

Dated

## Funding Agreement

### Vibrant Streets Package - Open Streets Program

Crown in right of the State of New South Wales acting through the  
Department of Transport (ABN 11 370 995 518)

**[Legal name of Recipient]** a body politic of the State constituted under the  
*Local Government Act 1993* (ABN[ABN#])

*The Department reserves its rights to make any amendments to this draft Agreement prior to its finalisation with any Recipient.*

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DRAFT

**This Agreement** is dated

**Parties:**

**Department**

**The Crown in right of the State of New South Wales acting through the Department of Transport** (ABN 11 370 995 518) of 231 Elizabeth Street, Sydney, NSW, 2000.

**Recipient**

**[Legal name of Recipient]** a body politic of the State constituted under the *Local Government Act 1993* (ABN[ABN#]) of **[Council address]**.

**Introduction:**

- A** The NSW Government has established the Program which aims to support eligible councils to carry out short-term demonstration projects involving community events and activities on or in streets.
- B** The Recipient has nominated the Project for funding through the Program and has made an application to the Department.
- C** The Department has agreed to provide the Funding from the Program to the Recipient to facilitate the carrying out of the Project by the Recipient.
- D** The objective of this Agreement is to document the agreed outcomes for the Project including timing for payment of the Funding and completion of the Project.
- E** The Recipient, in consultation with the Department, has prepared the Project Plan and the Department has approved the Project Plan, which is annexed to this Agreement as Annexure A.
- F** The parties also agree that in the event that part of the Funding is not required or used by the Recipient for the Project, those unspent funds will be returned to the Department.
- G** The Department agrees to provide, and the Recipient agrees to accept, the Funding in accordance with the terms of this Agreement.

**It is agreed:**

The parties to this Agreement agree as follows:

## **1. Definitions**

### **1.1 Definitions**

In this Agreement, unless the context clearly indicates otherwise:

**ABN** means Australian Business Number as set out in section 41 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

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

**Agreement Details** means those details in Schedule 1 of this Agreement;

**Annexure** means any annexure to a Schedule;

**Asset** means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, but excludes any Intellectual Property Rights;

**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 made by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth);

**Australian Privacy Principle** has the same meaning as it has in the *Privacy Act 1988* (Cth);

**Business Day** means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales, and concludes at 5 pm on that day;

**Case Study Report** means a report to be provided by the Recipient to the Department, in accordance with the provisions of Schedule 3;

**Change in Policy** means a change in the NSW Government policies with respect to or in connection with the Project, funding provided under this Agreement or the implementation of this Agreement;

**Confidential Information** means:

- (a) terms of this Agreement and all confidential information, Material and technology disclosed or provided in any form by any party to any other party in connection with the subject matter of this Agreement;
- (b) the information (if any) described in Item 8 of the Agreement Details; and
- (c) information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;

**Copyright Material** has the same meaning as it has in the *Copyright Act 1968* (Cth);

**Date of this Agreement** means the date on which the Agreement is signed by the last party;

**Delivery Partner** means a third-party organisation or association that has received a grant from the Recipient in accordance with clause 6.2;

**Department**, where the context permits, includes officers, delegates, employees and agents and successors of the Department of Transport (ABN 11 370 995 518);

**Department Material** means any Material:

- (a) provided by the Department to the Recipient for the purposes of this Agreement; or
- (b) derived at any time from the Material referred to in paragraph (a);

**Dispose** means to sell, license, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and "Disposal" means the method of so disposing;

**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 Project Material;

**Evaluation Tool for Public Space and Public Life** means the Department's '[Evaluation Tool for Public Space and Public Life](#)' in the '[Great Public Spaces Toolkit](#)' available on the Department's website;

**Force Majeure** means a delay resulting from any cause or reason beyond the reasonable control of a party including any one of the following events:

- (a) civil war, insurrections, riots;
- (b) floods, fires, explosions, pandemics, earthquakes;
- (c) acts of God or the public enemy; and
- (d) industrial disputes, stoppages, and strikes;

**Financial Year** means each period from 1 July to the following 30 June occurring during the term of this Agreement, or any part of such a period occurring at the beginning or end of the term of this Agreement;

**Funding** means the amount or amounts payable by the Department under this Agreement as specified in Item 6 of the Agreement Details;

**Funding Acknowledgement Guidelines** means the NSW Government Funding Acknowledgement Guidelines for Recipients of NSW Government Infrastructure Grants as updated from time to time and available at [Funding Acknowledgement Guidelines | NSW Government](#) or as otherwise notified by the Department;

**GST** has the meaning that it has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Information Privacy Principle** has the meaning given in the *Privacy and Personal Information Protection Act 1998* (NSW);

**Intellectual Property Rights** includes:

- (a) all copyright (including rights in relation to phonograms and broadcasts);
- (b) all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts;
- (c) all other rights resulting from intellectual activity in the industrial, scientific literary or artistic fields; and
- (d) Moral Rights;

**Law** includes:

- (a) Acts of the Commonwealth and the State(s) and Territory(s) in which the Project will be undertaken, and any other relevant State or Territory;

- (b) ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);
- (c) directions by any person exercising statutory powers regarding the Recipient or the Project; and
- (d) all the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Project,

whether currently in force or coming into force on or after the Date of this Agreement;

**Material** means anything in relation to which Intellectual Property Rights arise;

**Milestone** means a milestone or stage of completion of the Project as set out in Schedule 4;

**Moral Rights** includes the following rights of an author of Copyright Material:

- (a) the right of attribution of authorship;
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed;

**Notice** has the meaning in clause 23.1;

**Personnel** means:

- (a) in relation to the Recipient – any natural person who is an officer, employee, agent, or professional advisor of the Recipient or its subcontractors or Delivery Partners; and
- (b) in relation to the Department – any natural person who is an officer, employee, agent or professional advisor of the Department;

**Privacy Law** means the *Privacy Act 1988* (Cth), the *Privacy Regulations 2013* (Cth), the Australian Privacy Principles, the Information Privacy Principles, the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Privacy and Personal Information Protection Regulations 2014* (NSW);

