



Memorandum of Understanding

City of Kalamunda
and
Kalamunda and Districts Agricultural Society Inc

This Memorandum of Understanding summarises the mutual agreements and responsibilities as they apply between Kalamunda and Districts Agricultural Society Inc, in respect of funding provision by the City of Kalamunda for the annual Kalamunda Show.

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Date	22 December 2021
Parties	
1.	City of Kalamunda ABN 6074 1095 678 (City).
2.	Kalamunda and Districts Agricultural Society Incorporated (Incorporated as an Association in WA A0490017H) The Agricultural Society
Recitals	
A.	The Kalamunda Show is held annually at Kostera Oval and the Agricultural Hall at the corner of Canning Road and Recreation Road in Kalamunda.
B.	The City is the major event sponsor and has supported the Kalamunda Show through financial and in-kind assistance.
C.	This MOU has been agreed between the Parties to summarise each Parties' mutual agreements and responsibilities as they apply pursuant to the MOU in

ry 2022 | respect of funding provision by the City of Kalamunda for the Kalamunda Show.

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1. Definitions and Interpretation

1.1 Definitions

Unless otherwise separately defined within this Agreement, or if the subject matter or context requires otherwise, in this Agreement, including the introductions, schedules and appendices, the following words and expressions whether commencing with capital letters or not shall have the meanings respectively assigned to them below:

Abbreviations:

City of Kalamunda – ‘The City’

Kalamunda and Districts Agricultural Society Incorporated – ‘The Agricultural Society’

Kalamunda Show – ‘The Show’

Address List means *A list of residential addresses, without personal details.*

Agreed Funding means a ‘one-off’ payment of sponsorship funds in the amount of (exclusive of GST) to be provided by The City to The Agricultural Society for the sole purpose of The Agricultural Society undertaking all necessary works and doing all things reasonably necessary to provision and run The Show.

Agreement means this Agreement between the City and Kalamunda and Districts Agricultural Society Incorporated, as amended from time to time, whether referred to as the ‘MOU’, or ‘Agreement’.

City’s Event Budget means the Annual Budget set by the City for events held in the City.

City’s Fees and Charges Schedule means *The City of Kalamunda’s annual schedule of fees and charges as adopted by Council.*

City Offices means The City of Kalamunda Administration, located at 2 Railway Road in Kalamunda.

City's Events Sponsorship and Donations Policy means the Policy and Procedure as attached to this MOU as Schedule 1.

Commencement Date means the date described at the top of page 3 of this MOU.

Community Event Application means *The Community Event Application form and process that is undertaken by all Community event organisers.*

Community Events Guide means The City of Kalamunda's guide to assist event organisers in the City

Event Notification Letter is notification which the event organiser delivers to nearby residents informing them of the day, time and nature of the event at least two weeks prior to the event taking place.

Event Parking Plan means a document outlining proposed locations where patrons are able to safely park. The plan will include satisfactory confirmation by all parties of any permissions or arrangements agreed with organisers.

Memorandum of Understanding or 'MOU' or 'Agreement', means this Agreement between the City and Kalamunda and Districts Agricultural Society Incorporated as amended from time to time.

MOU Fund Period means the period of the Term.

On-line Grant Acquittal Form means the Sponsorship and Donations Acquittal form available on the City website which must be submitted within a prescribed time frame post event.

Party means a party to this MOU.

Parties means the City and Kalamunda and Districts Agricultural Society Incorporated.

Permanent Toilet Facilities means those facilities which are inherently a permanent part of the venue

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Sponsorship Funds means funding available from the City **up to** a capped amount of \$20,000 (exclusive of GST) in each financial year, that the City may agree to provide to Kalamunda and Districts Agricultural Society Incorporated subject to the requirements of this MOU.

Term means the Term described in 3.1 of this MOU.

Kalamunda Show Funding Application means the Kalamunda Show Funding Application attached in Schedule 2 to this MOU.

Kalamunda and Districts Agricultural Society Incorporated means the main organising body of the Kalamunda Show, as also defined in the 'Parties' clause to this MOU.

1.2 Interpretation

The following rules apply unless the context requires otherwise:

- a) The singular includes the plural, and the converse also applies.
- b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- c) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity and permitted assigns.
- d) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this MOU.
- e) A reference to an agreement or document (including a reference to this MOU) is to the agreement or document as amended, supplemented, novation or replaced, except to the extent prohibited by this MOU or that other agreement or document, and includes the recitals, schedules and annexure to that agreement or document.
- f) A reference to a party to this MOU or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

- g) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- h) A reference to dollars and \$ is to Australian currency.
- i) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- j) Nothing in this MOU is to be interpreted against a party solely on the ground that the party put forward this MOU or a relevant part of it.
- k) Headings are for convenience only and do not affect interpretation.
- l) A reference to a particular Government department, statutory authority or other body or association having a particular jurisdiction, function, authority or control over any matter or thing will be deemed to be a reference to that Government department, statutory authority or other body or association having the relevant jurisdiction, authority or control howsoever it is named or renamed from time to time and will be deemed to be a reference to any other Government department, statutory authority or other body or association having that particular function or authority or control from time to time.
- m) A reference to a party using or obligation on a party to use its best endeavors or reasonable endeavors does not oblige that party to:
 - (i) pay money in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this MOU;
 - (A) provide other valuable consideration to or for the benefit of any person; or
 - (B) Agree to commercially onerous or unreasonable conditions.

