

Between

## Parties

Name	<b>Newcastle City Council</b>
ABN	25 242 068 129
Address	12 Stewart Avenue, Newcastle NSW 2300
Short form name	<b>CN</b>
Nominated representative	Nick Kaiser

and

Name	<b>Hamilton Business Association Inc</b>
ABN/ACN	43 576 863 540
Address	c/o 5 Marina Avenue, New Lambton NSW 2305
Short form name	<b>Service Provider</b>
Nominated Representative	Reece Hignell

## BACKGROUND

- A. City of Newcastle (CN) levies special rates pursuant to section 495 of the Act.
- B. CN must spend special rates for the purpose of beautifying, promoting and developing the area in which those funds were raised.
- C. The Service Provider is a not for profit organisation registered under the Associations Incorporation Act 2009 (NSW) to represent the interests of the businesses in the Special Rate (SR) Area.
- D. CN wishes to engage the Service Provider to provide the Service on behalf of CN.
- E. It is acknowledged that the Service Provider is a registered incorporated association and must comply with all legislative requirements separate to this agreement.

## OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

**Acquittal Report** means the annual report submitted to CN by the Service Provider.

**Act** means the Local Government Act 1993 (NSW).

**Agreed Personnel** means the Service Provider and its authorised representatives.

**Agreement** means this written agreement between CN and the Service Provider, together with any documents referred to herein.

**Deliverables Plan Template (DPT)** means the template provided at Appendix 1 that is to be used by the Service Provider when proposing a Deliverables Plan in accordance with this Agreement.

**Deliverables Plan** means the plan approved by CN's nominated representative in writing containing the details of what the Service Provider intends to do to deliver the Service, including how and when the Service Fee will be spent, an operational plan and a marketing and communication plan for delivering the Service. The Deliverables Plan derived from sections 3, 4 and 5 of the DPT once approved in accordance with this Agreement.

**Ideas Exchange** is an event hosted by CN that provides an opportunity for cross collaboration, networking and for other Service Providers to learn from each other about ways Service Providers can best benefit the SR Area.

**Intellectual Property** includes all proprietary rights in relation to information including copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know-how), circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields as defined in *Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967*.

**Laws** means any laws, statutes, rules, regulations, proclamations, ordinances, standards or local laws of any authority, present or future, and whether State, Federal or otherwise.

**Service Fee** means the total amount approved by CN's nominated representative under section 4 (Financial Plan) of the DPT for delivery of the operational plan approved through the DPT pursuant to the Agreement.

**Service** means the approved operational plan (section 3 DPT), communications strategy (section 5 DPT) and any other obligations of the Service Provider under the Agreement and the approved DPT.

**SR Area** means the area represented by the Service Provider from which CN levies a special rate pursuant to section 495 of the Act. The area is defined in item 2 of Schedule 1.

**SR Funds** means the funds raised by CN through levying a special rate on businesses in the relevant area as defined in item 2 of Schedule 1.

**Start Date** means the date set out in item 1 of Schedule 1.

**Support Officer** means the person or company provided by CN in accordance with clause 5.1 (e) to assist the Service Provider in meeting its obligations under this agreement.

Unless the contrary intention appears, a reference in this Agreement to:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) the word "person" includes an individual, a firm, a body corporate, a sponsorship, joint venture, an unincorporated body or association, any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity;
- (d) a particular person includes a reference to the person's executors, administrators, successors, successors in title, substitutes (including persons taking by novation) and assigns.

## 2 PROVISION OF AND LOCATION OF SERVICE

- 2.1 The Service Provider agrees to provide the Service in the Deliverables Plan to the benefit of the businesses within the area set out in item 2 of Schedule 1. The area may be changed from time to time as is necessary to reflect changes in rating or zoning with 28 days written notice from CN.