**Procurement Certificate** means a certificate to be provided by the Recipient to the Department following completion of the Project, in accordance with the provisions of Schedule 3;

**Program** means the program under which the Department is able to provide Funding to the Recipient as further described at Item 9 of the Agreement Details;

**Program Core Metrics** means the indicative core metrics referred to in Schedule 3 and annexed to this Agreement at Annexure B, as amended from time to time;

**Project** means the Project described in Item 1 of the Agreement Details and includes the provision of the Project Material to the Department;

**Project Acquittal Report** means a report to be provided by the Recipient to the Department following completion of the Project, in accordance with the provisions of Schedule 3;

**Project Commencement Date** means the date set out in Item 3 of the Agreement Details;



**Project Completion** means the completion of the Project, including delivery of the Project Acquittal Report, Procurement Certificate, any Case Study Report required by the Department, and the performance of any other Recipient obligations under this Agreement;

**Project Completion Date** means the date set out in Item 4 of the Agreement Details as the Project Completion Date;

**Project Location** means the locations set out in Item 10 of the Agreement Details;

**Project Material** means any Material:

- (a) created by the Recipient for the purpose of this Agreement;
- (b) provided or required to be provided to the Department under the Agreement; or
- (c) derived at any time from the Material referred to in paragraphs (a) or (b),  
and includes:
  - (d) any Existing Material incorporated in the Material referred to in paragraphs (a) or (b) above;
  - (e) any Promotional Material;
  - (f) any Update or Milestone Report;
  - (g) the Project Acquittal Report;
  - (h) any Case Study Report; and
  - (i) the Procurement Certificate;

**Project Objectives** means the objectives of the Project described in Item 5 of the Agreement Details;

**Project Period** means the period specified in Item 4 of the Agreement Details during which the Project must be completed;

**Project Plan** means the project plan referred to in clause 5.3 and annexed to this Agreement at Annexure A, as amended from time to time;

**Promotional Material** means any photo, artist impression, video or any other promotional material relating to the Project reasonably required by the Department;

**Recipient** includes, where the context permits, the officers, employees, agents, volunteers and subcontractors, and successors of the Recipient;

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

**Schedule** means a schedule to this Agreement and may include Annexures and incorporate other documents by reference;

**Term** refers to the period described in clause 2 of this Agreement;

**Third Party Interest** means any legal or equitable right, interest, power or remedy in favour of any person other than the Department or the Recipient in connection with this Agreement, including

any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest;

**Unexpended Funding** means any part of the Funding that is unspent or uncommitted; and

**Update Report** means the report to be provided by the Recipient to the Department in accordance with the provisions of Schedule 3.

## 1.2 Interpretation

In this Agreement, unless the context clearly indicates otherwise:

- (a) a reference to **this Agreement** or another document means this agreement or that other document and any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this agreement;
- (e) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this agreement;
- (f) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this agreement;
- (g) the **introduction** accurately sets out the circumstances in which the parties have entered into this agreement;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (l) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;
- (m) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (n) a reference to a **breach of warranty** includes that warranty not being complete, true or accurate;

- (o) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (p) **including** and **includes** are not words of limitation;
- (q) the words **at any time** mean at any time and from time to time;
- (r) a reference to a time is to that time in New South Wales;
- (s) a word that is derived from a defined word has a corresponding meaning;
- (t) **monetary amounts** are expressed in Australian dollars;
- (u) the singular includes the plural and vice-versa;
- (v) words importing one gender include all other genders; and
- (w) a reference to a thing includes each part of that thing.

### 1.3 Construction

Neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## 2. Term

The Term of this Agreement commences on the Date of this Agreement and, unless terminated earlier, expires on whichever of the following days is the later:

- (a) the day on which any remaining part of the Funding that is required to be paid is paid;
- (b) the day on which any of following reports is last provided by the Recipient to the Department: the Project Acquittal Report, the Procurement Certificate, any Case Study Report.

## 3. Machinery of Government and other Changes in Policy

- (a) The Recipient acknowledges that during the term of the Agreement, there may be changes in the title, structure, department, function or operations of the Department or any other NSW Government entity as a result of machinery of government (MOG) changes.
- (b) If, during the term of the Agreement, a MOG change occurs resulting in the transfer of functions from the Department to another entity, the Department may transfer this Agreement in its entirety to the new entity by giving written notice to the Recipient.
- (c) If the MOG change results in a requirement for a novation, variation or transfer of this Agreement, then the Recipient agrees to enter into a deed and/or a new agreement to give effect to that change.
- (d) In addition to any other right of the Department under clause 19, the Department may terminate this Agreement at any time for a change in NSW Government policy by providing 30 Business Days' notice to the Recipient.
- (e) The Recipient releases the Department from any claims in respect of termination under this clause other than its obligation to pay for work done or liabilities incurred up to the effective date of termination.

## **4. Provision of Funding**

### **4.1 Payment of Funding**

- (a) Subject to sufficient funds being available, and compliance by the Recipient with this Agreement, the Department agrees to provide the Recipient with the Funding at the times and in the manner specified in Schedule 2.
- (b) The Recipient agrees to:
  - (i) undertake the Project and be responsible for any Project costs that exceed the Funding;
  - (ii) procure any additional funding necessary to carry out the Project in order to ensure the Project is delivered and maintained in accordance with this Agreement.
- (c) The Department is not responsible for the provision of additional money to meet any expenditure in excess of the Funding.

## **5 Project**

### **5.1 Project Requirements**

The Recipient must:

- (a) use the Funding to complete the Project and for no other purpose;
- (b) the Project must be delivered in accordance with the Program Guidelines;
- (c) commence the Project in accordance with the Project Plan; and
- (d) complete the Project by the Project Completion Date.

### **5.2 Conduct of Project**

The Recipient agrees to carry out the Project:

- (a) to achieve the Project Objectives and for no other purpose;
- (b) to meet the Milestones in accordance with Schedule 4;
- (c) in an efficient, effective, economical and ethical manner;
- (d) diligently and to a high standard;
- (e) in accordance with this Agreement, including the Project Plan; and
- (f) in accordance with all applicable Laws.

