchen will be constructed that clarifies the location of the land described at item 1.7 of this Schedule;</li> <li>- of either of the following, as the case requires: <ul style="list-style-type: none"> <li>- that the site on which the Regional Kitchen will be constructed is not subject to inundation overlay; or</li> <li>- that the site on which the Regional Kitchen will be constructed is subject to inundation overlay and the risk treatment You propose to manage this risk;</li> </ul> </li> <li>- of Your plans for the ongoing management and maintenance of the facility;</li> <li>- that steps have been taken to transfer the title to the land described at item 1.7 (as clarified by You) of this Schedule to Regional Kitchen Pty Ltd; and</li> <li>- that all co-funding has been secured.</li> </ul>	2 July 2009	Nil	N/A
3	Provision of: <ul style="list-style-type: none"> <li>- detailed specifications of the Activity, described in item 1.4 of this Schedule that further develops these requirements. The specifications must include, but need not be limited to, the dimensions, materials and costs of the structure that will</li> </ul>	3 September 2009	Nil	N/A

			<p>constitute the Regional Kitchen building, and each part of that structure; and</p> <ul style="list-style-type: none"> <li>- an up-to-date, detailed and accurate timeline for completion of the Activity; and</li> </ul> <p>Evidence that is acceptable to Us that:</p> <ul style="list-style-type: none"> <li>- the required Government and all necessary approvals to commence the Project have been obtained, including a copy of the development application and approval;</li> <li>- Council's lease and loan arrangements have been finalised;</li> <li>- the transfer of the land described at item 1.7 of this Schedule to Regional Kitchen Pty Ltd is complete;</li> <li>- a qualified/experienced Project Manager has been appointed; and</li> <li>- a suitably qualified builder has been appointed.</li> </ul>	<p>20 October 2009</p>	<p>\$2,250,000</p>			<p>27 November 2009</p>
<p>4</p>	<p>Evidence that is acceptable to Us that:</p> <ul style="list-style-type: none"> <li>- all requirements under clause 2.5(b) of the Schedule have been met;</li> <li>- Your initial cost estimate, as provided to Us, is reasonable and has been reviewed by a quantity surveyor;</li> <li>- suitably qualified contractors have been appointed to install and commission the boiler, compressed air plant and glycol plant systems;</li> <li>- suitably qualified contractors have been appointed to install all necessary equipment;</li> <li>- construction of the facility has commenced;</li> <li>- the foundations for the facility have been laid;</li> <li>- site preparation works are complete; and</li> <li>- all contracts for all materials, equipment and services have been entered into and orders placed as applicable.</li> </ul>							

5	<p>Evidence that is acceptable to Us that:</p> <ul style="list-style-type: none"> <li>- all requirements under clause 2.5(c) of this Schedule have been met; and</li> <li>- the external building works being complete to lock-up stage that is, the shell.</li> </ul>	13 January 2010	\$1,800,000	17 February 2010
6	<p>Evidence that is acceptable to Us that:</p> <ul style="list-style-type: none"> <li>- all requirements under clause 2.5(c) of this Schedule have been met;</li> <li>- external building works are complete;</li> <li>- internal building works have commenced;</li> <li>- landscaping has commenced;</li> <li>- signage has been erected; and</li> <li>- the process of engaging staff to operate the facility has commenced.</li> </ul>	14 May 2010	\$1,800,000	21 June 2010
7	<p>Evidence that is acceptable to Us that:</p> <ul style="list-style-type: none"> <li>- internal fit out is complete;</li> <li>- landscaping is complete;</li> <li>- signage has been erected; and</li> <li>- staff to operate the facility have been engaged.</li> </ul>	31 October 2010	Nil	N/A
8	<p>Evidence that is acceptable to Us of:</p> <ul style="list-style-type: none"> <li>- Activity Completion and an Occupancy Certificate or other certificate/s, certifying completion of the project to the appropriate standard under the Building Code of Australia and/or other standards as appropriate, have been awarded by the appropriate issuing authority/ies; and</li> <li>- the Regional Kitchen is open and operational for the Purpose set out at item 1.2 of this Schedule.</li> </ul>	13 January 2011	Nil	N/A

## ANNEXURE B

<b>BUDGET</b>		
Cost Item	Description	Amount (GST exclusive)
Construction/fit-out	Base building works: building shell, building fit-out, landscaping, building services, external works, preliminaries and margins and contingency.	\$6,000,000
Plant/equipment purchase	Process and packaging equipment	\$1,853,169
Plant/equipment hire/lease	Plant and equipment	\$1,146,831
<b>Our Funding</b>		<b>\$9,000,000</b>