## 3 SERVICE PROVIDER'S OBLIGATIONS

### 3.1 General obligations

The Service Provider agrees to:

- (a) Operate under a constitution that complies with the Associations Incorporation Act 2009 (NSW);
- (b) Provide the Service subject to the provisions of this agreement and consistent with requirements of the Act;
- (c) Submit a proposed draft Deliverables Plan using the Deliverables Plan Template to CN within one month of the Start Date of this Agreement;
- (d) Only use the Service Fee for the purpose of beautifying, promoting and developing the area as specifically agreed to in the Deliverables Plan approved by CN. For clarity, SR Funds must not be used for administration costs, employee costs or used for any other costs related to the operation of the Service Provider unless approved in writing by CN;
- (e) Secure and maintain any consent, authority, permit, licence or certificate required to meet its obligations under this Agreement. For clarity, approval of a Deliverables Plan does not imply that CN has given any other consent. The Service Provider should note that many activities require approvals and consents from CN, and other government agencies and that they are wholly responsible for obtaining such approvals. Failure to obtain approvals will void the Agreement and may result in funding being revoked even when works have been completed;
- (f) Provide CN with a copy of the agenda of all committee meetings not less than 14 days prior to that committee meeting;
- (g) Provide CN with a copy of the minutes of all committee meetings within 14 days of the minutes being adopted;
- (h) Provide the Support Officer with, for publication on CN's website, the minutes of all meetings, agenda items and reports relating to the expenditure of the Service Fee within 14 days;

- (i) Provide a standing invitation to CN's nominated representative to be present at all committee meetings for agenda items involving discussion of the expenditure of the Service Fee;
- (j) Provide a standing invitation to all CN councillors representing the ward relevant to the Hamilton Special Business Rate area to be present at all Committee meetings for agenda items involving discussion of the expenditure of the Service Fee;
- (k) Provide CN with any records or files (financial or otherwise) relating to the performance of its obligations under this agreement within 7 days of the request. Inspection of records or files may be sufficient to satisfy this obligation at the discretion of CN;
- (l) In the instance of a Performance Review under clause 4.1, to fully co-operate with CN or CN's contractors conducting the review. This includes, providing without limitation, access to the Service Provider's premises, employees, records, documents and papers that relate directly or indirectly to the performance of the Service Provider's obligations under this agreement;
- (m) Fully co-operate with CN's auditors nominated under clause 4.2;
- (n) Ensure that where any of its obligations under this Agreement are performed under a subcontract, any subcontract contains equivalent clauses permitting CN and CN's nominated auditors to have access to the employees, premises and accounts, records, documents and papers of the subcontractor to the extent provided for in clauses 3 and 4 in relation to the expenditure of SR Funds;
- (o) Publicly acknowledge CN's support including, for example, the inclusion of CN's restricted logo on advertising and collateral and through invitations to events and functions for CN representative/s;
- (p) Use CN's restricted logo in accordance with Schedule 2 and must:
  - (i) Not modify the restricted logo in any way without the consent of CN;
  - (ii) Obtain approval from CN prior to publishing, producing, printing or distributing any material containing the restricted logo;
  - (iii) Use the Restricted Logo in accordance with CN's Logo Usage Guidelines at Schedule;
- (q) Attend, at least once per year, an Ideas Exchange hosted by CN. The Service Provider must present to the Ideas Exchange, with the presentation to include:
  - (i) Project outcomes as provided in its Deliverables Plan;

- (ii) An outline of the highlights and challenges of its project experiences.

## 3.2 Financial Obligations

The Service Provider agrees:

