

## Funding Agreement

Council of the City of Gold Coast (**the City**)

**INSERT NAME**

Council of City of Gold Coast ('the City', 'We', 'Us', 'Our') ABN 84 858 548 460, 135 Bundall Road, Bundall Qld is prepared to offer to the Recipient ('You')

**Insert full name/ details**

Funds of **\$funding amount** inclusive of GST,  
on the terms and conditions of this funding agreement for the purposes of conducting Nature Conservation Assistance Program activities as outlined in the application and compliant with the Policy.

Financial assistance is

- made for the purposes of the Project, and
- subject to the terms and conditions set out below:

## **Part 1. Definitions**

1.1 In this funding agreement, except where the contrary intention is expressed, the following definitions are used:

**'Budget'** means the budget set out in Schedule 2;

**'Funding'** or **'Funds'** means the amount paid to You under clause 3.1;

**'Milestone'** means a stage of completion of the Project as set out in Schedule 1;

**'Misspent funding'** means any amount of the funds which has been spent by the Recipient otherwise than in accordance with this agreement;

**'NCAP'** means the Nature Conservation Assistance Program;

**'Notice'** means a formal announcement or warning;

**'Outcome'** means an outcome set out in Schedule 1;

**'Policy'** means the City of Gold Coast's *Nature Conservation Assistance Program Policy*;

**'Project'** means the Project set out in Schedule 1;

**'the City'** means the Council of the City of Gold Coast;

**'Unspent funding'** means any amount of the Funds which has not been spent, or legally committed for expenditure by the Recipient in accordance with this agreement and payable by the Recipient as a current liability (as supported by written evidence to the satisfaction of the City);

**'We,' 'Our'** or **'Us'** means the Council of the City of Gold Coast; and

**'You'** or **'Your'** means the Recipient.

1.2 If there is inconsistency between any of the documents forming part of this funding agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Part 2 - Terms and Conditions;
- (b) Schedules;
- (c) any attachments to the Schedules;
- (d) the Policy; and
- (e) other documents incorporated by reference in this funding agreement.

## **Part 2. Terms and Conditions**

### **1. Duration of agreement**

- 1.1 This agreement begins on the date this agreement is signed and dated by Us and continues until the **end date** unless terminated earlier in accordance with clause 5.

### **2. Terms and conditions**

#### 2.1 You must:

- (a) Only spend the Funds:
  - (i) solely and specifically for the purposes of the Project, to achieve one or more of the Outcomes, as set out in Schedule 1 (and not on any cost or activity excluded under the Policy as outlined in the NCAP 'Guidelines' at [www.cityofgoldcoast.com.au/ncap](http://www.cityofgoldcoast.com.au/ncap));
  - (ii) in the area identified on the project map provided at the time of application; and
  - (iii) in accordance with the budget and conditions set out in Schedule 2.
- (b) Register the Project on a website nominated by Us if so required;
- (c) In all publications, promotional materials and activities relating to the Project and this agreement:
  - (i) acknowledge the financial and other support you have received from the City. The following acknowledgement may be used:  
"This initiative is supported by the City of Gold Coast"
  - (ii) use the supplied City of Gold Coast logo in accordance with our instructions;
- (d) Attend a restoration workshop along with any contractors to be engaged for the project for restoration activities who do not hold the minimum qualification of a Certificate III in Conservation and Land Management (CaLM) or membership in the Australian Association of Bush Regenerators (AABR), if requested by the NCAP administrator;
- (e) Attend in person or via teleconference meeting/s the City may require you to attend for the duration of this agreement;
- (f) Indemnify Us from and against any loss or liability (including legal costs and expenses on a solicitor/own client basis) incurred or suffered by Us arising from:
  - (i) any negligent, wilful or unlawful act or omission by You or Your, agents, volunteers or contractors in connection with Your performance of the Project; or
  - (ii) any breach by You of your obligations under this agreement;

except that this indemnity is reduced proportionately to the extent that any such loss or liability is caused by Our breach of this agreement or any negligent, wilful or unlawful act or omission by Us or our employees, agents or contactors;

- (g) Submit to Us:
- (i) a progress report by the **due date**.
  - (ii) an acquittal report detailing expenditure of Funds and outcomes achieved by **due date**.

Reports must include copies of any documents produced by the Project;

- copies of receipts for all expenditure related to the Project for this funding round must be included with the acquittal report only.
- completed Daily Record and Herbicide Sheets for days worked by contractors (see Attachment B) and photo monitoring (see Attachment D for guidelines).
- In-kind labour tracking sheet (see Attachment A)

Time taken to manage the project, including its reporting requirements, are not considered as in-kind labour.