### **5.3 Project Plan**

- (a) The Recipient must carry out the Project in accordance with the Project Plan.
- (b) The Department and the Recipient acknowledge that the Project Plan may be varied in accordance with clause 25.3.

### **5.4 Recipient Obligations**

- (a) The Recipient agrees to:

- (i) liaise with and provide information, any reports or other documents to the Department as reasonably requested by the Department, including at any Milestones; and
  - (ii) comply with all of the Department's reasonable requests, directions, monitoring or reporting requirements.
- (b) Clause 5.4(a) survives termination of this Agreement.
- (c) In relation to conducting a review and final evaluation of the Program, the Recipient agrees to:
- (i) respond to all of the Department's reasonable requests; and
  - (ii) provide any information the Department reasonably requires.
- (d) The Recipient agrees to provide to the Department written Update Reports, a Project Acquittal Report, any Case Study Report and a Procurement Certificate in the manner specified in Schedule 3.
- (e) Each of the parties may nominate, from time to time, a person who has authority to receive and sign Notices and written communications for each of them under this Agreement and accept any request or direction in relation to the Project.

#### **5.5 Responsibility of the Recipient**

The Recipient is fully responsible for the performance of the Project and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:

- (a) involvement by the Department in the performance of the Project;
- (b) subcontracting of the Project;
- (c) provision of part of the Funding by the Recipient to a Delivery Partner; or
- (d) payment of any amount of Funding by the Department to the Recipient.

#### **5.6 Records**

The Recipient agrees to comply with all obligations under, and reasonable directions from the Department in respect of, the *State Records Act 1998 (NSW)* and the *State Records Regulation 2015 (NSW)*.

#### **5.7 Milestones**

The Recipient must complete, to the satisfaction of the Department:

- (a) each Milestone; and
  - (b) each obligation or requirement imposed by each Milestone,
- on or before the date specified for the completion of that Milestone in Schedule 4.

## **6 Subcontractors and Delivery Partners**

### **6.1 Recipient may subcontract**

- (a) The Recipient is fully responsible for the performance of the Recipient's obligations under this Agreement and may subcontract any part of its obligations under this Agreement.
- (b) The Recipient must have a written contract with each of the Recipient's subcontractors (**subcontract**) and ensure that each subcontract is consistent with, and allows the Recipient to give effect to, the Recipient's obligations under this Agreement.
- (c) The Recipient is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out.
- (d) The Recipient must ensure that its subcontractors comply with the relevant terms of this Agreement and do not do anything, or omit to do anything, which if done or omitted to be done by the Recipient would be a breach of the Recipient's obligations under this Agreement.
- (e) The Recipient shall be deemed to be responsible for any and all breaches of this Agreement committed by its subcontractors as if the Recipient had breached the Agreement itself.

### **6.2 Recipient may provide funding to Delivery Partners**

- (a) The Recipient may use a portion of the Funding to provide funding to any number of Delivery Partners to carry out community events or activities for the purposes of the Project.
- (b) The Recipient must ensure that the purposes for which any portion of the Funding is granted to a Delivery Partner is consistent with, and allows the Recipient to give effect to, the Recipient's obligations under this Agreement.
- (c) The Recipient will be responsible for demonstrating, through the Project Acquittal Report, that any funding provided to a Delivery Partner by the Recipient out of the Funding has been used in accordance with the terms of this Agreement.

## **7 Taxes, duties and government charges**

The Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

## **8 Debt and Interest**

- (a) In this clause 8, 'Interest' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), on a daily compounding basis.
- (b) The Recipient agrees, upon request of the Department, to pay any amount owed or payable to the Department or which the Department is entitled to recover from the Recipient under this Agreement, including if demanded by the Department any Interest, as a debt due by the Recipient without further proof of the debt by the Department being necessary. Such payment is without prejudice to any other rights available to the Department under the Agreement, under statute, at law or in equity.
- (c) If the Department notifies the Recipient that an amount is to be refunded or otherwise paid to the Department and the amount is not refunded or paid within 20 Business Days, or as

otherwise notified by the Department, the Recipient agrees to pay Interest, unless the Department notifies the Recipient otherwise, on the amount outstanding after the expiry of the date it was due, until the amount is paid in full.

- (d) In respect to any obligation the Recipient may have under this Agreement to pay the Department any Interest, the Recipient agrees that the Interest represents a reasonable pre-estimate of the loss incurred by the Department.

## **9 GST**

### **9.1 Definitions**

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

### **9.2 Consideration is GST exclusive**

Unless otherwise specified, all amounts payable under this Agreement are exclusive of GST and must be calculated with regard to GST.

### **9.3 GST payable on taxable supply**

- (a) If a supply made under this Agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- (b) The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- (c) If there is an adjustment to a taxable supply made under this Agreement then the Supplier must provide an adjustment note to the Recipient.
- (d) The amount of a party's entitlement under this Agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

## **10 Management Funding**

### **10.1 Account and financial records**

- (a) The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia and that is an account that complies with any other reasonable requirements of the Department.
- (b) The Recipient agrees to:
  - (i) keep financial accounts and Records relating to the Funding and Project that identify:
    - a. all receipts and payments related to the Funding and Project; and
    - b. all interest earned on the Funding.
  - (ii) unless otherwise notified by the Department, prepare financial statements for the Project in accordance with Australian Accounting Standards including:

- a. a register of the Assets created, acquired, written-off or Disposed of during the Financial Year to date; and
- b. arrange for the audit of those accounts and Records in accordance with Australian Auditing Standards.

