

Hi Christine,

Thanks for the opportunity of providing this late submission.

### **General Comments**

Cairns Regional Council Water & Waste are currently providing support services to regional communities including indigenous (ref: Cairns – Yarrabah MOU). The intent of this service provision is to assist with providing the back-up capability and capacity for water sector related matters – which, in assisting with the sustainable supply of potable water and management of wastewater, have a direct link to improved quality of life and health based objectives. With many of the indigenous communities there remains a challenge of both attracting and retaining qualified competent water operating professionals. Whilst the investment in construction of actual infrastructure is critical, the ongoing operation and maintenance tends to get overlooked. By working with the communities with a long term strategic view, the aim is provide a platform upon which the communities can become more self-sufficient – with ongoing, long-term back-up support. This long-term backup is needed simply due to the inability to provide back-filling for such matters as Leave (annual, long service, sick,...) and basic employee turnover. This overall strategy will assist in providing pride in what is being done, a better understanding of the health and community benefits, and employment/career opportunities. In order to enable this to happen, more often than not funding is required to initiate the program and then maintain it. It is believed that more emphasis needs to be placed on this type of funding (State and/or Federal) rather than a pure focus on capital investment.

The philosophy adopted has been to understand the specific culture and develop the trust of the community influencers ..... before talking about the specifics of the services being offered. In this manner the early buy-in is obtained from those that are going to be relied upon to operate the water/wastewater plant and equipment.

Please find attached the MOU that Cairns has with Yarrabah. As you can see it is fairly broad, with the intent of setting the platform for fee-for-service support where required. This Agreement is something that we are then looking to leverage off of in order to expand the services that we can offer to others.

Key aspects of our approach:

- First step - development of trust with the indigenous community: a process that has taken 12 months, with us developing a better understanding of the specific local culture and the community base challenges;
- Second step – DISCUSSIONS on the type of services/support that they see that they need ..... Rather than us going and doing an audit and TELLING them what they need. A real collaborative approach;
- Third step – development of the formal MOU;
- Fourth step – currently sitting down with them to talk through priorities.

Currently Yarrabah have requested a more intensive investigation into their water and wastewater network. This is all about mapping of asset criticality and then setting up better maintenance and asset management practices.

By all means contact me should you require any further information.

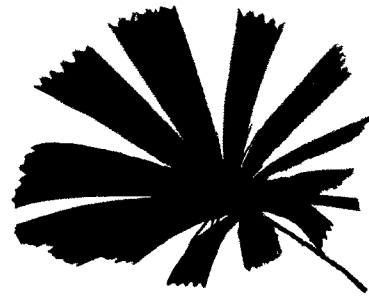
Regards

**Graham O'Byrne** | General Manager  
Water & Waste | Cairns Regional Council

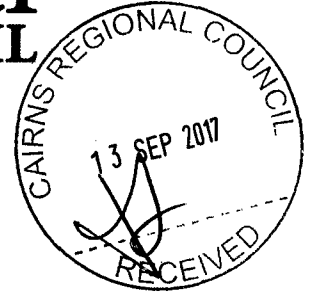
[REDACTED]  
PO Box 359, 119-145 Spence St, Cairns Q 4870

**Vision: To be the lead Water and Waste service Provider in a tropical environment**

| *Industry Leader, Community Leader* | *Building Relationships, Building Capacity* | *Right People, Right Culture*  
| *Efficient Processes, Effective Results* |



**Cairns  
Regional  
COUNCIL**



## **Memorandum of Agreement**

between

**Cairns Regional Council**

and

**Yarrabah Aboriginal Shire Council**

for

**WATER AND WASTEWATER SUPPORT AND  
SERVICES**



This **MEMORANDUM OF AGREEMENT ("MOA")** is made on *insert date*.