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2. Objective of this MOU

- 2.1** In addition to Kalamunda Show day, fundraising activities take place in the form of events held throughout the year. For the purpose of this MOU, the City's commitment, whether financial, or in kind, will focus on the delivery of the Kalamunda Show itself.
- 2.2** The City's Event Budget provides a number of opportunities for organisers to seek financial support from the City pursuant to the City's Sponsorship Policy and Procedure which is annexed as marked 'Annexure A' to this MOU.
- 2.3** The City's Sponsorship Policy however limits such support to a three-year time period for each applicant. In order to ensure ongoing sustainability for the Kalamunda Show, the City has agreed to enter into this MOU with Kalamunda and Districts Agricultural Society Incorporated for a period of ten (10) years.
- 2.4** In consideration of the City agreeing to extend support in accordance with clause 2.3 above, Kalamunda and Districts Agricultural Society Incorporated has agreed to deliver the Kalamunda Show for the benefit of the community.

3. Term

- 3.1 This MOU is valid from the Commencement Date until 30 June 2031, unless terminated earlier in accordance with the terms contained herein.
- 3.2 The MOU may be extended by the mutual agreement and subject to agreement of all conditions being met, negotiate for another 5 years, in writing, by the Parties.

4. Funding and conditions

4.1 Funding

- a) The City will provide Kalamunda and Districts Agricultural Society Incorporated with the opportunity to receive Sponsorship Funds in accordance with this MOU during the Term, subject to:

- (i) Kalamunda and Districts Agricultural Society Incorporated submitting a completed Kalamunda Show Funding Application to the City by or before 30 March of each financial year during the Term; and
 - (ii) The Kalamunda Show Funding Application referred to in 4.1(a)(i) above, being in accordance with Schedule 2 of this MOU.
- b) Upon receipt of a complete Kalamunda Show Funding Application from Kalamunda and Districts Agricultural Society Incorporated, pursuant to 4.1(a)(i) and (ii) above, the City will consider the same and inform Kalamunda and Districts Agricultural Society Incorporated upon approval of the new financial year budget, of whether the City agrees to make payment to Kalamunda and Districts Agricultural Society Incorporated of the Sponsorship Funds, which agreement will not be unreasonably withheld.
- c) In considering Kalamunda and Districts Agricultural Society Incorporated's Kalamunda Show Funding Application for any relevant financial year, other than the 2021/2022 financial year, the City will take into account whether Kalamunda and Districts Agricultural Society Incorporated satisfactorily acquitted its responsibilities in the successful provision of the Kalamunda Show in the financial year immediately preceding the relevant application.
- d) Upon the City's provision of written approval of Kalamunda and Districts Agricultural Society Incorporated's Kalamunda Show Funding Application in the relevant financial year, Kalamunda and Districts Agricultural Society Incorporated must, within 10 business days after receipt of the said written approval, provide the City with an acceptable tax invoice for the Sponsorship Funds, which must include a nominated bank account for payment.
- e) Provided the City receives the tax invoice referred to above in paragraph 4.1(d) within the time stipulated therein, the City will make payment of the Sponsorship Funds to Kalamunda and Districts Agricultural Society Incorporated's nominated bank account, by or before 30 August of the relevant financial year.
- f) No less than 30 days in advance of the Kalamunda Show each year Kalamunda and Districts Agricultural Society Incorporated must pay the following in full to the City,

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in the amounts prescribed by the City's Fees and Charges Schedule (for each the relevant financial year):

- (i) Key Bond for keys required for the facility;
- (ii) Fees relating to the Event Food Stalls Application.

Note:

~~(iii)~~ 1. A food stall is required to hold a current "City of Kalamunda Food Stall Permit" to sell food at events. If a food stall does not have a current permit, they can apply by completing a food stall permit application

~~(iv)~~ 2. Kalamunda Agricultural Society is responsible for confirming the validity and currency of food business registrations and public liability insurance of all food stalls operating at the show.

