

COMMUNITY FACILITIES MANAGEMENT AGREEMENT

Between:

Gympie Regional Council

(as the Council)

and:

[Name of Organisation]

(as the Manager)



COMMUNITY FACILITIES MANAGEMENT AGREEMENT

THIS AGREEMENT dated the _____ day of _____ 2021

BETWEEN: **GYMPIE REGIONAL COUNCIL**, of 242 Mary Street, Gympie in the State of Queensland, (hereinafter referred to as "the Council")

AND: **[Name of Organisation]**, of **[Organisation's address]** in the State of Queensland, (hereinafter referred to as "the Manager")

RECITALS

- A. The Council is the owner of property located at **[property address]** more particularly described as **Lot [.....]** on **SP/RP[.....]** and hereinafter referred to as "the Property".
- B. The arrangement is for the use of the whole of the Licensed Area, by the Manager, as per the attached plan in Annexure C.
- C. The terms and conditions are set out in this Management Agreement and herein after referred to as the "Agreement".

AGREEMENT

The Council and the Manager each covenant and agree to the terms and conditions set out in this Agreement and to abide by those terms and conditions in every respect for the entire period of operation of this Agreement.

DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

In the Agreement:

"Agreement" means the Agreement that exists between the Council and the Manager in relation to the Licensed Area as evidenced by this document;

"Agreement Fee" means the amount set out in **Item 4** of the Reference Schedule payable for each year of the Term, and any year (or part thereof) of any holding over period agreed to under Clause 2.1(b) (with the amount determined on a pro rata basis);

"Capital" means any major improvements to ensure the facility is able to be maintained as a long term asset;

"Cost" includes loss, liability and expense.

"Council" means the party named on the front page of this Agreement and its successors and assigns and where the context permits its employees, agents and contractors;

"Date of Commencement" means the date stated in **Item 1** of the Reference Schedule;

"Date of Expiration" means the date stated in **Item 2** of the Reference Schedule;

"Event of Force Majeure" means any occurrence occurring beyond the reasonable control of the Party affected by it and, without limiting the generality of the above, includes:

- i. an act of a public enemy, a war (declared or undeclared), explosion, insurrection, public riot,

- civil commotion, military action, act of terrorism and an act of sabotage;
- ii. a strike, blockade, lockout, an industrial action, dispute or disturbance of any kind;
 - iii. an act or restraint of any government or any governmental authority, including foreign governments and authorities;
 - iv. a storm, tempest, lightning, fire, flood, earthquake or other natural calamity.

"General Maintenance" means any minor improvements to ensure the facility is able to be operated and managed on a daily basis;

"Government Agency" means any government or any governmental, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), and includes other GST related legislation.

"Land" means the land on which the Property is situated and includes any improvements contained therein.

"Licensed Area" means the area described in **Item 3** of the Reference Schedule;

"Manager" means the party described on the front page of this Agreement and its permitted successors and assigns and where the context permits its employees, agents and contractors and is an incorporated association;

"Party" means each or either of:

- i. Council; and
- ii. the Manager.

"Reference Schedule" means the schedule so described which is affixed to this document;

"Statute" means any statute, regulation, proclamation, ordinance or by-law of the Commonwealth of Australia or the State of Queensland and includes all statutes, regulations, proclamations, ordinances or by-laws varying consolidating or replacing them and all regulations, proclamations, ordinances and by-laws issued under that statute; and

"Term" means the term of the Agreement set out in **Item 5** of the Reference Schedule.

"WHS ACT" means *Work Health and Safety Act 2011*

"Work Cover" means Insurance under the *Workers Compensation Act*.

"Workers Compensation Act" means *Workers Compensation and Rehabilitation Act 2003*.

TERM OF AGREEMENT

2.1 Term of the Agreement

- a) The Term commences on the Date of Commencement and expires on the Date of Expiration, subject to the provisions of the Agreement.
- b) If the Manager continues to occupy the Property after the Date of Expiration with Council's written consent (which consent Council may grant (absolutely or conditionally) or may refuse, at its discretion), the terms of this Agreement are to apply as a monthly hold over agreement.
- c) If the Manager holds over in accordance with **Clause 2.1(b)**, either the Manager or Council may terminate the monthly hold over agreement by giving at least 1 months' notice to the other.