## 10.2 Refunds of unexpended and misspent Funds

- (a) Without limiting the Department's rights under this Agreement, the Department may by Notice in writing recover all or part of the Funding from the Recipient (as a debt due and payable on demand) in any of the circumstances set out below in Column A in the table below, but only to the extent set out in Column B in the table below:

	<b>Column A: Circumstance in which some or all of the Funding may be recovered by the Department</b>	<b>Column B: Extent to which some or all of the Funding may be recovered by the Department</b>
1	The Recipient is paid more than the Funding as specified in this Agreement.	Only to the extent of the amount of overpayment.
2	The Recipient has incorrectly claimed some or all of the Funding.	Only to the extent which part or all the Funding has been incorrectly paid to the Recipient.
3	The Recipient abandons the Project.	Repayment of the Funding in full.
4	There is Unexpended Funding at the Project Completion Date.	Only to the extent of any Unexpended Funding.
5	If this Agreement is terminated in accordance with clause 19.1.	Repayment of the Funding in full.
6	If this Agreement is terminated for any other reason not listed above.	Repayment of part or all of the Funding.
7	The Department, in its discretion, determines that the Project carried out ceases to be viable during the Project Period.	Repayment of part or all of the Funding.
8	The Department, in its discretion, determines that the Project when completed, did not achieve the scope of the Project.	Repayment of part or all of the Funding.
9	Change in NSW Government Policy in clause 18.2 or either party is unable to perform an obligation because of Force Majeure in clause 19.	Only to the extent of any Unexpended Funding.



- (b) If the Department exercises the right to require the repayment of all or part of the Funding in accordance with clause 10.2(a), the Recipient must refund:

- (i) the full amount of the Funding; or
- (ii) the part of the Funding that is the subject of the Notice, and
- (iii) interest

within the period (which must be reasonable in the circumstances) specified in the written Notice.

- (c) Despite Item 4 of clause 10.2(a) above, if the cost of the completed Project, including Project Completion, is less than the Funding, the Department may by provision of a Notice require the Recipient to otherwise deal with the Unexpended Funding in accordance with any conditions that the Department considers appropriate, including conditions relating to the ongoing use and expenditure by the Recipient of that amount for particular goals or objectives associated with the Project.
- (d) This clause survives termination or expiry of this Agreement.

## **11. Statutory Approvals**

- (a) The Recipient must obtain all necessary statutory approvals in relation to the Project, and the Recipient must give the Department, as soon as practicable after the Date of this Agreement, satisfactory written evidence that these statutory approvals have been obtained.
- (b) If the Recipient does not comply with the requirement in subclause 11(a), the Department may at the Department's sole discretion terminate this Agreement in accordance with clause 18.1.

## **12. Records & Audit**

### **12.1 Keeping Records**

The Recipient must create and maintain full and accurate accounts and Records of the conduct of the Project including, without limitation:

- (a) all progress having regard to the requirements of the Project Plan; and
- (b) all receipt and use of Funding.

### **12.2 Retention of Records**

The Recipient agrees to create and maintain Records and accounts under clause 12.1 and retain them for a period of no less than seven years after the end of the term of this Agreement.

### **12.3 Audit**

- (a) The Department may at its expense and in its discretion conduct an audit of the Recipient's compliance with this Agreement.
- (b) The Department or a person commissioned by the Department will give the Recipient prior Notice of its requirements in relation to an audit and endeavour to minimise disruption and interference to the Recipient's performance of its obligations under this Agreement.

- (c) The Recipient must co-operate fully with the audit, including permitting the person conducting the audit to inspect and make copies of the Recipient's Records and materials relevant to the Project and the performance of this Agreement.
- (d) Except where otherwise determined by the Department, the Recipient is responsible for its own costs of participating in or conducting an audit and such costs are not to be paid out of the Funding.
- (e) The Recipient must promptly take any reasonable action required by the Department to rectify any error, non-compliance or inaccuracy identified in an audit in relation to the Project or the Recipient's performance of this Agreement.
- (f) The Recipient is not entitled to any delay costs or other costs or expenses of whatever nature relating in any way to an audit.
- (g) Where the Department directs, the Recipient must not further spend nor make any further commitment to spend any amount of Funding until such time as the audit has been completed and the Department has confirmed in writing that any action required under clause 12.3(e) has been taken.

### **13. Confidential information**

#### **13.1 Obligation**

- (a) Subject to this clause 13, each party must maintain in confidence all Confidential Information and ensure that the Confidential Information is kept confidential.
- (b) The Recipient agrees to secure all of the Department's Confidential Information against loss and unauthorised access, use, modification or disclosure.

#### **13.2 Written Undertakings**

The Recipient must, on request by the Department at any time, arrange for:

- (a) its Personnel; or
- (b) any person with a Third Party Interest,

to give a written undertaking in a form acceptable to the Department relating to the use and non-disclosure of the Department's Confidential Information.

#### **13.3 Exceptions to confidentiality**

The obligations on the parties under this clause 13 will not be taken to have been breached to the extent that the Confidential Information:

- (a) is required to be disclosed by Law to disclose, in which case the disclosing party must immediately notify the other party of the requirement and must take lawful steps and permit the opposition or restriction of the disclosure to preserve, as far as possible, the confidentiality of the Confidential Information;
- (b) is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (c) is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;

- (d) is disclosed by the Department to the responsible Minister;
- (e) is disclosed by the Department, in response to a request by a House or a Committee of the Parliament of New South Wales or the Commonwealth of Australia;
- (f) is shared by the Department (including other agencies), where this serves the Department's, the Crown in right of the State of New South Wales, or the Commonwealth of Australia's legitimate interests;
- (g) is in or enters the public domain for reasons other than a breach of this Agreement; or
- (h) is disclosed to its professional advisers to obtain professional advice.

#### **13.4 Obligation to notify**

Where a party discloses Confidential Information to another person pursuant to clause 13.3 the disclosing party must notify the receiving person that the information is confidential.

#### **13.5 Period of Confidentiality**

The obligations under this clause 13 will continue, notwithstanding the expiry or termination of this Agreement except to the extent any of the Confidential Information is released into the public domain, otherwise than in breach of this Agreement.

#### **13.6 Survival of clause**

This clause 13 will survive the termination of this Agreement.

### **14. Privacy**

#### **14.1 Privacy Obligations**

- (a) The Recipient agrees, in conducting the Project:
  - (i) not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of Privacy Law;
  - (ii) to comply with Privacy Law; and
  - (iii) to comply with any directions, guidelines, determinations or recommendations of the Department, to the extent that they are consistent with Privacy Law.
- (b) The Recipient agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 14.1.
- (c) The provisions of this clause 14.1 survive the termination or expiration of this Agreement.