28/8/17

**CAIRNS REGIONAL COUNCIL**, ABN: 24 310 025 910, whose office is situated at 119-145 Spence St, Cairns QLD 4870 here, in the State of Queensland ("**CRC**")

and

**YARRABAH ABORIGINAL SHIRE COUNCIL**, ABN: 30 977 526 871, whose office is situated at 56 Swamill Road, Yarrabah QLD 4871 here, in the State of Queensland ("**YASC**").

The Parties are interested in establishing a collaborative relationship which enhances and progresses mutually beneficial outcomes.

The Parties set out hereunder the purpose, objectives and operative arrangements to allow the relationship to foster:

## 1. RECITALS

- (a) The development of partnerships and resource sharing within the Far North Queensland (FNQ) region is acknowledged as being integral to ongoing regional capacity and service delivery.
- (b) The culture of resource sharing is well developed within the FNQ region with significant achievements in sharing common planning tasks, systems support and operational support.
- (c) This Memorandum of Agreement is without prejudice and is independent of any other arrangements, which may be entered into with other parties or agents.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1. Definitions

In this Memorandum of Agreement, unless the contrary intention appears:

<b>Agreement</b>	means this Memorandum of Agreement, as amended from time to time
<b>Business Days</b>	means Monday to Friday, except for public holidays
<b>Commencement Date</b>	means the signing date of this Agreement signed by the last party to sign
<b>CRC</b>	means Cairns Regional Council
<b>DEWS</b>	Queensland Department of Energy and Water Supply
<b>End Date</b>	means the date that this Agreement will end, as defined by the Commencement Date and Term

<b>Fee</b>	means all costs incurred by CRC chargeable to YASC in reference to provision of the Services
<b>Party</b>	means a party to this Agreement
<b>Services</b>	means work undertaken as part of this Agreement
<b>YASC</b>	means Yarrabah Aboriginal Shire Council

## **2.2. Interpretations**

In this Agreement, unless the contrary intention appears:

- (a) Clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (b) Words in the singular number including the plural and vice versa; and
- (c) Where a word or phrase is given in a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (d) All clauses refer specifically to water and wastewater services

## **3. TERM OF THE AGREEMENT**

This Memorandum of Agreement will commence on the Commencement Date (date the last party signs) and will continue in force for a period of five (5) years, renewable for a further five (5) years by mutual agreement, or until parties agree to an earlier termination date in writing.

## **4. PURPOSE**

**The purpose of this Memorandum of Agreement is to:**

- (a) Establish the roles and responsibilities for each Party involved
- (b) Facilitate a consistent approach across the Parties involved in relation to operational relief support
- (c) Define the range of support and services available, and define a process to enable terms, conditions and fees to be determined and agreed upon.
- (d) Enable related information to be shared across the Parties for a range of different purposes.
- (e) Ensure that support and services are provided with the long term goal of increasing the capacity and capability of YASC in the area of water and wastewater services.

## **5. RELATIONSHIP BETWEEN THE PARTIES**

In order to achieve the purpose of the Memorandum of Agreement, the Parties will:

- (a) Maintain regular contact to promote the effective implementation of the Agreement
- (b) Consult with each other on emerging issues and risks associated with the performance of the Agreement activities
- (c) Perform roles and responsibilities under this Agreement in a cooperative, consultative and transparent manner.

## **6. CRC'S ROLES AND RESPONSIBILITIES**

Cairns Regional Council will:

- (a) Provide support and or services including but not limited to the following areas:
  - Mentoring of YASC employees (with a program of YASC employee on-site mentoring in Cairns to be developed)
  - Communication support and incident management relating to water quality issues reported to DEWS.
  - Operator relief support
  - Assist YASC to develop record keeping systems (as required)
  - Assist YASC to review SCADA and provide monthly review of data
  - Project based support
  - Joint procurement opportunities

All support and services to be mutually agreed on an as-needs basis. Where agreed a fee for service will apply.