AGREEMENT FEES & CHARGES

3.1 Payment

The Manager will pay the Agreement Fee to the Council or to such other person as the Council nominates in writing to the Manager annually in advance on:

- a) for the first year of the Term, the Date of Commencement; and
- b) thereafter, the first day of each subsequent year of the Term (including the first day of any holding over period agreed to by Council under **Clause 2.1(2)**);

3.2 Fees & charges

- a) The Manager may set reasonable fees and charges for the use of the Licensed Area, subject to **Clause 3.2(c)**.
- b) All fees and charges collected under **Clause 3.2(a)** must be utilised for the purposes of managing and operating the Licensed Area.
- c) All fees and charges under **Clause 3.2(a)** must first be approved by Council (acting reasonably).
- d) The Manager must issue receipts for any fees and charges it collects under clause 3.2(a) and retain a copy of each receipt.

USE OF LICENSED AREA

4.1 Permitted use

The Manager must manage and operate the Licensed Area for the purpose of **[insert Permitted Use]**.

4.2 Nuisance

The Manager will not do or suffer to be done anything in, upon or about the Property which shall be or may be or may become a nuisance at law.

4.3 Advertising Signs

No advertising sign, bill, placard, notice or poster is to be affixed, painted or exhibited upon the Property without the Council's written consent (which consent Council may grant (absolutely or conditionally) or may refuse, at its discretion), which is not directly in relationship to the operation of the permitted use described in **Clause 4.1**.

4.4 Alterations and/or additions by the Manager

The Manager may construct improvements, alterations and/or additions to the Property subject to the Council's prior written consent (which consent Council may grant (absolutely or conditionally) or may refuse, at its discretion).

4.5 Requirements of Government Agencies

The Manager must comply promptly with any statute in respect of the Manager's use of the licensed area and any requirements, notices or orders of any government agency having jurisdiction or authority in respect of the licensed area or the use of the licensed area, and including but not exclusive to, comply with all WHS Act, *Electrical Safety Act 2002* and *Environmental Protection Act 1994* requirements.

4.6 Security Access

The Manager is responsible and must ensure that the building is kept secured and monitored on a regular basis. A register of keys issued to the Manager must be maintained.

INSURANCE, INDEMNITIES AND RELEASES

5.1 Obligation to Insure

- a) The Manager must insure against any loss or damage which is commonly covered by a public risk or liability insurance to an amount of at least \$20,000,000.00 or any greater amount as may be reasonably required by the Council throughout the term of the Agreement.
- b) The Manager must insure against any loss or damage which is commonly covered by contents insurance throughout the term of the Agreement.
- c) The Manager must furnish to Council evidence that all insurances required to be procured under this clause have been effected with a registered insurer (as approved by Council acting reasonably) and will supply particulars of those policies, together with certificate of currency on an annual basis.
- d) The Manager must maintain Work Cover with an insurer licensed under the Workers Compensation Act to provide accident insurance for all persons it employs in the Licensed Area.
- e) The Manager must pay promptly all premiums, duty, GST, and other money due to any authority concerning Work Cover.

5.2 Release and Indemnity of Council

The Manager hereby releases and holds harmless and indemnifies the Council from and against all damages, costs, charges, expenses, actions, claims and demands which may be incurred or made against the Council or the Manager or their employees or contractors or invitees or agents or any other person which arises from any damage to any property or injury to any person, including death, arising from the occupation of the subject premises and activities by the Manager, or a breach of this Agreement by the Manager, unless and to the extent the same arises directly from the negligence of Council or its employees or contractors.

5.3 Property of the Manager

The Manager hereby releases and indemnifies the Council from and against all damages, costs, charges, expenses, actions, claims and demands for damage to or destruction of property of the Manager left at the premises, unless and to the extent the same arises directly from the negligence of the Council or its employees or contractors.

5.4 Negligence or default of Council

The releases, responsibilities and indemnities in **Clauses 5.2 and 5.3** do not apply to any act, matter, thing or consequence if it arises directly out of the negligence or default of the Council.

5.5 Council's responsibility

- a) The Council shall bear all costs associated with ensuring that all buildings are insured under Council's policy.
- b) The Council shall bear the cost of any excess on all claims related to damage by fire, storm, flood and tempest.

5.6 Manager's responsibility

- a) Other than in the ordinary course of operating the Licensed Area under this Agreement, the Manager must not do or permit to occur upon the Licensed Area anything it knows, or ought reasonably to know:
 - i. will or might render void or voidable any insurance Council holds concerning the Licensed Area; or
 - ii. will or might increase a premium payable upon the insurance.
- b) The Manager shall be responsible for any excess amount payable on a claim under Council's insurance policy due to the negligence or other actions of the Manager.