4.2 Agreed Initial Funding to Kalamunda and Districts Agricultural Society Incorporated

- a) Notwithstanding the above said in paragraph 4.1, upon execution by the Parties of this MOU, the City will transfer the Agreed Initial Funding to Kalamunda and Districts Agricultural Society Incorporated within 14 days after receipt by the City of a request on letter head from Kalamunda and Districts Agricultural Society Incorporated, for the Agreed Initial Funding to be paid into Kalamunda and Districts Agricultural Society Incorporated's nominated account.
- b) Sponsorship Funding for subsequent years within the MOU Fund Period will be paid subject to paragraph 4.1 and the general requirements of this MOU.
- c) In kind support will be provided for the following:
 - 1. Fee waiver for the hire of the Agricultural Hall, Foyer & Lesser Hall
 - 2. Fee waiver for the hire of Kostera Oval
 - 3. Labor assistance installation of temporary fencing
 - 4. Office space in the Agricultural Hall
 - 5. Ensuring the oval and surrounding grounds are ready for the Kalamunda Show each year.

5. Parties' obligations

5.1 Mutual obligations

The Parties agree to work collaboratively and efficiently to deliver an annual Kalamunda Show.

5.2 The City's Obligations

The City agrees:

- a) subject to paragraph 4.2(a) above, to pay Kalamunda and Districts Agricultural Society Incorporated the Funding as agreed in this MOU.
 - b) Subject to Kalamunda and Districts Agricultural Society Incorporated being successful in a Kalamunda Show Funding Application to the City in the years following the City to assist Kalamunda and Districts Agricultural Society Incorporated in any Kalamunda Show Funding Application to the City by provision of:
 - (i) a Community Events Guide; and
 - (ii) an On-line Grant Acquittal Form;
 - c) to provide Kalamunda and Districts Agricultural Society Incorporated with an Address List for the distribution of an Event Notification Letter, no less than 28 days prior to the Kalamunda Show, the formatting and content of which must be approved by the City prior to release;
- 5.2.1 Provide access to all areas of Kostera Oval under the control of the City (excluding Kalamunda Lapidary Club).
 - 5.2.2 Provide access to the Agricultural Hall, Theatre Foyer and Lesser Hall from the Wednesday preceding the commencement of the Show until dusk on the Monday immediately after the end of the Show. The Use of the Large Chairs Store near the Ag Hall will be made available for Office space for the Ag Society for the period of the show and in the lead up as required.
 - 5.2.3 Provide on-site assistance during the week prior to the Show, including but not limited to, the location marking of reticulation pipes, underground electrical lines, storm water and sewerage pipes and security fencing.
 - 5.2.4 Provide on-site assistance, with the installation and removal of temporary fencing.

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- 5.2.5 Ensure the venue is in a good and safe condition and provide locks, keys and chains for all access gates to the venue (excluding the Lapidary Club entrance which must remain accessible at all times).
- 5.2.6 Assist with the promotion of the event in appropriate City publications and on the City website.
- 5.2.7 Permit storage of various items associated with the Show at the Kalamunda Performing Arts Centre as agreed with the City's representative limited to Storage Room 2.
List of storage areas currently being used. Urgently needs discussion
- 5.2.8 Liaise with the other parties prior to the execution of any major alterations to Kostera Oval if there is likelihood of impact on the layout of the Show.
- 5.2.9 Ensure all lights and power outlets are in good and safe condition.
- 5.2.10 Allow parking of showmen's vehicles and equipment in the area off McCrae Street in the Kostera Oval Reserve from the Sunday preceding the Show until dusk on the Monday after the Show and permit a caretaker to remain in temporary residence during that period for security purposes.
- 5.2.11 Subject to the agreement of the Lessees, supply and fit temporary locks to allow access to the toilets and showers in the Pat Moran Pavilion from the Tuesday prior to the Show to dusk on the Sunday afterwards.
- 5.3 THE AGRICULTURAL SOCIETY AGREES TO:**
- 5.3.1 Provide the City with the forthcoming year's proposed Show date at least twelve months in advance or as soon as reasonably practicable thereafter.
- 5.3.2 Provide the City with an annual Risk Management Plan to AS/NZS/31000 standard for the Annual Show and at all times abide by Occupational Safety and Health policies and practices regarding site safety.
- 5.3.3 Remove all litter and equipment from the event site by dusk on the Monday immediately following the show, including cleaning of change rooms, showers and toilet facilities.
- 5.3.4 To take all care and responsibility to ensure that the surface of Kostera Oval does not incur avoidable damage. Wherever possible track mats must be used in high traffic areas during set up and pack down.
- 5.3.5 Not erect equipment or conduct activities that may cause damage to the grassed surface area, paving or hall walls and floors and to either make good any damage or, subject to negotiation, reimburse the City should any rehabilitation be required above and beyond acceptable wear and tear as deemed necessary by City's representative.