- (b) On-site work will only be attended to during business hours, unless in the case of an emergency works where there is a need for on-site support and assistance. If emergency works are required outside normal operating hours, CRC will make all reasonable endeavours to respond.
- (c) Ensure that all conduct is undertaken by goodwill, commitment and confidentiality.
- (d) Take all opportunities to ensure continuous improvements in every process and explore other initiatives and innovations that may provide value enhancement in connection with the provision of the Services.
- (e) Invoice the Fee to YASC in accordance with clause 8.
- (f) Communicate with YASC regarding any issues which may impact upon the Services.

## **7. YASC's ROLES AND RESPONSIBILITIES**

YARRABAH ABORIGINAL SHIRE COUNCIL will:

- (a) Mentoring of CRC staff on site at Yarrabah facilities (program to be developed in coordination with CRC)
- (b) Regularly review and assess the performance of support provided by CRC and provide feedback or performance related advice on a monthly basis.
- (c) Pay the Fee to CRC in accordance with clause 8.
- (d) Communicate with CRC regarding any issues or matters which may actually or potentially affect YASC's access to the Services.

## **8. FEES AND INVOICING**

- (a) Each Party shall agree to be responsible for its own respective costs associated with undertakings of the Agreement and subject to their own internal approval processes.
- (b) Where costs will be incurred in the delivery of requested services and/or support the cost of services requested under this agreement shall be agreed to by both parties prior to commencement.
- (c) Where projects, services and/or support have been agreed to and provided Cairns Regional Council will charge Fees to YASC for each monthly period by generating and sending invoices to the other Party.
- (d) Costs associated with fulfilling the roles and responsibilities above will be paid by YASC within 30 days of receiving an invoice for payment of the Fee.
- (e) The list of available services are listed in this Memorandum of Agreement as Appendix 1.
- (f) If YASC requests CRC to provide Services which are outside the scope of this Agreement, CRC and YASC must agree to the fee prior to commencement of work.
- (g) Fees and charges will be reviewed annually as part of the evaluation and review process pursuant to clause 12.

## **9. VARIATION TO AGREEMENT**

This Agreement may be amended or varied at any time. Any variations must be made in writing and agreed in writing by all Parties.

## **10. EVALUATION AND REVIEW**

Cairns Regional Council in conjunction with YASC will annually, from the anniversary of the Commencement Date, evaluate and review the effectiveness and suitability of this Agreement.

## 11. TERMINATION

- (a) This Agreement may be terminated at any time by either Party, by either Party giving 30 days written notice to the other Party, and a reason stated for termination.
- (b) If the Agreement is terminated pursuant to this clause 9, any or all Fees and costs remain due and payable and either Party is entitled to claim any or all Fees and costs incurred in the performance of the Services, prior to termination.

## 12. NOTICES

- (a) A Notice or other communication in connection with this Agreement must be in writing and may be given by the relevant Party and may be sent by email or ordinary post to the address as specified in Schedule 1.
- (b) Unless a later time is specified, a notice or other communication takes effect from the time it is received.

## 13. DISPUTE RESOLUTION

- (a) If a dispute arises between the Parties regarding the Agreement, a Party may give written notice of the dispute to the other Party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.
- (b) The Parties agree to attempt in good faith to resolve any dispute, differences or difficulties in a pragmatic manner regarding the Agreement.
- (c) In the event that a dispute arises and within seven (7) days of giving the Dispute Notice, the Parties agree that the respective Senior Representatives are the first point of contact for the other Party to negotiate or resolve the dispute.
- (d) Matters that remain unresolved between the Senior Representatives after 30 Business Days will be referred to the respective Senior Managers in the first instance, and then escalated to the respective CEOs if necessary, for mutual review and determination.
- (e) Should any or all negotiations of the Senior Representatives, General Managers or CEOs fail to settle or resolve the dispute within a further 14 Business Days, the matter will be referred to an independent mediator for arbitration.
- (f) Despite the existence of a dispute, the Parties will continue to operate in accordance with this Agreement, (unless specifically requested in writing by the other Party not to do so and clause 9 (Termination) applies and the agreement is dissolved).
- (g) Arbitration must be conducted in accordance with the provisions of the *Commercial Arbitration Act 2013*, to facilitate the fair and final resolution of any commercial disputes between the parties by an impartial arbitral tribunal without unnecessary delay or expense.



