
FUNDING AGREEMENT

KIAMA MUNICIPAL COUNCIL (ABN 22 379 679 108)

(Funding Provider)

and

KIAMA DISTRICT SPORTS ASSOCIATION INCORPORATED (also known as 'KDSA')

(ABN 50 448 167 455)

(Recipient)

TABLE OF CONTENTS

1. PARTIES	3
2. FUNDING AGREEMENT	3
3. FUNDING AGREEMENT PERIOD	3
4. NATURE OF FUNDING	3
5. RECIPIENT RESPONSIBILITY	3
6. INSURANCE	4
7. FOREFEITURE OF AGREEMENT	4
8. NOTICES.....	5
9. INTERPRETATION	5
10. DISPUTE RESOLUTION	7
FUNDING AGREEMENT SCHEDULE	8
EXECUTION PAGE	9
ANNEXURE "A"	10

Item 14.5

Enclosure 1

Date:

1 Parties

Who are the parties to this funding agreement?

- 1.1 The funding provider is described in item 1 in the schedule.
 - 1.2 The recipient is described in item 2 in the schedule.
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2 Funding Agreement

What is the nature of this funding agreement?

- 2.1 Kiama Municipal Council resolved on 17 May 2022, to formalise an annual funding agreement amount and establish a formal working relationship between Kiama Municipal Council (funding provider) and the Kiama District Sports Association Incorporated (recipient).
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3 Funding Agreement Period

How long is this funding agreement for?

- 3.1 This funding agreement is for the period stated in item 3A in the schedule, commencing on the date stated in item 3B in the schedule and ending on the date stated in item 3C in the schedule.
-

4 Nature of Funding

What is the funding amount?

- 4.1 The funding amount for each financial year of the funding agreement is stated in item 4 in the schedule. This funding amount is exclusive of GST.

What are the funding details?

- 4.2 The funding provider will pay the recipient within 30 days of invoice once the below has been received:
 - 4.2.1 Completed '*KDSA/KMC Grant Funding application and report form*' template (Annexure A) including receipts showing purchase and installation/use as proof of funding amount spent.
 - 4.2.2 Tax invoice from recipient made out to funding provider.

Who is responsible for the goods and services tax?

- 4.3 In clauses referencing, the expressions "GST", "tax invoice" and "taxable supply" have the same meaning as in A New Tax System (Goods and Services Tax) Act, 1999 (Cth).
- 4.4 The funding amount payable under this funding agreement are exclusive of any GST.

What if there is unspent money at the end of financial year?

- 4.5 The funding provider agrees to carry over up to a maximum of \$10,000 per year for the first four years of the agreement if the recipient does not spend the whole funding amount.
 - 4.6 To ensure unspent funding is carried over to the next financial year, the recipient must finalise funding applications and invoices to funding provider by no later than 15 June each year.
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5 Recipient responsibility

How must the funding amount be used?

- 5.1 The recipient must:
 - 5.1.1 Ensure that funding requests by KDSA Affiliates are to purchase essential equipment or undertake minor improvements to club facilities and not for any other purpose;
 - 5.1.2 Provide a report to Council after each KDSA meeting detailing the funding amount that has been allocated to Affiliates and for what project/work (ie reason for funding) and minutes of the meeting.
 - 5.1.3 Once the funding amount has been spent by the Affiliate, the KDSA must also submit to Council a completed '*KDSA/KMC Grant Funding application and report form*' (Annexure A) including receipts showing purchase and installation/use as proof of funding amount spent.
 - 5.1.4 Comply with all laws regulating how the funding amount is to be used, ensure Affiliates obtain any approvals, consents or licences needed, comply with any conditions of consent and keep current any licences or registrations needed for the use of the funding amount.
 - 5.1.5 The recipient will advise the funding provider immediately of any board member change or as soon as practicable after the succeeding KDSA meeting.

6 Insurance

What insurance must the recipient take out?

- 6.1 The recipient must keep current insurance policies covering:
 - 6.1.1 Public liability in an amount not less than the amount stated in item 5 in the schedule
- 6.2 The recipient must give the funding provider evidence of the maintenance of the policy or provide a copy of the certificate of currency for the policy within 14 days after each anniversary of the commencing date.
- 6.3 The recipient must ensure that all Affiliate members keep current insurance policies covering:
 - 6.3.1 Public liability in an amount not less than the amount stated in item 5 in the schedule

Indemnities

- 6.4 The recipient must release and indemnify the funding provider to the full extent permitted by law from and against all liability in respect of damage to or loss of property, illness, personal injury, death or financial loss sustained in or in connection with this agreement.

7 Forfeiture and End of Agreement

When does this funding agreement end?

- 7.1 This funding agreement ends:
 - 7.1.1 on the date stated in item 3C in the schedule; or
 - 7.1.2 if the recipient is an incorporated association, when the recipient ceases to be incorporated under the *Associations Incorporation Act, 2009 (NSW)*; or
 - 7.1.3 at any time by either party following 28 days written notice.