<b>OTHER CONTRIBUTIONS (FINANCIAL)</b>		
Cost Item	Name of Contributor	Amount
Wages, salary and superannuation, training, operating costs, materials, insurance and office expenses, construction/fit-out, plant equipment purchase, plant equipment hire/lease, project management, consultants, contractors, professional fees, legal & compliance	<ul style="list-style-type: none"> <li>- Hobsons Bay City Council</li> <li>- Banyule City Council</li> <li>- Brimbank City Council</li> <li>- Greater Dandenong City Council</li> <li>- Darebin City Council</li> <li>- Greater Geelong City Council</li> <li>- Hume City Council</li> <li>- Macedon Ranges Shire Council</li> <li>- Maribyrnong City Council</li> <li>- Melton Shire Council</li> <li>- Moonee Valley City Council</li> <li>- Moreland City Council</li> <li>- Stonnington City Council</li> <li>- Yarra City Council</li> </ul>	\$4,051,408
Wages, salary and superannuation, training, operating costs, materials, insurance and office expenses, construction/fit-out, plant equipment purchase, plant equipment hire/lease, project management, consultants, contractors, professional fees, legal & compliance, Other costs – Interest on bank loans.	Department of Human Services	\$6,000,000



Wages, Salary and Superannuation, Training, Operating Costs, Materials, insurance and office expenses, Construction/ Fit-out, Plant Equipment purchase, Plant Equipment hire/lease, Project Management, Consultants, contractors, professional fees, legal & compliance, Other costs – Interest on bank loans.	Borrowings and Finance Leases	\$10,919,000
<b>Other Contributions (Financial)</b>		<b>\$20,970,408</b>

<b>OTHER CONTRIBUTIONS (IN-KIND)</b>	
Description of Other Contribution (In-kind)	Name of Contributor
Labour representation: Advisory Group, Communication Group, HR Group, workshops	<ul style="list-style-type: none"> <li>- Hobsons Bay City Council</li> <li>- Banyule City Council</li> <li>- Brimbank City Council</li> <li>- Greater Dandenong City Council</li> <li>- Darebin City Council</li> <li>- Greater Geelong City Council</li> <li>- Hume City Council</li> <li>- Macedon Ranges Shire Council</li> <li>- Maribyrnong City Council</li> <li>- Melton Shire Council</li> <li>- Moonee Valley City Council</li> <li>- Moreland City Council</li> <li>- Stonnington City Council</li> <li>- Yara City Council</li> </ul>

Project Name: **Regional Kitchen project**  
 Project Type: **CIP-SP**  
 Project No: **SP740**  
 File Number: **0**

Were changes requested during the negotiation process? (Y/N): **N**

Has the Funding Agreement been signed by the funding recipient: (Y/N): **Y**

Is the Funding Agreement an exact copy of the cleared, final version of the Agreement, or the copies returned are those sent from this office and returned without alteration? (Y/N): **Y**

**Forward both copies of the Funding Agreement to the Delegate for signing and place a copy of this file note on file.**

Verified by (Contract Manager):

**47F**

(Name)

(Date)

*19/6/09*



**Australian Government**  
**Department of Infrastructure, Transport,**  
**Regional Development and Local Government**

47F [Redacted]  
24/6 ✓  
47F [Redacted]

**This Deed Poll (Undertaking) made at Altona on 19 June 2009**

**In favour of** the Commonwealth of Australia as represented by the Department of Infrastructure, Transport, Regional Development and Local Government

**(DITRD LG)**

**By** [Hobsons Bay City Council] ABN 24 936 107 898

**(Proponent)**

The Proponent hereby acknowledges and agrees the following:

**Undertaking**

1. Any funding approved by the Minister for Infrastructure, Transport, Regional Development and Local Government ('the Minister') on behalf of the Commonwealth of Australia ('the Commonwealth') for a project under the Community Infrastructure Program – Strategic Projects ('Project') is subject to the execution of a funding agreement ('Funding Agreement').
2. The amount of funding (if any) will be determined at the absolute discretion of the Commonwealth and will be stipulated in a Funding Agreement.
3. The Commonwealth is not and will not be responsible for the provision of any funding in addition to the amount approved by the Minister and stipulated in a Funding Agreement.
4. The Proponent is responsible for any additional funding (if any) required for the Project.