If reports are not submitted by the due date, the City is entitled to recover NCAP monies from the recipient;

- (h) Return to Us, any Unspent or Misspent funding with the acquittal report. If You do not return the Unspent or Misspent funding, You agree that We (or persons authorised by Us) may audit your records relating to the funding and We may take action to recover the Unspent or Misspent funding from You;
- (i) Keep (and retain for at least 7 years from the time of making, or from the time of termination or expiry of this agreement, whichever is longer), such records (including all receipts and invoices) as are necessary:
  - (i) to provide a complete, detailed record of all expenditure of Funds provided by Us; and
  - (ii) to prepare the reports and statement required by sub-clause 2.1(g) of this funding agreement.
- (j) Provide photos, or allow the City of Gold Coast access to the restoration site to obtain photos, for 3 years after the project has been completed (see Attachment D for guidelines).
- (k) Agree to take all reasonable care to protect the work completed with funds provided through the NCAP for the term of your property ownership. This work includes, but is not limited to, tubestock planted, restoration works carried out, and fencing installed.
- (l) Not spend Funds on project activities or items already funded through other means e.g. other grant schemes.

### **3. Fund Payment and GST**

- 3.1 Subject to Your acceptance of and compliance with this agreement, we shall pay to You an amount of \$**amount** inclusive of GST in accordance with item 3 of Schedule 1.
- 3.2 Funds must be acquitted by the end of the financial year in which they were received.
- 3.3 In this funding agreement a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- 3.4 Funds paid to You must at all times be held in an account in the Recipient's name which the Recipient solely controls with a deposit taking institution authorised under the *Banking Act 1959* (Cth) to carry out banking business in Australia.
- 3.5 Funds paid to You must at all times be identified as such and You must identify the receipt and expenditure of the Funds separately within Your accounting records so that at all times the Funds are identifiable and ascertainable.
- 3.6 You must not use the Funds as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest.

### **4. Recovery of money**

- 4.1 The City is entitled to recover from the Recipient, as a debt due to the City of Gold Coast:
  - (a) at any time, any amount of money which, in the City's opinion is Misspent Funding; and
  - (b) any Unspent funding which has not been repaid by the Recipient at the time of acquittal as required under clause 2.1(h), or which is repayable by the Recipient under clause 5.7.
  - (c) any funding not accounted for in reports.
- 4.2 The City of Gold Coast may give the Recipient a Notice requiring the Recipient to repay to the City (or deal with as specified by the City) an amount which the City is entitled to recover under clause 4.1.
- 4.3 If the City gives a Notice under clauses 4.1 the Recipient must repay the City the amount specified in the Notice in full (or deal with as specified by the City):
  - (a) within 14 days of the date of the Notice - for Misspent funding referred to in clause 4.1(a); or
  - (b) immediately – for Unspent funding referred to in clause 4.1(b).
- 4.4 The City or a representative may conduct audits relevant to the performance of the Recipient's obligations under this Agreement. Provided that We give You reasonable notice, You agree to provide Us with access to any books and records directly

related to this agreement and access to Your premises for purposes related to this agreement.

## **5. Termination of agreement**

- 5.1 We may, at any time, terminate this agreement, reduce the scope of the Project or suspend the payment of funding by giving You Notice ("**Notice**").
- 5.2 On receipt of a Notice from us, You must take all available steps to minimise any loss that may result and continue to undertake any part of the Project not affected by the Notice.
- 5.3 If this agreement is terminated under clause 5.1, We are only liable for:
- (a) payments in accordance with this agreement before the effective date of termination; and
  - (b) reasonable costs actually incurred by You and directly attributable to the termination but not any amount which would result in the total amounts payable by Us to You under this agreement to be more than the amount of the Funds.
- 5.4 We will not be liable to pay compensation for loss of prospective profits or loss of benefits.
- 5.5 Without limiting any other rights or remedies We may have, We may terminate this agreement effective immediately by giving You notice if:
- (a) You breach a material provision of this agreement where the breach is not capable of being remedied;
  - (b) You breach any provision of this agreement and fail to remedy the breach within 14 days after receiving notice from Us requiring You to do so; or
  - (c) if an event specified in clause 5.6 happens to You.
- 5.6 You must notify Us immediately if You cease to be able to pay Your debts as they become due, enter into liquidation, have a controller or managing controller or liquidator or administrator appointed, are declared bankrupt or assign Your estate for the benefit of creditors or any analogous events, or put Your property on the market.
- 5.7 If this agreement is terminated or reduced in scope, then We shall be entitled to recover that portion of the Funds that is Unspent.
- 5.8 Termination of this agreement does not affect any accrued rights or remedies of a party.