- (a) To open an account with the Commonwealth Bank of Australia for the Service Fee paid under this agreement. The account must have the following criteria:
  - (i) The account name must be in the format of “Newcastle City BIA” on behalf of Newcastle City Council;
  - (ii) A CN officer as a signatory to the account;
  - (iii) CN be provided internet banking access to view and transact within the account;
- (b) To submit an Acquittal Report to CN’s nominated representative by 31 July each year with tax invoices that directly align to the approved Deliverables Plan expenditure for the previous financial year;
- (c) To return any portion of the Service Fee not spent in accordance with the Deliverables Plan to CN by 31 July following the financial year in which it was allocated to be spent, unless:
  - (i) The Service Provider applies to, and is authorised in writing by CN’s nominated representative, to carry over unspent Service Fee from one financial year to the next where the Service Fee is approved to be used for the same purpose as that specified in the Deliverables Plan; or
  - (ii) CN’s nominated representative informs the Service Provider in writing that it will adjust a future payment of Service Fee to take account of the unspent Service Fee from the previous year.
- (d) To abide by CN’s Statement of Business Ethics (Appendix 2) when expending the Service Fee, including that all committee members declare any conflict of interest at committee meetings;
- (e) To either:
  - (i) Develop procurement guidelines that comply with the Statement of Business Ethics and will be submitted for approval by CN as part of the Deliverables Plan Template; or
  - (ii) Comply with the following procurement requirements when expending the Service Fee:

## Procurement Thresholds (excluding consultants)

For all goods, works and services the following requirements apply:

- <\$1,000 no quote or tender is required
- between \$1,000 and \$10,000 two (2) informal quotes are required
- between \$10,000 and \$50,000 three (3) informal quotes are required
- between \$50,000 and \$125,000 three (3) formal quotes are required

## Procurement of Consultants

For the engagement of any consultant, the following applies:

- <\$10,000 one formal quote is required
- between \$10,000 and \$125,000 three formal quotes are required
- over \$125,000 an open tender process is required.

## **4 PERFORMANCE REVIEW**

### 4.1 Performance Review

To ensure the Service Provider is meeting its obligations under this Agreement CN may conduct a Performance Review of any aspect of the performance of the Service Provider's obligations under this Agreement and where appropriate will seek to involve the Service Provider in that review.

### 4.2 Nomination of auditors

CN may nominate auditors to conduct, at CN's cost, financial and compliance audits of the Service Provider in respect of the obligations under this Agreement.

### 4.3 Prior notice

In carrying out CN's powers under this clause 4, CN will give the Service Provider at least 14 days notice.

## **5 CN'S OBLIGATIONS**

### 5.1 General obligations

CN agrees:

- (a) That CN's nominated representative will provide written approval/rejection of the Service Provider's proposed Deliverable Plan and Acquittal Report in accordance with section 6;
- (b) To co-operate with the Service Provider as the Service Provider reasonably requires;
- (c) Provide the information and documentation that the Service Provider reasonably requires to fulfil its obligations under this Agreement;

- (d) To provide, free of charge (if requested by the Service Provider), an appropriate CN space during business hours for the Service Provider to hold meetings each month or as required by the Deliverables Plan and the Service Provider's constitution;
- (e) Provide access to a Support Officer to assist the Service Provider with meeting their obligations under the Deliverables Plan;
- (f) Use reasonable endeavours to keep the Service Provider informed of decisions of CN which are relevant to the Service Provider's obligations under this agreement;
- (g) To grant the Service Provider a non-exclusive, royalty free, non-transferable license to use CN's restricted logo in its advertising materials solely for the purpose of promoting CN's association with the Service Provider and initiatives of the Deliverables Plan.

## **6 PROCESS FOR APPROVAL/REJECTION OF DELIVERABLES PLAN AND PAYMENT OF SERVICE FEE**

### 6.1 Process for payment of service fee

- (a) The Service Provider submits a proposed Deliverables Plan using the DPT within 30 days of the Start Date.
- (b) CN's nominated representative provides written approval/rejection within 30 days of submission of the proposed Deliverables Plan.
- (c) If the proposed Deliverables Plan is approved by CN it becomes the Deliverables Plan for the upcoming 12 months and the Service Provider submits an invoice for the Service Fee agreed in the approved Deliverables Plan.
- (d) CN pays the Service Fee within 21 days of the invoice to the account opened in accordance with clause 3.2(a).
- (e) If the proposed Deliverables Plan is rejected by CN, the reasons why will be provided to the Service Provider who will amend the plan within 14 days and re-submit to CN for approval. CN's nominated representative must provide written approval/rejection within 14 days of submission of the revised Deliverables Plan.
- (f) The Service Provider provides CN with a financial Acquittal Report by 31 July each year in accordance with Acquittal Report requirements of the Agreement.
- (g) CN's nominated representative must approve/reject the Acquittal Report within 30 days of it being submitted. If the Service Fee has not been expended in accordance with this Agreement and the Deliverables Plan