**Governing Law**

5. This Undertaking will be governed by and construed in accordance with the Laws of the Australian Capital Territory, and the Proponent agrees to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Undertaking.

**Executed as a Deed Poll**

Signed sealed and delivered by Hobsons Bay City Council 24 936 107 898 and this Signatory warrants that they have the authority to bind Hobsons Bay City Council in the presence of:

47F [Redacted Signature]

Signature of Proponent's authorised representative

s 47F [Redacted Name] Acting Chief Executive Officer

Name of Proponent's authorised representative in full

47F [Redacted Signature]

Signature of Witness

s 47F [Redacted Name] (CPA)

Name of Witness in full

s 47F [Redacted Signature]

112 ✓





# Nicola Roxon MP

FEDERAL LABOR MEMBER FOR GELLIBRAND

The Hon Anthony Albanese MP  
 Minister for Infrastructure, Transport,  
 Regional Development and Local Government  
 Parliament House  
 CANBERRA ACT 2600

15 January 2009

Dear Minister,

*Anthony*

I write to strongly support the application by the Regional Kitchen Group to the Regional and Local Community Infrastructure Program (RLCIP) – Strategic Projects.

The Regional Kitchen Group is a joint venture of fourteen local councils in Victoria. The Regional Kitchen Project seeks to develop a high volume meal production facility to support the meal delivery programs of these local councils.

The positive attributes of this project include:

- Provision of quality and nutritious food to older Victorians
- High food safety and security standards
- Provision of culturally appropriate meals

The Regional Kitchen Group has already received funding from a range of key stakeholders, including the participating local councils and \$6 million from the State Government of Victoria. I am advised that the Regional Kitchen Group has applied for \$9 million from RLCIP. This funding would be the final amount required prior to the project being able to commence.

I am advised that in accordance with the aims of RLCIP the Regional Kitchen Group would be able to commence construction shortly after receipt of funding and would create around 50 jobs when operational. This funding would also enable the Regional Kitchen Group to incorporate energy and water saving features into the project.

Representatives of the Regional Kitchen Group are available to brief you or your Department on this impressive project. My office would be happy to facilitate this meeting if required.

I wish to strongly support the application by the Regional Kitchen Group to the Regional and Local Community Infrastructure Program (RLCIP) and hope you can consider the application on its merits.

Yours sincerely,

*Nicola Roxon*

**Nicola Roxon MP**  
**Federal Member for Gellibrand**





**I COOK  
CATERING  
AGED CARE  
SERVICES**



5<sup>TH</sup> May 2009  
The Hon. Anthony Albanese  
Federal Member for Grayndler

**Re: Concerns and Issues relating to the establishment of the Regional Food Kitchen- Vic**

Dear Mr Albanese

I.Cook Catering Aged Care Services ( ICCACS) is a long established Commercial Catering business which is located in your Dandenong Victoria, employing approximately 30 staff. Our operations are focused on the production of meals for the Aged Care Sector, currently servicing four Municipalities and a couple of Aged Care Facilities across Metropolitan Melbourne.

We write to you as a result of information brought to our attention by our employees and subsequent media information on the proposed establishment of a Regional Food Kitchen (RFK) in the Western Suburbs through the financial support obtained from collaboration of 14 Municipalities, State and Federal Grant Funding of ranging from \$14.4 Million to \$30.0 Million.

We have attached a detailed list of issues and concerns for your information and consideration and accordingly seek a meeting with you or your representatives so as to discuss these issues.

In summary ICCACS has recently acquired a new facility in the Dandenong area at which we are going to expand our operations through our establishment of a larger modern state of the art commercial kitchen which will provide the benefits of those stated in the Media releases at a fraction of the cost compared to the Grants being committed to the RFK. ICCACS believe that the same level of output and efficiency can be established for amounts less than those committed by the Federal Government and without the need for State or Local Government Contributions.

We would be pleased to be able to meet with you so as to discuss the issues we raise and to enlist your advice on how best to bring to light available cost effective options in an all engaging scenario.

As Ratepayers we have initiated discussions with our Ward Councillor, on behalf of ourselves and our employees, who are concerned about the impact the RFK will have on their job security, we written to our Local Member and herein we write to invite you to meet with us to be better informed of available options and potentially substantial capital expenditure savings by Government.