#### **14.2 No reduction in Privacy Obligations**

The obligations in clause 14 do not detract from any of the Recipient's obligations under Privacy Law or under clause 14.1.

### **15. Acknowledgement and publicity**

#### **15.1 Acknowledgement of support**

- (a) Unless otherwise notified by the Department, the Recipient agrees, in all publications, promotional and advertising Materials, public announcements, promotional plaques and

activities by the Recipient or on the Recipient's behalf in relation to the Project, or any products, processes or inventions developed as a result of it, to acknowledge the financial and other support the Recipient has received from the New South Wales Government in accordance with the Funding Acknowledgement Guidelines, or as otherwise approved by the Department prior to its use or publication.

- (b) Where the Recipient has been provided with Funding to produce any publication, a copy of the publication must, on request, be provided to the Department.
- (c) The Recipient must provide the Department with no less than 10 Business Days' Notice of any proposed publications, promotional and advertising Materials and activities instigated by the Recipient with a connection or reference to the Project.
- (d) The Recipient must not publish any of the material referred to in subclause (c) above without the written approval of the Department.
- (e) If a Notice is issued under subclause (c) above, the Recipient must:
  - (i) provide the Department with all such information as reasonably required by the Department regarding the time and date of the proposed publications, promotional and advertising Materials or public announcements and activities; and
  - (ii) do such things as required to allow a representative of the Department to attend or participate in (including making an announcement at any public announcement or activity) which the Department may choose to do so in its absolute discretion.
- (f) The Recipient must invite the Minister for Roads and Departmental representatives to any formal launch events. To make an invitation, the Recipient will send a notice via [Contact the Special Minister of State, and Minister for Roads, Arts, Music, Night-time Economy, Jobs and Tourism | NSW Government](#) and to [PublicSpace@planning.nsw.gov.au](mailto:PublicSpace@planning.nsw.gov.au) at least 20 Business Days prior to the applicable event date.
- (g) If an invitation is accepted by the Minister or a Department representative, the Recipient will work with the Department's nominated media officer on the arrangements and media protocols.
- (h) If an invitation is issued under subclause (f) above, the Recipient must:
  - (i) provide the responsible Minister and the Department with all such information as reasonably required by the Department regarding the time and date of the proposed public announcements and activities; and
  - (ii) do such things as required to allow the responsible Minister and/or a representative of the Department to attend or participate in (including making an announcement at any public announcement or activity) which the Minister or the Department may choose to do so in their absolute discretion.

## 15.2 Right to publicise Funding and the Project

- (a) The Recipient will provide to the Department Promotional Material to enable the Department to publicise, promote and report on the Project. The Recipient shall be solely responsible for obtaining all necessary Intellectual Property Rights for the Department's use of the Promotional Material.
- (b) The Department reserves the right to use the Promotional Material to publicise, promote and report on the Project and/or awarding of Funding to the Recipient. The Department

may do (but is not limited to doing) this by including the Recipient's name, the amount of the Funding given to the Recipient, the date the Agreement commences and its term, and the title, location, purpose and a brief description of the Project in media releases, general announcements about the Funding, annual reports or through any other means as determined by the Department.

- (c) The Recipient agrees to grant to, or will procure for, the Department a permanent, irrevocable, royalty-free, worldwide, non-exclusive, transferable licence (including a right of sub-licence) to use, reproduce, exploit, communicate, adapt and distribute the Promotional Material for the purpose provided in subclause (a).
- (d) The Department may in its discretion and where it is practicable to do so, give a Notice to the Recipient of any such publication under subclause (b).
- (e) This clause survives termination or expiry of this Agreement.

### **15.3 Retraction of promotional material**

- (a) If the Department:
  - (i) terminates this Agreement under clause 18.1; or
  - (ii) otherwise determines in its absolute discretion that the Project is not consistent with the Project Objectives,

the Department may, by a Notice to the Recipient, request the Recipient to cease the use of and/or retract any publication of any Promotional Material and the Recipient must immediately comply with such request.

## **16. Liability and Insurance**

### **16.1 Insurance**

- (a) The Recipient must take out and maintain, during the Term of this Agreement, all appropriate insurance policies including but not limited to:
  - (i) workers compensation insurance as required by Law for all persons involved in the delivery of the Project;
  - (ii) public liability insurance to the value of not less than \$20 million in respect of each and every occurrence and unlimited in the aggregate for any one period of cover; and
  - (iii) insurance over all Assets used in connection with the Project funded or partly funded by the Funding, for their full replacement value.
- (b) On request by the Department, the Recipient must provide a copy of valid and current certificates of currency for the insurance and/or a warranty from its insurer that the policy extends to the Department and covers potential liability arising under this Agreement.
- (c) The Recipient must not do, permit or suffer any act, matter or thing or omission whereby the policy referred to in this clause may be vitiated, rendered void or voidable.

### **16.2 Proportionate liability regime**

To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Recipient under or in connection with this Agreement.

### 16.3 Indemnity

- (a) In this clause 16.3, "fault" means any negligent or unlawful act or omission or wilful misconduct.
- (b) The Recipient indemnifies the Department from and against any:
  - (i) cost or liability incurred by the Department;
  - (ii) loss of or damage to property of the Department; or
  - (iii) loss or expense incurred by the Department in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Department,  
arising from:
    - (iv) any breach by the Recipient of the Agreement;
    - (v) any act or omission involving fault by the Recipient in connection with this Agreement;
    - (vi) the use of Assets; or
    - (vii) the use by the Department of the Project Material, including any claims by third parties about the ownership or right to use the Intellectual Property Rights in the Project Material.
- (c) The Recipient's liability under subclause (a) above will be reduced proportionately to the extent that any act or omission involving fault on the part of the Department or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- (d) The right of the Department to be indemnified under this clause 16.3 is in addition to, and not exclusive of, any other right, power or remedy provided by Law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

## 17. Dispute Resolution

### 17.1 Procedure for dispute resolution

The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 17.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- (a) the party claiming that there is a dispute will give the other party a Notice setting out the nature of the dispute;
- (b) within 5 Business Days (or such other period as agreed by the parties in writing) each party will nominate a senior representative not having any prior involvement in the dispute;
- (c) the senior representatives will try to settle the dispute in good faith by direct negotiation between them;
- (d) failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a senior representative

within the period set out in subclause (b) above), the parties may agree to refer the dispute to an independent third person with power:

- (i) to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
- (ii) to mediate and recommend some form of non-binding resolution;
- (e) the parties will co-operate fully with any process instigated under subclause (d) in order to achieve a speedy resolution; and
- (f) if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties may agree in writing), either party may commence legal proceedings.