to the satisfaction of CN, CN's nominated representative will advise the Service Provider in writing and CN may terminate this Agreement and the Service Provider must repay the unspent portion of the Service Fee within 30 days.

- (h) The Deliverables Plan may be amended at any time by written agreement between CN's nominated representative and the Service Provider. The written agreement containing amendments becomes an appendix to the Deliverables Plan, replacing the relevant sections.

6.2 Nothing in this agreement stops or restricts the Service Provider from applying for additional special rates as part of any competitive process undertaken by CN.

## 7 INTELLECTUAL PROPERTY

7.1 The ownership of the Intellectual Property in anything created under this Agreement as part of the Service will vest with CN. The Service Provider must assign ownership of all Intellectual Property rights to CN and will ensure that its employees, subcontractors and agents execute all documents necessary to assign such rights to CN.

## 8 INDEMNITY

8.1 The Service Provider indemnifies CN, its servants and agents from and against all actions, claims, losses, damages, penalties, demands or costs whatsoever which may be brought or made against it or them by any person in respect of or by reason of or arising out of the performance by the Service Provider of the Agreement including:

- (a) any negligence, wrongful act or omission of the Service Provider or of any other persons for whose acts or omissions the Service Provider is liable; and/or
- (b) death or injury to any person or loss of or damage to any property; and/or
- (c) any breach of a third party's Intellectual Property Rights; and/or
- (d) any breach of the Agreement by the Service Provider; and/or
- (e) any action, claim or demand from liability brought against CN in connection with a breach by the Service Provider of the WH&S Act and associated legislation (so far as it is permissible at law).

8.2 The Service Provider's liability to indemnify CN is reduced proportionally to the extent that an action or omission of CN or employees or agents (other than the Service Provider) of CN may have contributed to the injury, damage or loss.

## **9 INSURANCE**

9.1 For every year other than the first year after the Agreement commences, the Service Provider must, as part of its Deliverables Plan, affect and maintain the following insurances:

- (a) Workers Compensation insurance (if required) in accordance with the NSW Workers Compensation Act 1987);
- (b) Public Liability insurance (of no less than \$20,000,000 coverage for any claim);
- (c) Professional Indemnity insurance (of at least \$10,000,000 coverage).

9.2 The Service Provider must provide Certificates of Currency for the required insurance policies to the CN at least one week prior to the Start Date.

9.3 The Certificates of Currency must not be cancelled or amended without written notice being given to CN, and must be made available for inspection at any time during the term of the Agreement.

## **10 ALTERATIONS AND MUTUAL TERMINATION**

10.1 This Agreement may be altered or terminated by agreement only in writing signed by CN's nominated representative and the Service Provider.

## **11 SURVIVAL**

11.1 Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

## **12 SEVERABILITY**

12.1 A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

## **13 RELATIONSHIP**

13.1 This Agreement does not create a relationship of employment, trust, agency or partnership between the parties. As such, the Service Provider is not entitled to the benefits of an employee.

13.2 The Service Provider must not act outside the scope of authority conferred on them by this Agreement.

13.3 The Service Provider must take upon themselves the whole risk of performing their obligations under this Agreement and must also comply with every, and all, reasonable and lawful direction of the CN's nominated representative.

## **14 GOVERNING LAW AND JURISDICTION**

14.1 The Agreement is subject to and construed in accordance with the Laws, Acts and other prescribed rules applying in the State of New South Wales.

## **15 FORCE MAJEURE**

15.1 Neither Party will have any liability under or be deemed to be in breach of this agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this Agreement by written notice to the other Party.