Yours faithfully

47F

Managing Director

## **I. Cook Catering Aged Care Services**

### **Views and Comments on the proposed Regional Food Kitchen ( RFK )**

**Based on Council and general Media Releases ICCACS has been made aware of the establishment of a Regional Food Kitchen – RFK .**

**This RFK is being established through the collective efforts of 14 Local, State and Federal Government Funding.**

**In a recent Herald Sun Article – 28<sup>th</sup> April 2009 it states that \$9 million has been spent on a RFK based in Altona and will cost nearly \$30 Million to produce 10,000 meals per day – the RFK is expected to be completed by 2010.**

**Initial Media Releases by Hobsons Bay City Council dating back to 2008 indicated that the RFK would cost \$14.4 Million and create 30 – 50 jobs which would produce 1.5 Million Meals per annum.**

**ICCACS understands that the decision to proceed with the RFK was based on a report produced by the Department of Human Services and via the promotion and lobbying of Metropolitan Councils by Hobsons Bay City Council – which is a current service provider to Meals on Wheels contracts.**

**The capability of the RFK to be established appears to be based on the following;**

- **Long term 10 year commitments by approximately 14 Municipalities**
- **Financial Contributions by Local Governments – media quotes at \$200,000 per Council – totalling \$2,800,000**
- **State Government Funding providing \$6,000,000**
- **Federal Government Commitment to \$9,000,000**

**The total of the quoted expected contributions equates to \$17.8 Million Dollars against the expected expenditure being quoted at between \$14.4 and \$30 Million**

**The Organisational structure of the RFK has been presented as a two part option ie; equity in the building and contractual commitment to the service operations for a minimum of ten years. Councils will thus be involved as Property Investors and Buyers of products/ meals.**

As expressed in a Media release by Moreland City Council 28<sup>th</sup> July 2008 the benefits expected from the RFK are:

- A modern, up to date kitchen
- Efficiencies of scale
- Increased delivery options for clients, due to modern food production technologies.
- Long -term savings in both capital and operational costs.

ICCACS raise the following issues and concerns in relation to both the process of evaluation and the decision to proceed with funding of the proposed RFK.

ICCACS currently produce up to 500,000 meals p.a. for 4 Metropolitan Municipalities and Aged Care Facilities, employing approximately 30 employees.

ICCACS services entered the Meals on Wheels Service delivery sector via the Competitive Tender Processes, meaning that the cost of service delivery being both the Capital and Operational components were privately funded and due compensation is obtained through the tendered contract price of meals.

Hobsons Bay City Council is currently in the same arena competitively tendering for service delivery to other Municipalities as a potential service provider.

The Meals on Wheels market currently comprises Councils that either produce their own service delivery in house or alternately outsource to external contractors/service providers.

The proposition to establish a RFK immediately shrinks the size of the potential market for Service Providers and effectively reduces the viability of operating in this Sector as a Meals on Wheels Service Provider. Thus, Government support is establishing a platform for a future monopolization of the Meals delivery Services through the elimination of Competition via an environment of artificial financial advantage via grants and long term contract commitments.

The process undertaken has not considered all potential options available as there has not been any engagement with existing service providers.

ICCACS is not aware of any opportunity or invitation by Government Departments to present alternative proposals on an equal playing field and a similar offering of Financial Support.

Councils that have expressed participation in the consortia included Brimbank and Greater Dandenong. ICCACS currently are the Meals Service Provider to Brimbank and the ICCACS operations are located in Dandenong and accordingly employ a significant number of Dandenong residents.

ICCACS believes the decision making process undertaken was inequitable and potentially ill informed leading to incomplete conclusions to Government based on the following points.



**An Expression of Interest to the Wider Market was not published with the requirements to meet the Local Government Aged Care Sector meals needs.**

**Based on the perceived benefits published in Media Releases ICCACS has the following points and issues for consideration.**

**A Modern up-to-date kitchen.**

**The financial support required to established the RFK was not evaluated against other potential options eg; the quoted financial support to establish the RFK ranges from values of between \$14.4 and \$30.0 Million dollars with an expected output of between 1.5 to 2.5 Million meals per annum. ICCACS currently produces 500,000 meals per annum and considers the Capital requirements specified as exorbitant to achieve the stated outputs.**