## **17.2 Costs**

Each party will bear its own costs of complying with this clause 17, and the parties will bear equally the cost of any third person engaged under subclause 17.1(d).

## **17.3 Continued performance**

Despite the existence of a dispute, the Recipient will (unless requested in writing by the Department not to do so) continue to perform the Recipient's obligations under this Agreement.

## **17.4 Application of clause**

This clause 17 does not apply to:

- (a) legal proceedings by either party for urgent interlocutory relief; or
- (b) action by the Department under or purportedly under clause 10 or 18.

## **18. Termination**

### **18.1 Termination for fault**

- (a) If the Recipient does not comply with any of its obligations under this Agreement, then the Department:
  - (i) if it considers that the non-compliance is not capable of remedy – may by Notice terminate this Agreement immediately;
  - (ii) if it considers that the non-compliance is capable of remedy – may, by Notice require that the non-compliance be remedied within the time specified in the Notice, and if not remedied within that time, may terminate this Agreement immediately by giving a second Notice.
- (b) The Department may also by Notice terminate this Agreement immediately if:
  - (i) in relation to this Agreement, the Recipient breaches any Law of the Commonwealth of Australia, or of a State or Territory;
  - (ii) another clause of this Agreement allows for termination under this clause 18.1; or

- (iii) the Department is satisfied that any statement made in the Recipient's application for Funding is false or misleading in a way which would have affected the original decision to approve the Funding.

## **18.2 Termination for Change in Government Policy**

Without limiting any other rights or remedies the Department may have arising out of or in connection with this Agreement, the Department may terminate this Agreement immediately upon written notice to the Recipient due to a Change in Policy.

## **18.3 Preservation of other rights**

Clause 18.1 does not limit or exclude any of the Department's other rights under this Agreement or at Law.

## **19. Force Majeure**

If either Party is unable to perform an obligation under this Agreement because of a Force Majeure, then:

- (a) as soon as reasonably practicable after the Force Majeure arises, the affected party shall notify the other party of the Force Majeure and provide details of the Force Majeure and the extent to which and for how long the notifying party estimates that it is unable to perform its obligation;
- (b) such affected party is relieved from performing its obligations under this Agreement (other than the parties' obligations to pay money) to the extent it is prevented from doing so by the Force Majeure;
- (c) dates shall be extended to take into account the Force Majeure as agreed by the parties acting reasonably; and
- (d) such party prevented from performing its obligations due to a Force Majeure shall use commercially reasonable efforts to remedy the situation so it may perform its obligations.

## **20. Liability of Department on Termination**

The Department is not liable to the Recipient for the balance of the Funding and the Recipient is not entitled to make a claim for damages or loss as a consequence of termination.

## **21. Assignment**

This Agreement is personal to each party and neither party may assign the rights or benefits of this Agreement to any person.

## **22. General Warranties**

Each party warrants to each other party that this Agreement creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms.

## **23. Notices**

### **23.1 Notices**

Any notice, demand, consent, approval, request or other communication to be given under this Agreement (**Notice**) must be:



- (a) in writing;
- (b) given to the following contact person:
  - (i) in the case of the Department, that person specified in Item 13 of the Agreement Details, or other person as notified by the Department; or
  - (ii) in the case of the Recipient, that person specified in Item 14 of the Agreement Details, or other person as notified by the Recipient;
- (c) served in accordance with clause 23.2; and
- (d) unless this Agreement provides otherwise, in English.

### **23.2 Service of Notices**

- (a) A Notice under this Agreement is only effective if it is in writing, and addressed as follows:
  - (i) if given by the Recipient to the Department – addressed to the Department at the Address for Service specified in Item 11 of the Agreement Details, or other address as notified by the Department; or
  - (ii) if given by the Department to the Recipient – given by the Department and addressed as specified in Item 12 of the Agreement Details, or other address as notified by the Recipient.
- (b) A Notice must be given at the recipient's Address for Service by being:
  - (i) hand delivered; or
  - (ii) sent by prepaid mail within Australia.
- (c) A Notice is given if:
  - (i) hand delivered, on the date of delivery;
  - (ii) sent by electronic mail, on the date of delivery unless an automated response is received by the receiver advising that the email has not been received by the recipient;
  - (iii) sent by prepaid mail within Australia, on the date that is 2 Business Days after the date of posting.
- (d) If a Notice is received:
  - (i) after 5:00 pm on any Business Day; or
  - (ii) on a day that is not a Business Day,
 

it is deemed to be received at 9:00 am on the next Business Day for the purposes of this clause 23.

## **24. Work Health and Safety**

### **24.1 Compliance with Work Health and Safety Law**

The Recipient agrees to comply with:

- (a) all Laws relating to work health and safety including (but not limited to), the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) all reasonable directions from the Department or its Personnel in relation to work health and safety.

## **25. General provisions**

### **25.1 Inconsistency**

If there is any inconsistency between provisions of this Agreement then the order of precedence will be:

- (a) **clause 1 to clause 25**; then
- (b) any **Schedules**; then
- (c) any **Annexures**.

### **25.2 Entire agreement**

This Agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

### **25.3 Variation**

Unless provided for in Schedule 5, this Agreement or any of the matters outlined in the Schedules or Annexures to this Agreement must not be varied except by a later written document executed by all parties.