## 14. RELEASE AND INDEMNITY

- (a) Yarrabah Aboriginal Shire Council will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by CRC or any officer, servant or agent of the CRC arising from the unlawful or negligent acts or omissions of YASC, its employees, subcontractors or agents, in the course of the supply (or attempted or purported supply) of Services under the Agreement.
- (b) Yarrabah Aboriginal Shire Council releases and indemnifies CRC and all officers, servants and agents of CRC from and against all actions whatsoever and howsoever arising which may be brought or made against any of them by any person, including YASC's officers, servants and agents, arising from:
  - i. any wilful or negligent act or omission of YASC or any person for whose conduct YASC is liable; and
  - ii. any unlawful or negligent act or omission of the visitors, invitees or licensees of YASC; and
  - iii. death, injury, loss or damage suffered by YASC, its employees, subcontractors or agents, or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the negligence or other wrongful act or omission of CRC or any officer, servant or agent of CRC.
- (c) In the event of any claim or action being made or brought against Cairns Regional Council, CRC may retain any money due to YASC in respect of Services supplied under the Agreement for the purpose of settling or defending the claim or action. If the money retained is not sufficient for the purpose of settling or defending the claim or action, the balance outstanding in respect of the claim or action may be recovered from YASC as a debt due and payable to the CRC.
- (d) Cairns Regional Council will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by YASC's or any officer, servant or agent of the YASC's arising from the unlawful or negligent acts or omissions of CRC, its employees, subcontractors or agents, in the course of the supply (or attempted or purported supply) of Services under the Agreement.
- (e) Cairns Regional Council releases and indemnifies YASC and all officers, servants and agents of YASC from and against all actions whatsoever and howsoever arising which may be brought or made against any of them by any person, including CRC's officers, servants and agents, arising from:
  - iv. any wilful or negligent act or omission of CRC or any person for whose conduct CRC is liable; and
  - v. any unlawful or negligent act or omission of the visitors, invitees or licensees of CRC; and
  - vi. death, injury, loss or damage suffered by CRC, its employees, subcontractors or agents, or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the negligence or other wrongful act or omission of YASC or any officer, servant or agent of YASC.

- (f) In the event of any claim or action being made or brought against Yarrabah Aboriginal Shire Council, YASC may retain any money due to CRC in respect of Services supplied under the Agreement for the purpose of settling or defending the claim or action. If the money retained is not sufficient for the purpose of settling or defending the claim or action, the balance outstanding in respect of the claim or action may be recovered from CRC as a debt due and payable to the YASC.

## 15. INTELLECTUAL PROPERTY

- (a) All rights, titles and interest including all intellectual property rights in and to all Services made available to YASC under or in connection with this Agreement vests at all times in CRC.
- (b) Yarrabah Aboriginal Shire Council acknowledges and agrees that both now and in the future all Services and supporting information and materials provided in relation to these Services, are proprietary to CRC and comprise works of original authorship, including compiled information containing CRC's selection, arrangement, coordination and expression of such information or pre-existing material it has gathered or assembled, confidential and trade secret information, and information that has been created, developed and maintained by CRC at considerable expense of time and money, such that misappropriation or unauthorised use by YASC or others for commercial gain would unfairly (and may irreparably) harm CRC.
- (c) Yarrabah Aboriginal Shire Council must not:
  - i. claim any right, title or interest in; or
  - ii. commit (nor permit its officers, servants or agents to commit) any act or omission which would reduce or impair CRC's intellectual property rights in the Services, or information and materials provided during the provision of Services.
- (d) Yarrabah Aboriginal Shire Council must not and must ensure that others do not:
  - i. disclose, use, or distribute any of the information or materials to any Party other than YASC's officers, servants or agents;
  - ii. permit or allow access to the information or materials to any Party other than YASC's officers, servants or agents; or
  - iii. use or retain any information or materials for any purpose after the End Date of this Agreement, unless written permission is first obtained by CRC.
- (e) The Agreement will not infringe the intellectual property rights of any third party.
- (f) All rights, titles and interest including all intellectual property rights in and to all Services made available to CRC under or in connection with this Agreement vests at all times in YASC.
- (g) Cairns Regional Council acknowledges and agrees that both now and in the future all Services and supporting information and materials provided in relation to these