## **6. Negation of employment and subcontractors**

- 6.1 You must not represent yourself, and must ensure that your employees, partners, agents and subcontractors do not represent themselves, as being employees, partners or agents of Us.
- 6.2 You are fully responsible for the performance of the Project even if You subcontract any aspect of the Project.

## **7. Intellectual property and moral rights**

- 7.1 All intellectual property in material developed by You, or a third party, for the purposes of the Project vests on its creation in You. You agree to provide us a copy of the material if we request this.
- 7.2 You must grant to Us a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right to sub-license) to use, reproduce, adapt, modify and communicate the Project reports and material in whole or in part for any purpose.
- 7.3 If a third party has Intellectual Property Rights in existing material incorporated or supplied with Project reports or material, You must arrange for the grant to Us of a licence in the same terms as set out in clause 7.2.
- 7.4 You must use your best endeavours to ensure that any holder of moral rights (as defined in Part IX of the *Copyright Act 1968*) in the material incorporated or supplied with Project reports and material gives genuine consent to Us undertaking any of the acts mentioned in clause 7.2 even if such use would otherwise be an infringement of their moral rights.

## **8. Insurance**

- 8.1 You must have and maintain in connection with the Project:
  - (a) Workers' compensation insurance if required by the relevant State or Territory legislation and for the amount required under the legislation;
  - (b) If volunteers will be involved in the performance of the Project, volunteers' personal accident insurance; and
  - (c) Public liability insurance for \$10,000,000 (ten million dollars) or more per claim.
- 8.2 You must, on request by Us, provide certificates of currency certifying that You have the required insurance.

**9. Compliance with law, Nature Conservation Assistance Program Policy and other City of Gold Coast policies**

9.1 You must, in carrying out this agreement, comply with:

- (a) the Policy;
- (b) all relevant statutes, regulations, bylaws and requirements of the Commonwealth and of any State, Territory or local authority and in particular the *Crimes Act 1914*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*; and
- (c) relevant environmental legislation, *Nature Conservation Act 1992*, *Biosecurity Act 2014*, *Vegetation Management Act 1999*, *Environmental Protection & Biodiversity Act 1999*.

**10. Confidentiality and Personal information**

10.1 Unless permitted under clause 10.2, it is agreed that neither You nor We will disclose each other's Confidential Information to a third party.

10.2 The obligations on the parties under this clause 10 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this agreement;
- (b) is disclosed by the City to the responsible Officer or is shared by the City with another City of Gold Coast agency, where this serves the City's legitimate interests;
- (c) is authorised or required by law, including under this agreement, to be disclosed.

10.3 Notwithstanding any other provision of this agreement, the City may disclose the provisions of this agreement.

10.4 In this clause 10, Confidential Information means information that is by its nature confidential and:

- (a) is designated by a party as confidential; or
- (b) a party knows or ought to know is confidential, but does not include:
  - (i) information that is or becomes public knowledge otherwise than by breach of this contract or any other confidentiality obligation.

10.5 Without limiting any other obligation you may have under the *Privacy Act 1998*, You agree to comply with the Information Privacy Principles (IPPs) in section 14 of that Act as if You were an 'agency' as defined in that Act.



## **11. Applicable law**

- 11.1 This funding agreement is governed by and construed in accordance with the law for the time being in force in Queensland.

## **12. Sponsorship issues**

- 12.1 You must notify Us in your final report of any additional Project sponsorship or funding you gain.

## **13. Future funding applications**

- 13.1 Performance outcomes from Your Project and compliance with acquittal requirements will be used as some of the measures of suitability for future Nature Conservation Assistance Program applications, should you choose to apply for future funding.

## **14. General**

- 14.1 This funding agreement, including the Policy, constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this funding agreement.
- 14.2 No agreement or understanding varying or extending the terms of this funding agreement shall be legally binding upon either party unless in writing by Us, and co-signed by Us and You.
- 14.3 This funding agreement may be executed in counterparts.
- 14.4 You must not novate or assign your rights or obligations under this agreement without Our prior written consent.
- 14.5 Each party must pay its own costs of negotiating, preparing and executing this agreement.

## **15. Survival of clauses**

- 15.1 Clauses 2, 4, 7, 8, 10, 11, 12, 13 14 and 15 survive termination of this funding agreement.

## **16. Dispute Resolution**

- 16.1 Any dispute relating to this Agreement must be resolved in accordance with the procedures in this clause.
- 16.2 If a dispute arises, either party may serve a notice (Notice of Dispute) on the other party specifying
- (a) the dispute
  - (b) particulars of the dispute

(c) the position that party believes is correct.