### **25.4 Waiver**

A right created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

### **25.5 Conflicts of Interest**

- (a) The Recipient must not do anything to bring itself into a situation where it has a conflict of interest with the Department.
- (b) Where the Recipient identifies that there is a conflict of interest between itself and the Department (whether actual, perceived or potential) it must:
  - (i) immediately notify the Department;
  - (ii) take proactive steps to mitigate the impact of the conflict of interest;
  - (iii) take steps to remove or manage the conflict of interest; and
  - (iv) do whatever the Department reasonably requests of it to remove or manage the conflict.
- (c) Where the conflict of interest is unable to be managed to the satisfaction of the Department then the Department may terminate this Agreement, such termination to be treated as if it were a termination for cause under clause 18.1 of this Agreement.

## 25.6 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Agreement.

## 25.7 Time for doing acts

- (a) If:
  - (i) the time for doing any act or thing required to be done; or
  - (ii) a Notice period specified in this Agreement,expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that Notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

## 25.8 Governing law and jurisdiction

- (a) The Laws applicable in New South Wales govern this Agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## 25.9 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

## 25.10 Preservation of existing rights

The expiration or termination of this Agreement does not affect any right that has accrued to a party before the expiration or termination date.

## 25.11 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

## 25.12 Electronic execution and counterparts

- (a) The parties agree that this Agreement may be signed electronically as a deed in accordance with the *Electronic Transactions Act 2000 (NSW)*. A signed copy of this Agreement transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.
- (b) This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

## 25.13 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

**25.14 Legal expenses**

Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.

DRAFT

**Execution page**

**Executed** as a deed

**Signed, sealed and delivered** for and on behalf of **the Crown in right of the State of New South Wales acting through the Department of Transport** (ABN 11 370 995 518) by its Authorised Officer but not so as to incur any personal liability in the presence of:

.....  
Signature of Witness\*

.....  
Signature of Authorised Officer

.....  
Name of Witness

.....  
Name and position of Authorised Officer

[Include if to be witnessed remotely, otherwise delete: *\*By signing this document, the witness states that they have witnessed the signature of the signatory over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW)*]

**Signed, sealed and delivered** for and on behalf of **[Legal name of the Recipient]** (ABN [ABN#]) by its Authorised Officer:

.....  
Signature of Witness

.....  
Signature of Authorised Officer

.....  
Name of Witness

.....  
Name of Authorised Officer

[Include if to be witnessed remotely, otherwise delete: *\*By signing this document, the witness states that they have witnessed the signature of the signatory over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW)*]

### Schedule 1 Agreement Details

	Item	Detail
1.	Project and Description	[Name of Project and description ] as set out in the Project Plan
2.	Project Commencement Date	The Date of this Agreement.
3.	Project Completion Date	[insert date]
4.	Project Objectives	[Project Objectives]
5.	Funding	[\$]
6.	Confidential Information	Nil
7.	Program	Vibrant Streets Package: Open Streets Program
8.	Project Location	Refer to the Project Plan
9.	Department Address for Service	231 Elizabeth Street, Sydney, NSW, 2000
10.	Recipient Address for Service	[insert] [Note: An Address for Service must be a street address.]
11.	Department Representative	[Brooke Wharton, A/Executive Director Cities Revitalisation and Place]
12.	Recipient Representative	[Name, Position]

## Schedule 2 Funding

1. The Department will provide, or enable the provision of, the Funding to the Recipient in two payments for the Project in accordance with Schedule 4.
2. The Recipient agrees to receive the Funding in accordance with, and subject to the terms of this Agreement.
3. Prior to the Department making any payment of the Funding to the Recipient, the Recipient agrees to provide the Department with a valid tax invoice (including itemisation of the GST component) in accordance with the following requirements:
  - (i) be addressed to the Department;
  - (ii) prominently be identified as "Tax Invoice"; and
  - (iii) contain:
    - (A) the Recipient's name;
    - (B) the Recipient's ABN;
    - (C) the name of Project;
    - (D) the amount of Funding requested;
    - (E) the GST component (listed separately to the amount requested); and
    - (F) the total amount of Funding requested.

### Schedule 3 Reporting Requirements

#### Milestone Report

1. The Recipient must provide a Milestone Report to the Department, in the form required by the Department via SmartyGrants.
2. Each Milestone Report for the purposes of this, Schedule 3, must be in a format agreed to by both parties to this Agreement and include the requirements outlined in Schedule 4. Any major changes to the Project and any major issues arising out of the Project are to be outlined.
3. Each Milestone Report must be endorsed by an appropriate representative of the Recipient before being provided to the Department.
4. The Recipient must provide the Department with any additional reports if requested.

#### Project Acquittal Report

1. The Recipient must provide to the Department no later than 4 weeks after the completion of the Project, a Project Acquittal Report in the form required by the Department.
2. The Project Acquittal Report must include:
  - (i) when the Project was completed;
  - (ii) a statement of expenditure with an itemised breakdown and details of the actual cost of the Project, including a tabulated and indexed folder of tax invoices for, and documentary evidence of the payment of, each component of the Project;
  - (iii) the date the works, activations, events or activities comprised in the Project were made available to the local community;
  - (iv) evaluations using the [Evaluation Tool for Public Space and Public Life including at least twice at the same time of day: once prior to project implementation to determine a baseline, and once during the activation or event and analyse the results \(before and after survey analysis\)](#)
  - (v) a statement of how the Project aligned to the [NSW Public Spaces Charter](#) values and principles;
  - (vi) before and after reporting against Program Core Metrics; and
  - (vii) high-resolution images and/or videos of the Project (before and after images, including images taken from the same spot/position) with relevant credits and permissions for NSW Government use,
  - (viii) and any other information required by the Department.
3. The statement of expenditure must be signed by the Recipient's Authorised Officer and include a statement that the Recipient has expended the grant funding in accordance with the terms and conditions outlined in the Funding Agreement and that the Recipient has kept a complete set of accounting and financial records relevant to the project which have been maintained and can be produced on request for audit purposes.
4. The Project Acquittal Report must be endorsed by the Recipient's Authorised Officer before being provided to the Department.