## **16 PRIVACY AND GIPA**

16.1 The Service Provider agrees to comply with the provisions of the Privacy & Personal Information Protection Act 1998, as if it were included in the definition of 'public sector agency' under that Act, the Privacy Code of Practice for Local Government and CN's Privacy Management Plan.

16.2 The Service Provider acknowledges CN is a 'public sector agency' for the purposes of the Government Information (Public Access) Act 2009 (GIPA Act) and any documents related to the spending of the Service Fee, including Deliverables Plans and Acquittal Reports, will be considered CN's for the purposes of the GIPA Act.

## **17 CODE OF CONDUCT**

17.1 The Service Provider must act in a manner consistent with the requirements of CN's Code of Conduct (available on CN's website or by request) for the term of this Agreement.

## 18 PAYMENT

18.1 Payment is to be made within 21 days of the receipt of an approved invoice consistent with the approved Deliverables Plan in the form of a valid tax invoice under GST law in respect of the Service delivered and accepted. The Service Provider must quote the purchase order number supplied by CN (to be supplied after the execution of this agreement) on any tax invoice or claim for payment.

## 19 TERMS AND CONDITIONS

19.1 This Agreement is subject to the Hunter Councils' Terms of Engagement (current edition) as at appendix 3.

19.2 In the event of any conflict or inconsistency, the order of precedence shall be in the order of the documents as listed below.

- (a) This Agreement including approved Deliverables Plan, Acquittal Reports and amending correspondence
- (b) Amending correspondence
- (c) Hunter Council's Terms of Engagement

The documents listed above form part of the Agreement.

## 20 TERMINATION

20.1 Without prejudice to any other right CN may have, CN may terminate this Agreement without notice if the Service Provider:

- (a) fails to perform its obligations under the Agreement at all, or within any time period specified by CN;
- (b) fails to carry out a reasonable direction of CN in respect to its obligations under the Agreement;
- (c) fails to submit a Deliverables Plan or Acquittal Report by the required date; or
- (d) fails to fulfil any of the Service Provider's obligations under section 4.

20.2 CN may terminate this Agreement by giving 14 days written notice to the Service Provider if:

- (a) if it ceases to levy the Special Rate;

- (b) if the Service Provider makes any arrangement(s) with its creditors or is wound up under the Associations Incorporation Act 2009.
- (c) at any time for any reason. If termination occurs under this sub-clause, the Service Provider is entitled to retain the Service Fee if it intends to spend it in accordance with the Deliverables Plan.

20.3 The Service Provider may terminate this agreement by giving 14 days written notice to CN if:

- (a) CN fails to meet its obligations under this Agreement, and:
  - (i) the failure is unable to be corrected, and
  - (ii) that failure means the Service Provider cannot meet its obligations under the Agreement.
- (b) The Service Provider believes it can no longer meet its obligations under the Agreement.

If this occurs, any of the Service Fee not spent in accordance with the Deliverables Plan is to be returned to CN.

## 21 DISPUTE RESOLUTION

- 21.1 In the event of any dispute arising between CN and the Service Provider that cannot be resolved by negotiation, CN shall nominate a formal dispute resolution process to be followed by the parties.
- 21.2 The Service Provider must continue to perform its obligations under the Agreement notwithstanding the existence of a dispute.

## Agreement

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**Signed** on behalf of the **NEWCASTLE CITY COUNCIL** ABN: **25 242 068 129** by its Authorised officer:



\_\_\_\_\_  
Authorised officer

**Nick Kaiser**

\_\_\_\_\_  
Name of Authorised officer (print)