5.7 Notice of claim

Each Party must give written notice to the other of any circumstances (including death, personal injury or property damage or loss) likely to give rise to a claim under any policy of insurance affected in accordance with this Agreement within 24 hours of the incident occurring.

5.8 Notice of damages/unauthorised entry

The Manager shall be responsible for ensuring that the appropriate regulating authority is notified within 24 hours of any unauthorised break-in and/or wilful damages including graffiti, to the property. Written notice, including photographs must be forwarded to Council within 48 hours of the incident occurring.

6. DUTIES & OBLIGATIONS

6.1 The Manager

- a) The Manager is responsible for the general maintenance to all buildings within the Licensed Area.
- b) The Manager is responsible for all electricity, gas, telephone, internet and general operating costs associated with the Licensed Area.
- c) The Council is responsible for the maintenance of the entire grounds and gardens within the Licenced Area to be kept in a well presented condition.
- d) The Manager must promptly repair any damage done to the Licensed Area as a result of it exercising its rights under this Agreement.
- e) The Manager is responsible to ensure that all buildings within the Licensed Area are kept in a clean and well-presented condition at all times.
- f) The Manager will be responsible for testing and tagging of non-fixed electrical appliances within the Licensed Area.
- g) The Manager must make available to the Council on an annual basis, or upon demand:
 - i. Details with respect to the operation and maintenance of the Licensed Area, including financial details; and
 - ii. Details of office bearers and other members of the Management Committee.
- h) The Manager must make the Licensed Area available to representatives or contractors of the Council for the purposes of undertaking any necessary inspections and maintenance, upon reasonable notice being provided.
- i) The Manager will be, for the purposes of the WHS Act, the principal contractor and the person in control of the Licensed Area.

6.2 The Council

- a) The Council is responsible for ensuring that the annual termite maintenance and timber pest inspection is undertaken and ensuring that any action required as a result of this inspection is undertaken within a reasonable timeframe.
- b) The Council is responsible for ensuring that periodic building inspections are undertaken and shall work with the Manager to ensure that any action required as a result of this inspection is undertaken within a reasonable timeframe.
- c) The Council will be responsible for the maintenance of all safety equipment and appliances, including testing and tagging of fixed electrical appliances only.
- d) The Council will be responsible for all costs associated with the maintenance and installation of the air-conditioning system.
- e) The Council will where reasonably possible provide advice and support to the Manager relevant to the management and governance of the Licensed Area.
- f) The Council is responsible for payment of all applicable rates and charges relating to the Property.
- g) Any request or requirement for major capital works to be undertaken within the Licensed Area, will be in consultation with both Parties.

7. FORCE MAJUERE

- a) If any Party is unable to perform, or is prevented, hindered or delayed from performing, either wholly or in part, any of its obligations under this Agreement (except an obligation to make money payments) due to an Event of Force Majeure, that Party is not liable for that non-performance, and its obligations shall be suspended for so long as the Event of Force Majeure renders the Party unable to so perform its obligations.
- b) A Party affected by an Event of Force Majeure under **Clause 7(a)** shall as soon as is reasonably practicable notify the other Party in writing of its occurrence and of any anticipated delay in arising from it.
- c) A Party affected by an Event of Force Majeure under **Clause 7(a)** shall take all reasonable steps to remove the event and resume performance of its obligations under this Agreement as soon as is reasonably practicable.
- d) The obligation to take reasonable steps in Clause 7(c) shall not oblige the Party to settle any strike, blockade, lock-out or industrial action, dispute or disturbance in manner contrary to the interests of the Party affected.

8. TERMINATION

8.1 Events of termination

If:

- a) the Licensed Area is damaged or destroyed or if there is interruption to access to the Licensed Area so as to render the Licensed Area or any part of the Licensed Area wholly or substantially unfit for the occupation or use of the Manager or inaccessible by any means of access; or
- b) the Manager commits a material breach of any of its obligations and, has not remedied that

breach within a reasonable period after receiving written notice from the Manager directing it to do so; or

- c) the use by the Manager of the property interferes in any way with the Council's operations on the Property; or
- d) there is a serious breach of the WHS Act and/or the *Electrical Safety Act 2002* and/or the *Environmental Protection Act 1994* by the Manager; or
- e) the Manager identifies insufficient membership and/or financial capacity in accordance with its adopted rules or constitution resulting in the winding up of the Association in accordance with the Office of Fair Trading and the *Associations Incorporation Act 1981* and *Associations Incorporation Regulation 1999*; or
- f) Council requires the Land for its own use.

then the Agreement may be terminated immediately by written notice, by the Manager in the case of **subclauses (a) and (e)** and by the Council in the case of **subclauses (a), (b), (c), (d) (e) and (f)**.