**Meals Service Unit costs have not been presented for public consideration however the fact that such significant financial assistance has been offered in the form of grants, the cost base is artificially lowered through inequitable support. Any existing service provider would be able to reduce their cost base if provided the levels of quoted cash injection. The point being what degree of cost reduction can be achieved at various capital contributions.**

**A property holding entity funded by external sources will naturally be able to contribute back commercial rental returns as an off set – such an arrangement would be attractive to any participant in the meals delivery area, however does this support stimulate prudent business decisions or does it create an environment of false economy and luxurious financial decision making through artificial financial underpinning.**

**Once committed all parties are locked in to the project even if it doesn't perform effectively in the future – they will be bound to financial underwriting.**

**Issue:**

**Is the level of Financial Support being enlisted necessary to achieve the level of current and future cost effective service delivery required? What degree has financial risk assessment played in the formation of the model – based on the fact that funding has not been personally guaranteed – why was not the same level of financial support offered to the wider industry.**

**ICCACS believes the stated levels of output can be achieved at significantly lower levels of capital/grant contribution.**

**Question:**

**What is the structure and composition of the financial model behind the RFK and has this been competitively assessed against other options and structures?**



## **Efficiencies of Scale**

The Consolidation of 14 Councils under a single long term service agreement will naturally create an environment for the achievement of Economies of Scale particularly when the stated term of commitment will extend out to a minimum term of ten years.

This is currently unprecedented in that all current Service Providers have to assume contract terms for periods significantly shorter than 10 years, thus having significant impact on the financial modelling and recovery periods for capital, the term is potentially three times that of current terms.

Has the costing model been measured against alternate options and market players to determine the degree of economies of scale capable of being achieved and hence being reflected in the final unit costs of meals produced.

Furthermore, there are Councils in the Consortia that currently produce their own meals service, these opportunities have not been presented to the wider market so as to provide a greater opportunity to private industry to compete for contracts – increasing the size of the market opens the possibility for greater financial viability of the sector and sustainable competition.

### **Issues:**

ICCACS was not placed on an equal playing field nor given the opportunity to present a competitive and sustainable option for comparison against the RFK proposal.

Does an Institutionally run operation produce a more cost effective business model than a privately run entity?

What impact would the consolidated offering over the longer contract term have on the market long term – what checks and balance are there to ensure future cost effective operations?

What is the basis of the measurement of economies of scale financial benefits, particularly comparing based on a common offering to the market place eg terms of contract and financial investment by Government?

The consolidation of Councils will lead to a potential Monopoly market – with limited checks, balances and future cost effective alternatives. Reduced Contingency options through shrinkage of market suppliers.

Would it not be prudent to have established a platform of co operation across a number of existing players so as to achieve a diversity of supply and efficiency with benchmarking capabilities? Does this proposed structure present the ultimate financially viable option?

## **Increased delivery options**

The delivery options traditionally have been specified by Councils and have been serviced in accordance with contract specifications. This is an area that is not

necessarily an advantage that comes from the RFK but rather through logistics planning.

ICCACS are currently evaluating changing the delivery dates of their meals to coincide with rescheduling requests from a particular Municipality – this form of change and in particular the scheduling of deliveries is collaboration between the parties taking into consideration whether there is a volunteer base to work with or are they paid staff for delivery – the number of drop off points and the value or need given to frequency of resident contact.

There was no public forum, nor workshop discussions or future directions in terms of requirements presented by Councils on this matter.

Points to consider ICCACS are located in Dandenong and it would be fair to say that an operation based in the Municipality could best provide the service requirements – fair to say as a general statement however there was no opportunity to test the scenario?

### **Modern food production technologies.**

The available literature does not specify what forms of advance modern technologies will be applied. Traditionally Councils have specified whether they require their meals delivered as either hot or as Cooked Chill products.

As we cannot comment on the technologies to be employed it must be stated that Service providers have historically supplied within the scope of the Council Specifications.

ICCACS as a current meals supplier initially supplied meals as cooked chill in foil containers – during the term of our contracts and at no additional cost to Councils ICCACS in consultation with Councils have introduced the Modified Atmosphere Packaging System. Further details on MAPS are contained as part of our profile information.

This improvement to the service delivery was done as part of our continuous improvement practices wherein ICCACS introduced the change rather than being requested to change.

ICCACS considers itself as a leader and innovator in Meals production and delivery yet no consultation or engagement was facilitated so as to consider existing available supply options.

The most important point in this statement about technologies is that ICCACS have privately funded the purchase of relevant technologies and currently provide it as part of the service delivery.