- 16.3 If a Notice of Dispute is served the CEO for each party must meet and negotiate in good faith with a view to resolving the dispute. If the dispute is not resolved within 21 days after it is served, the dispute will be referred to arbitration whether or not the CEO's have met and negotiated.
- 16.4 Any dispute referred for arbitration must be determined in accordance with the Australian Centre for Commercial International Arbitration Rules (ACICA). The seat will be Brisbane and the language English
- 16.5 Nothing herein prevents a party seeking urgent interlocutory relief
- 16.6 Despite any dispute the parties must continue to comply and perform their contractual obligations herein.

## 17. Contact Officer

- 17.1 The contact officer is: **Officer name**

City of Gold Coast  
PO Box 5042  
GCMC QLD 9729  
Ph: 07 5582 **insert extension**  
Email: **insert email**@goldcoast.qld.gov.au

# Schedule 1 – Project

## 1. Project Description

Information to be inserted by Conservation Partnership Officer

## 2. Outcomes

Funding amount of funding is available to finance Your Project addressing the following outcomes:

- Information to be inserted by Conservation Partnership Officer
- Contractor works must commence by 1 February 20xx unless agreed to otherwise in writing by a Conservations Partnerships Officer.

The panel strongly recommends the landowner works alongside the project’s contractors, to improve their knowledge and skills in restoration techniques and understanding of ecosystem function. Co-contribution labour is to be worked within the project area and **all work should be carried out in accordance with the SEQ Ecological Restoration Framework.**

## 3. Project Map

Insert a map of the property and project area map

## 4. Milestones

Milestone		Due Date
1.	Funding agreement signed by You and returned to Us	Date of signature
2.	Funding agreement signed by Us	
3.	Funding Received	
4.	Implement project	
5.	Return completed progress report	
6.	Complete Your Project	
7.	Return completed final acquittal report to Us with any unspent funds	

# Schedule 2 – Budget

\* Must include GST

Cost Item	Details (e.g. description and unit)	Quantity	Unit cost*	Funds sought from the City*	Your contribution (cash only)*	Your contribution (in-kind)*	Total cost (including in-kind)*
<b>Weed Management</b>							
Herbicide							
Other costs							
Contractor							
Labour (self)							
<b>Revegetation</b>							
Plants							
Materials							
Other costs							
Contractor							
Labour (self)							
<b>Fencing</b>							
Line clearing							
Materials							
Other costs							
Contractor							
Labour (self)							
<b>Other</b>							
Machinery hire							
Materials							
Other costs							
Labour (self)							
<b>Project Totals</b>							

# Schedule 3 – Budget Summary

Budget Summary		Amount incl. GST
NCAP funding income		
Proposed NCAP fund expenditure (as detailed in Schedule 2)		
Anticipated co-funding income (as detailed in schedule 2)	Financial	
	In-kind	
Anticipated other income		

## 1. Variation of expenditure amounts

You may vary the Budget (Schedule 2) by re-allocating expenditure between items specified in the Budget. However, if this will result in the amount of Funds allocated to an item increasing by more than 20%, You must first obtain Our written approval.

If You want to propose a change to the project for which funds have already been approved, You must first contact a Conservation Partnerships Officer for advice. Any variation may result in the need to vary the contract.

## 2. Variation of income amounts

You must declare all sources and amounts of other contributions You have received or expect to receive towards the Project in the "Anticipated Other Income" table above. As part of the agreement, You are required to provide a co-funding amount equivalent to 30% of the funding provided by Us as in-kind or a cash contribution.

If You receive any further contributions towards the Project which have not been declared above, You must provide details of the additional contributions to Us in Your progress report (if any at that stage). You must provide details of all contributions and expenditure in relation to the Project in Your final report.

**This funding agreement does not become binding on the City of Gold Coast until it is executed by the City. You must execute this funding agreement and return to the City's contact officer for execution no later than ten working days from date of receipt of final funding agreement.**

**Executed** as an agreement.

SIGNED for and on behalf of the City of Gold Coast

[DATE] on .....  
by its authorised representative

.....  
(SIGNATURE)

Amanda Tzannes  
Manager, City Planning  
Pursuant to delegation number 1640

In the presence of:

.....  
(SIGNATURE OF WITNESS)

.....  
(NAME OF WITNESS)

**EXECUTED** by YOU (the Recipient) )  
in accordance with )  
section 127(1) of the Corporations )  
Act 2001 (Cwlth) by authority of its )  
directors: )  
)  
)  
)

.....  
Signature of Applicant )  
)  
)

.....  
Name of Applicant (block letters)