Services, are proprietary to YASC and comprise works of original authorship, including compiled information containing YASC's selection, arrangement, coordination and expression of such information or pre-existing material it has gathered or assembled, confidential and trade secret information, and information that has been created, developed and maintained by YASC at considerable expense of time and money, such that misappropriation or unauthorised use by CRC or others for commercial gain would unfairly (and may irreparably) harm YASC.

- (h) Cairns Regional Council must not:
  - iii. claim any right, title or interest in; or
  - iv. commit (nor permit its officers, servants or agents to commit) any act or omission which would reduce or impair YASC's intellectual property rights in the Services, or information and materials provided during the provision of Services.
- (i) Cairns Regional Council must not and must ensure that others do not:
  - iv. disclose, use, or distribute any of the information or materials to any Party other than CRC's officers, servants or agents;
  - v. permit or allow access to the information or materials to any Party other than CRC's officers, servants or agents; or
  - vi. use or retain any information or materials for any purpose after the End Date of this Agreement, unless written permission is first obtained by YASC.
- (j) The Agreement will not infringe the intellectual property rights of any third party.

## **16. CONFIDENTIALITY**

- (a) Each Party may use the information of the other Party only for the purposes of this Agreement.
- (b) Each Party acknowledges that information accessible via provision of Operations Support may constitute confidential and commercially sensitive information. Each Party must not make public or disclose the confidential information of any Services and must ensure that it:
  - i. Takes all necessary steps to protect confidential information from unauthorised access, use or disclosure;
  - ii. Immediately notifies the other Parties on becoming aware of any unauthorised access, use or disclosure of confidential information; and
  - iii. Complies with any directions relating to security which may be given from time to time.
- (c) The Parties are not obliged to keep confidential any information that is:
  - i. Already in the public domain other than by a breach of confidentiality;

- ii. Required to be disclosed as a result of a statutory obligation, government policy or by order of a government agency; or
- iii. Disclosed with the prior written consent of the other Party.

## **17. ENTIRE AGREEMENT**

This Memorandum of Agreement constitutes the entire agreement between the Parties regarding procurement and supersedes all communications, negotiations, arrangements and agreements either verbal or written between the Parties with respect to the subject matter referred to in this Agreement.

Nothing contained in this document shall be construed as constituting a joint venture, partnership or formal business arrangement of any kind between the Parties or of appointing either Party as an agent of the other.

## **18. AUTHORITY TO ENTER INTO AGREEMENT**

The person signing this Memorandum of Agreement on behalf of each Party warrants that they are authorised to do so.

## **19. LEGALLY BINDING**

This Memorandum of Agreement is intended to create legal relations and constitutes a legally binding contractual arrangement between the Parties.

## **APPENDIX 1 – Services**

### **Available Services:**

- SCADA support
- Staff mentoring
- Staff exchange
- Capital project delivery
- Asset management support
- Drinking water / environmental incident support
- Document review
- Relief staff provision
- Joint procurement
- Any other services as agreed to by each party

Normal business hours are defined as between 6am – 6pm Mon –Fri

*\*Note: All rates will be quoted exclusive of GST.*