No Government funding was received in pursuit of the advancement in packaging, presentation and shelf life of meals and no competitor currently offers the same.

What are the comparatives between the proposed technologies to be employed by the RFK compared to the currently delivered MAP meals produced by ICCACS.

## **Long term savings in Capital and operational Cost**

**In general terms without privilege to specific details and based on the output volumes quoted ICCACS believes the Capital being deployed towards the RFK could be substantially less if consultation was facilitated with ICCACS.**

**What basis of measurement was used to determine the potential long term savings and what were they measured against? What alternative structures and co operation was considered or invited to ensure prudent spending of Tax and Rate payers dollars.**

## **Employment**

**Media releases quote the creation of between 30-50 jobs through the investment of up to \$30 Million in this project – What is the negative impact of this project on Employment through both closing existing in house facilities and against existing service providers.**

**The impact on ICCACS of Brimbank changing to the RFK would be the redundancy of up to 10 people.**

**What figures are available to show what redundancies are to be made due to the introduction of the RFK?**

**The Australian Services Union fear that at least 10 positions will be made redundant in Moreland Council if the RFK proceeds.**

**As a multiplier across 14 Councils it appears as a project supported by Government Funding there will be a significant negative employment result, redundancy rather than opportunity.**

**While ineffective and inefficient operations need restructure it is important to consider all options when the public purse is used and how those funds are applied.**



**FILE NOTE: 2SP740 Hobsons Bay City Council – Regional Kitchen Project (RFK)**

Tuesday 19 May 2009, 3:15pm: phone call

Phone conversation between 47F, Regional and Local Programs and 47F  
47F Hobsons Bay City Council

The issue:

The claim the catering company, I. Cook Catering Aged Care Services (ICCACS) made that Australian Government funding of the Regional Kitchen Project through the CIP-SP has resulted in an unfair competitive advantage over other commercial operators providing similar services and that it will reduce the viability of an existing business. Specifically affecting themselves in the Brimbank area where they provide the service and are located in Dandenong where they employ 10 staff from the area.

47F explained to 47F that he had received a letter from ICCACS and that it raised the above issues. Was 47F aware of this company and its concerns with RFK?

47F was aware of it and explained that the reason the kitchen was initiated was the market didn't meet the needs of the communities. The inadequacies led to an audit of the community service that found the Government needed to do something. It went out to tender 3 or 4 times with no response.

The following was found:

- The Regional Kitchen project was initiated after a state-wide review of Meals on Wheels services in Victoria concluded that food security for older people was at risk;
- Food safety standards in current kitchens needed to be raised;
- The current system exposed local governments to unacceptable standards of financial risk;
- Ethnic/cultural meals, vegetarian and specialist meals were not provided;
- Couldn't get texture modified meals for the increased number of very old people;
- The quality, variety and portion size from private suppliers was often inadequate;
- There was almost no competition in the market and it was often difficult to gain sufficient expressions of interest to supply such services; and
- Capital expenditure required to upgrade kitchens was beyond the reach of individual councils.

Development of a Regional Kitchen facility would:

- Address preventative health measures and reduce unnecessary admissions to acute care;
- Assist older people and people with a disability to be active in the community for as long as possible;
- Provide food security, a varied and healthy diet and culturally relevant meal options;
- Be a more efficient and sustainable means of food production; and
- Maximise the benefits of capital investment.

The State Government made an exemption of the Local Government Act 186 to tender and by becoming a shareholder the local governments could provide the service.

47F asked whether there had been any contact with ICCACS and whether there were any suggestions on how we can best handle the situation.



47F [REDACTED] replied that there had not been any contact but that he was aware of it. He had actually expected more reaction, but the business was not profitable, so there was not much reaction. He suggested that it be deflected on to State as they made the exemption for tendering.

47F [REDACTED] wanted more definite action and suggested they might contact ICCACS and find out where there might be competitive advantage and whether the two companies might be able to complement each other. 47F [REDACTED] agreed to contact ICCACS with a view to discuss how the proposal and ICCACS complement each other and identifying any specific issues that could be addressed to provide assurance that the projects are complementary and not competitive.

The conversation ended with a discussion of milestones for the Funding Agreement. 47F [REDACTED] asked them to ensure they included milestones which covered the building of the infrastructure (for which the SP money is designated) as well as milestones which cover project viability such as number of meals catered and job creation and retention.