Notwithstanding anything contained herein, either Party may at any time by written notice terminate this Agreement upon giving thirty (30) days' notice. No compensation shall be payable by the Council upon termination prior to the completion of this Agreement.

8.2 Effects on rights or liabilities

Termination of the Agreement does not affect the rights or liabilities of the Parties in relation to any cause of action accruing prior to the date of termination (unless otherwise stated under the provisions of the Agreement.)

8.3 The Manager to yield up

- a) The Manager must at the expiration or sooner termination of the term yield up the Licensed Area in good repair and clean condition fair wear and tear excepted having regard to its condition at the Date of Commencement of this Agreement.
- b) Nothing in this clause or any other provision of this Agreement obliges the Manager to remove any road surface or other improvements constructed on the Licensed Area for the purposes of **Clause 6.1** nor to repair any damage done or want of repair to the Licensed Area not caused by the Manager.
- c) In the event that this Agreement is terminated, then the Manager must immediately deliver up possession of the licensed area to the Council or its delegate, deliver all keys, locking devices and codes associated with locking to the Council.

9. NOTICES

9.1 Method of service

Any notice to be given under this Agreement by one of the Parties to the other must be in writing and is given for all purposes by delivery in person, by pre-paid post, or by email addressed to the receiving Party at the address set out in **Item 6** of the Reference Schedule in the case of the Council and in **Item 7** of the Reference Schedule in the case of the Manager.

9.2 Time of service

Any notice given in accordance with this Agreement will be deemed to have been duly served in the case of posting at the expiration of four (4) business days after the date of posting and in the case of email, on the first business day after the date of transmission.

9.3 Change of contact details

Upon change of contact details of either Party, written notice must be given to the other Party within fourteen (14) days.

10. ASSIGNMENT AND LICENCING

10.1 The Manager not to assign, sub-licence or sub-let

- a) The Manager must not assign this Agreement, sub-licence or sub-let the whole or any part of the Licensed Area, without the prior written consent of the Council, which consent Council may grant (absolutely or conditionally) or may refuse, at its discretion.
- b) The Manager must not mortgage or otherwise encumber its interest in this Agreement.

11. GOODS & SERVICES TAX

11.1 Interpretation of Terms

Each of the following expressions bears the meaning the GST Act ascribes to it:

- a) adjustment event;
- b) adjustment note;
- c) Commissioner;
- d) consideration;
- e) creditable acquisition;
- f) GST;
- g) GST group;
- h) input tax credit;
- i) recipient;
- j) recipient created tax invoice;
- k) registered;
- l) representative member;
- m) supplier;
- n) taxable supply;
- o) tax invoice.

11.2 GST Grouping

Also, references to a supplier, a recipient, a payer, or a payee who is a member of a GST group¹ include the representative member for that person's GST group.

11.3 Character of Payments

Each of the following expressions bears the meaning the GST Act ascribes to it:

- a) Non-monetary consideration for a taxable supply under this Agreement is GST-inclusive;
- b) However, unless the Agreement states otherwise, monetary consideration for a taxable supply under the Agreement is GST-exclusive

¹ Companies within a 90%-owned group, and in some cases other entities (such as non-profit bodies), can be approved by the Commissioner as a GST group. One member of the group then deals with all the GST liabilities and entitlements of the group (excepting GST on most taxable importations), and (in most cases) intra-group transactions are excluded from GST.

11.4 Responsibility for Payment

The recipient must:

- a) bear the GST upon a taxable supply under the Agreement;
- b) pay the tax to the supplier with the consideration for the supply.

11.5 Input Credit Adjustment (Reimbursements)

- a) If the Agreement requires a recipient to reimburse a supplier the cost of a creditable acquisition, the cost is to be net of the input tax credit to which the supplier is entitled for the cost.
- b) If the Agreement requires the reimbursement of a percentage of the cost of a creditable acquisition, the percentage is to be net of an equivalent percentage of the input tax credit to which the supplier is entitled for the cost.
- c) If the reimbursement of all or part of the cost of a creditable acquisition constitutes consideration for a taxable supply, the recipient must pay the supplier, in conjunction with the reimbursement payment, the GST referable to the supply.
- d) If the Agreement obliges a Party to indemnify the other Party against a Cost the other incurs or sustains, the Cost will be net of all input tax credits the payee is entitled to claim concerning that Cost.
- e) For clarity, if the net Cost to be indemnified constitutes the consideration for a taxable supply, the payer must bear the GST for the taxable supply.