#### Procurement Certificate

1. The Recipient must provide to the Department, within 1 month of the completion of the Project, a Procurement Certificate.
2. The Procurement Certificate must include a statement that the Recipient in carrying out the Project, has complied with the *Local Government Act 1993*, the *Local Government (General) Regulation 2021* and the Recipient's procurement policy.
3. The Procurement Certificate must be signed by the Recipient's chief procurement officer or any person performing this function before being provided to the Department.

#### Case Study Report

1. The Recipient must, if requested, prepare and provide to the Department, following completion of the Project, a brief Case Study Report in the form required by the Department.
2. The Recipient must provide any further information and assist with the finalisation of the Case Study Report, if requested.

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## Schedule 4 - Milestones Schedule

Milestone activities	Milestone Delivery Date	Funding amount	Timing for Funding Payment
<p><b>Milestone 1 – Project Commencement</b></p> <p>Submit via email to <a href="mailto:PublicSpace@planning.nsw.gov.au">PublicSpace@planning.nsw.gov.au</a>:</p> <ul style="list-style-type: none"> <li>• A signed Funding Agreement for co-signature and execution by the Department.</li> <li>• A correctly rendered invoice to the Department.</li> </ul>	Prior to 11 June 2024	80% of the Funding being \$[Insert amount of Funding]	At the completion of Milestone activities to the satisfaction of the Department.
<p><b>Milestone 2 – Event/Activation Plan and Approvals</b></p> <p>Submit a Milestone Report in SmartyGrants that includes but is not limited to:</p> <ul style="list-style-type: none"> <li>• A detailed plan outlining the layout and approach to the event/activation.</li> <li>• Confirmation of application/s receiving approval/s required (if any) from Transport for NSW, local traffic committee, council and other statutory bodies.</li> <li>• High-resolution before images submitted.</li> <li>• Before data captured through use of the Evaluation Tool for Public Space and Public Life</li> <li>• Baseline data against Annexure B submitted.</li> </ul>	[Council to insert]	N/A	N/A

<p><b>Milestone 3 – Event/Activation Commencement</b></p> <p>Commence delivery of activations and events as outlined in Item 1 of Agreement Details.</p> <p>Submit a Milestone Report in SmartyGrants that includes but is not limited to:</p> <ul style="list-style-type: none"> <li>• Capture data through use of the Evaluation Tool for Public Space and Public Life</li> <li>• Capture data against Annexure B.</li> <li>• Photo evidence of event/activation commencement.</li> </ul>	<p>[Council to insert]</p>	<p>N/A</p>	<p>N/A</p>
<p><b>Milestone 4 – Event/Activation Delivery</b></p> <p>Complete delivery of activations and events as outlined in Item 1 of Agreement Details.</p> <p>Submit a correctly rendered invoice to the Department via email to <a href="mailto:PublicSpace@planning.nsw.gov.au">PublicSpace@planning.nsw.gov.au</a>.</p> <p>Submit a Project Acquittal Report (as outlined in Schedule 3) in SmartyGrants within 4 weeks after completion of event/s and/or activations, and no later than 28 February 2025.</p>	<p>[Council to insert]</p>	<p>20% of the Funding being \$[Insert amount of Funding]</p>	<p>At Project Completion, after the delivery of activations and events as outlined in Item 1 of Agreement Details and subject to receipt by the Department of a Project Acquittal Report and a correctly rendered invoice from the Recipient. The report is required within 4 weeks after completion of event/s and/or activations, and no later than 28 February 2025.</p>

## Schedule 5 - Variations Schedule

1. The parties to this Agreement acknowledge and agree that the following terms of this Agreement may be varied by completion of the table below by the Department's Representative and the Recipient's Representative:
  - Schedule 1 Agreement Details
  - Schedule 4 Project Milestones
  - Annexure A Project Plan
    - Timing of activations or events
    - Delivery or production of activations or events, provided that there is no change to the Project Objectives
    - Budget breakdown other than any increase to labour costs
  
2. On and from the Effective Date in the table below, the term in the first column is varied as shown in the second column:

### Variations

Term to be varied	Variation	Effective Date	Signature of Department's Representative	Signature of Recipient's Representative

**Annexure A – Project Plan**

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## Annexure B - Program Core Metrics

**Table 1 Core indicators for Evaluation**

Evaluation against the core indicators is in addition to evaluations using the Evaluation Tool for Public Space and Public Life which includes evaluations at least twice at the same time of day: once prior to project implementation to determine a baseline, and once during the activation or event and analysis of the results (before and after survey analysis).

Indicator	Measure	Evidence
Type of activations/events Types of street environment changes	Category	Self-reported
Range of services and infrastructure to enable street closure and activation/event	Quantity Qualitative	Self-reported
Number of temporarily pedestrianised streets	Quantity	Self-reported
Area of road space temporarily pedestrianised for project	Area in m2	Self-reported
Area of public space (e.g. street space) improved / made accessible for people	Area in m2	Self-reported
Increase in footfall	Visitation/footfall	Counters / Observation
Increase in dwell time	Visitation/footfall	Counters / Observation
Brief character profile of visitors	Visitation Qualitative	Counters / First hand Survey / Observation
Number and details of partners involved	Quantity Qualitative	Self-reported
Number and details of industry sectors involved	Quantity Qualitative	Self-reported
Details of approval/s required Number of stakeholders involved for approval/s Number of business days it took to seek/obtain approval/s	Quantity Qualitative	Self-reported
Increase in sales turnover of local businesses	Amount	Self-reported / Survey results
Change in trading hours of local businesses	Number of hours	Self-reported / Survey results
Number of hospitality workers engaged by Council	Additional workers engaged / Additional hours worked	Self-reported

Indicator	Measure	Evidence
Number of creative workers engaged by Council	Additional workers engaged / Additional hours worked	Self-reported
Number of engagement of other staff (e.g. event management and volunteers)	Additional staff engaged / Additional hours worked	Self-reported
Long term outcomes (e.g. informs a future streetscape upgrade, built sector relationships, etc)	Qualitative	Self-reported
How people got to the area	Qualitative Quantitative	Self-reported