- 5.3.6 Return the site free of rubbish and equipment, including the grassed surface and all internal areas to an acceptable condition as determined appropriate by the City's representative.
- 5.3.7 Manage and take responsibility for all volunteers and contractors and ensure they all have necessary safety awareness and insurance.
- 5.3.8 Provide and maintain for the life of this agreement public liability insurance to a minimum of \$50,000,000 cover for its operation.
- 5.3.9 Pay a bond of \$1000 for the facilities as determined by the City's Schedule of Fees and Charges or by special agreement with the City.
- 5.3.10 A bond of \$5000 is payable by the Showmen's Association in case of damage to the playing surface of Kostera Oval.
- 5.3.11 Liaise with the City regarding the dates of the Show for the purposes of agreeing use of Kostera Oval and change rooms of the Pat Moran Pavilion.
- 5.3.12 Make an annual donation to the lessees of the Pat Moran Pavilion (to be agreed with the lessees), as reimbursement for usage of water, electricity and gas during the course of the Show.
- 5.3.13 Apply for City funding through the annual budget application process in the knowledge that there will be no guarantee of automatic funding in any year.
- 5.3.14 Provide event acquittal and formal feedback as agreed with the City Events Coordinator within three months of the conclusion of the Show.
- 5.3.15 Comply with all relevant legislation including conditions identified through the Event Application process including City local laws.

THE PARTIES AGREE TO:

Cooperate in good faith for the annual provision of the Show.

Evaluate the operation and implementation of this Memorandum of Understanding through:

- Two pre-event planning meetings held approximately 6 months and no less than 3 weeks in advance of each annual show, between key representatives from each party.
- A post event analysis meeting held within one month of the conclusion of the Show.

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- Any correspondence that either party deem necessary throughout the year.

5.4 AGREEMENT PERIOD

This Memorandum of Understanding shall remain in place for a period of 10 years, unless terminated under paragraph 10.

1. FEES AND CHARGES

The Agricultural Society shall not incur the City's normal fees and charges for hire of Kosteria Oval and Performing Arts Centre for the staging of the Show.

2. INTELLECTUAL PROPERTY RIGHTS

The parties acknowledge that nothing in this Memorandum of Understanding shall affect ownership, including third party ownership, of any intellectual property rights.

3. DISPUTE RESOLUTIONS

The parties shall attempt to settle all disputes arising from the execution or in connection with this agreement through friendly consultation between the parties.

4. VARIATIONS

The parties may agree to vary this Memorandum of Understanding by an exchange of letters. Where agreement between the parties cannot be reached then the Memorandum of Understanding is to remain in place and continue unaltered.

5.5 Kalamunda & Districts Agricultural Society

In addition to any and all other requirements of this MOU, Kalamunda and Districts Agricultural Society Incorporated:

- Shall provide Primary Sponsor Rights.
- Shall ensure that City of Kalamunda Promotional Feather flags (12 in total) are on display throughout the Kalamunda Show Zone.
- Shall ensure promotional banners provided by the City of Kalamunda are put up at inside locations of Ag Society events.

- d) Shall ensure verbal announcements are made during the show acknowledging the City of Kalamunda major sponsorship of the event.
- e) shall, by no later than 3 months' prior to the Kalamunda Show, submit a Community Event Application and, upon approval, comply with all conditions of the same; and
- f) acknowledges and agrees that should its Community Event Application be unsuccessful:
 - (i) If Kalamunda Show already in receipt of sponsorship funds it must, within 28 days thereafter, return the entirety of any Agreed Initial Funding, or Sponsorship Funds, as the case may be to the City.

6. Termination of MOU

- a) The Parties agree that this MOU will terminate if both Parties agree in writing to the termination.
- b) Either Party may terminate this MOU by giving the other party Notice of no less than 3 months
- c) The Parties agree that this MOU will otherwise terminate on 30 June 2031.

7. Obligation binding

The Parties acknowledge and agree that this Memorandum of Understanding is legally binding between the Parties.

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8. Execution and Date

on the Day of 2022

Signed for and on behalf of the **CITY OF KALAMUNDA** pursuant to the requirements of section 9.49A of the *Local Government Act 1995*:
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)
)
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)
)

Authorised signatory Print full name & position

on the Day of 2022

Signed for and on behalf of the
Kalamunda Show)
)
)

Authorised signatory Print full name & position

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Schedule 1

City's Sponsorship Policy and Procedure:

[Microsoft Word - Service 6 Event Sponsorship and Donations \(windows.net\)](#)

Schedule 2

City of Kalamunda Community Events Funding Application Form:

[Donations & Sponsorship Opportunities | City of Kalamunda](#)

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Schedule 3

City of Kalamunda Community Events Application Form:

[Event Application | City of Kalamunda](#)