11.6 Adjustments

- a) This Clause 11.6 applies if an adjustment event occurs concerning a taxable supply made under this Agreement.
- b) The consideration for the supply will be recalculated to reflect the adjustment event.
- c) As the case requires:
 - i. the recipient must pay the resultant GST shortfall to the supplier; or
 - ii. the supplier must refund the resultant GST overpayment to the recipient.

11.7 Registration Tax Invoices and Adjustment Notes

- a) The supplier need not give the recipient a tax invoice or adjustment note for a taxable supply under the Agreement if:
 - i. the Commissioner has issued a written determination or ruling permitting the recipient to issue a recipient created tax invoice for the supply; and
 - ii. the recipient gives the supplier a recipient created tax invoice or an adjustment note (as the case requires) for that supply.
- b) Otherwise, however, the supplier must give the recipient, when it makes the taxable supply or in exchange for the consideration, a tax invoice for the supply.
- c) The supplier also must give the recipient an adjustment note:
 - i. in exchange for payment of a GST shortfall; or
 - ii. in conjunction with the payment of a GST refund.

- d) If the consideration for a taxable supply is non-monetary, the tax invoice for the supply, and a relevant adjustment note, must state as the consideration the GST-inclusive market value of the supply.
- e) A Party that has been issuing recipient created tax invoices for taxable supplies under the Agreement must notify the other Party promptly if it loses its entitlement to issue such invoices

11.8 Registration

- a) Each Party declares that it is registered.
- b) A Party must notify the other promptly if it ceases to be registered.

12. MISCELLANEOUS

12.1 Governing law

This Agreement is governed by the laws of the State of Queensland and the Commonwealth of Australia and the Council and the Manager submit to the non-exclusive jurisdiction of the courts of the State of Queensland.

12.2 Entirety of Agreement

- a) This instrument details the entire arrangement between the Parties concerning this Agreement:
 - i. irrespective of negotiations or discussions preceding its execution and delivery; and
 - ii. irrespective of the content of any brochure, report, correspondence, or other document produced by or on behalf of a Party.
- b) Each Party acknowledges that no representation, verbal or written, made by or on behalf of the other Party but not detailed in this instrument has induced it to enter the Agreement.
- c) The waiver of an entitlement under the Agreement is not binding unless effected in writing.

12.3 Variation of Agreement

A purported variation of this Agreement is ineffective unless encapsulated in a deed.

12.4 Survival of Provisions

A provision of the Agreement capable of continued application after the Agreement has terminated will remain enforceable despite termination.

12.5 Agency/Authority

- a) This Agreement alone does not constitute the Manager as the Council's agent for any purpose
- b) The Manager possesses no authority to incur any obligation or liability on the Council's behalf, or in the Council's name.

REFERENCE SCHEDULE

- Item 1** **Date of Commencement**
[Day Month Year]
- Item 2** **Date of Expiration**
[Day Month Year]
- Item 3** **Licensed Area**
Part of the property located at [property address] more particularly described as Lot [...] on SP/RP [...], shown in hatch on the plan attached in Annexure C 'Licence Area' hereto.
- Item 4** **Agreement Fee**
\$## + GST per annum
- Item 5** **Term**
The term commences on the Date of Commencement and expires on the Date of Expiration, subject to the provisions of the Agreement.
- Item 6** **Contact at the Council**
Name: Coordinator - Property Management
 Property Management Section
Address: Corporate & Community Services Directorate
 Gympie Regional Council
 PO Box 155
 GYMPIE QLD 4570
Email: property@gympie.qld.gov.au
Telephone No: 1300 307 800
- Item 7** **Contact at the Manager**
Name: [REDACTED]
Address: [REDACTED]
Telephone No: [REDACTED]
Email Address: [REDACTED]

EXECUTED AS A DEED

Executed by GYMPIE REGIONAL COUNCIL)
as the Council by its Chief Executive Officer)
in the presence of:)

.....
Shane Michael Gray

.....
Witness

.....
Full Name (print)

.....
Address and Occupation of Witness (print)

Executed by the
[Name of Organisation])
as the Manager by its principal)
Management Committee

.....
Management Committee Member,

representatives in the presence of:)

.....
(Name)

.....
Management Committee Member,

.....
(Name)

.....
Witness

.....
Full Name (print)

.....
Address and Occupation of Witness (print)

ANNEXURE A - TITLE SEARCH

ANNEXURE B - LOCATION

DRAFT

ANNEXURE C - LICENCE AREA