28/07/2022

\_\_\_\_\_  
Date

**Signed** on behalf of the **HAMILTON BUSINESS ASSOCIATION INC** ABN: 43 576 863 540 by its Authorised officer:



\_\_\_\_\_  
Authorised officer

**Reece Hignell**

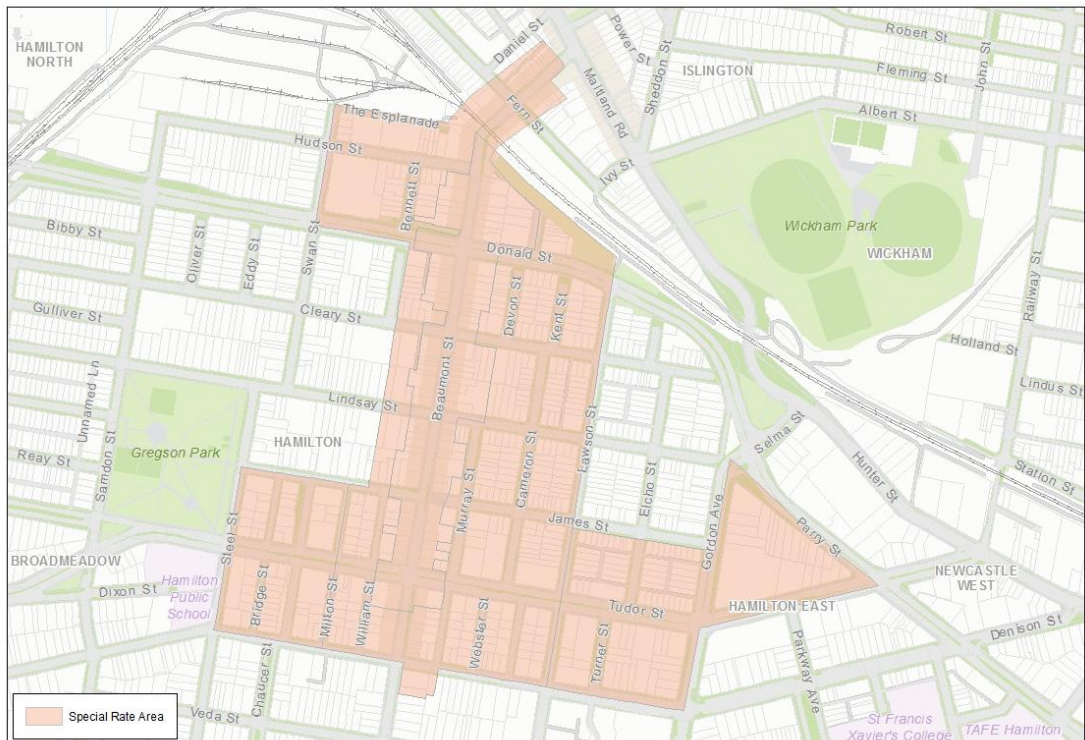
\_\_\_\_\_  
Name of Authorised officer

25/07/2022

\_\_\_\_\_  
Date

## Schedule 1 – Details

1. Start date: 13 September 2021
2. SR Area: Hamilton



3.

## **Schedule 2 – CN’s Logo Use Guidelines**

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The horizontal logo and the stacked logo are equally strong and can be used interchangeably depending on the space available, and at the discretion of the designer.

The two versions must not appear together in any single piece of collateral, where one logo is selected, it must be used consistently throughout.

The preferred background options are navy and white, though a black background is permissible for existing applications.

The logo should only be placed in the top or bottom right corners when it appears as a standalone logo.

The logo has a clear space rule to ensure it always appears uncluttered, clear and open. The clear space is the height of the CN of the logo type at the logo’s four widest points as shown. No item, text, image or other logo should interfere on this space. The minimum size the logo can be is 35 mm

### **22 Correct Use**



City of  
Newcastle



City of  
Newcastle



## 23 Incorrect Use



Do not distort the logo



Do not delete any part of the logo



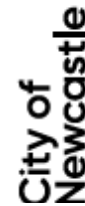
Do not change the typeface. Please use the official supplied logo files



Do not use the colour logo on a photo or colour other than specified



Do not recolour any part of the logo



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**Appendix 1 – Deliverables Plan**

**Appendix 2 – CN Statement of Business Ethics**

**Appendix 3 – Terms of Engagement Consultants**