Repayment of funds

- 7.2 If on the expiration or early termination of this Agreement, any unspent funding will be forfeited by the recipient to the funding provider.
- 7.3 If the recipient cannot or is unable to show to have spent or committed the funding to the satisfaction of the funding provider or in accordance with this agreement then any such funding will be forfeited or required to be repaid in accordance with clause 7.4.
- 7.4 In the event funding has already been provided to the recipient, the funding provider will provide written notice to the recipient to repay any amount that it deems applicable. The recipient must repay that amount in writing within 14 days from the date of any notice given by the funding provider.
- 7.5 In the event there is a dispute in relation to the repayment of funding, clause 10 of this agreement shall prevail.

Essential Terms of Funding Agreement

- 7.6 Essential terms of this agreement include:
 - 7.6.1 the obligation of the funding provider to pay the recipient as per clause 4.2.
 - 7.6.2 the obligations of the recipient to provide to the funding provider the '*KDSA/KMC Grant Funding application and report form*' template, and
 - 7.6.3 the obligations of the recipient in clause 6 (dealing with insurances).

8 Notices

How are notices given?

- 8.1 A notice given by one party to another must be in writing and is properly given if it is:
 - 8.1.1 left at that other party's address;
 - 8.1.2 sent by pre-paid mail to that other party's address; or
 - 8.1.3 transmitted by email to the other party's email address.
- 8.2 A notice given to a party in accordance with this clause is treated as having been received by a party:
 - 8.2.1 when delivered (if left at that party's address);

- 8.2.2 on the second business day after posting (if sent by pre-paid mail); and
- 8.2.3 transmitted by email to the other party's email address
- 8.3 Each party's address and email address is the address and email of that party stated in items 1 and 2 in the schedule or such other address and/or email notified by that party to the other party from time to time.

9 Interpretation

How is this funding agreement to be interpreted?

- 9.1 In this agreement, unless the contrary intention appears:
 - 9.1.1 "initial funding agreement period" means the length of the funding period for the term of 5 years from 1 July 2022 to 30 June 2027.
 - 9.1.2 "party" means the funding provider or the recipient as the case may be and "parties" means both of them;
 - 9.1.3 "schedule" means the schedule of items to this agreement;
 - 9.1.4 a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
 - 9.1.5 a word denoting the singular number includes the plural number and vice versa;
 - 9.1.6 a word denoting an individual or person includes a corporation, firm, authority, government or governmental authority and vice versa;
 - 9.1.7 a word denoting a gender includes all genders;
 - 9.1.8 a reference to a clause, paragraph, item, schedule or annexure is to a clause, paragraph, item, schedule or annexure of or to this funding agreement;
 - 9.1.9 any covenant or agreement on the part of two or more persons binds them jointly and severally; and
 - 9.1.10 a reference to any party to this funding agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns.
- 9.2 In this funding agreement:
 - 9.2.1 headings are for convenience of reference only and do not affect interpretation; and
 - 9.2.2 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- 9.3 This funding agreement is subject to any legislation that cannot be excluded.
- 9.4 Any variation or waiver of, or consent to any departure by a party from, a provision of this funding agreement:
 - 9.4.1 has no effect unless it is confirmed in writing signed by the parties; and
 - 9.4.2 is effective only to the extent to which it is made or given.

- 9.5 Any failure, delay or indulgence on the part of a party in exercising any power or right of that party does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right.
- 9.6 This funding agreement constitutes the agreement between the parties and any promise, representation or statement not contained in this funding agreement has no effect.
- 9.7 If any provision of this funding agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the unenforceable provision, are and continue to be valid and enforceable in accordance with their terms.
- 9.8 This funding agreement is governed by, and is to be construed in accordance with, the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any court hearing appeals from those courts.

10 Dispute Resolution

How are disputes resolved?

- 10.1 If a dispute arises out of or relates to this funding agreement, including any dispute as to breach or termination of this funding agreement or as to any claim in tort, in equity or under any statute, a party cannot commence any court or arbitration proceedings relating to the dispute unless that party has complied with the following clauses except where that party seeks urgent interlocutory relief.
- 10.2 A party claiming that such a dispute has arisen must, within 14 days of the dispute taking place, give notice to the other party specifying the nature of the dispute.
- 10.3 On receipt of that notice by that other party, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.
- 10.4 If the parties do not agree within 7 days of receipt of the notice, or any further period agreed in writing by them, as to:
 - 10.4.1 the dispute resolution technique and procedures to be adopted;
 - 10.4.2 the timetable for all steps in those procedures; and
 - 10.4.3 the selection and compensation of the independent person required for such technique,
 - 10.4.4 the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

Schedule of Items

Item 1 (cl 1.1) (cl 13.3)	Funding Provider: Address: Phone: Email:	Kiama Municipal Council (ABN 22 379 679 108) 11 Manning Street Kiama NSW 2533 (02) 4232 0444 council@kiama.nsw.gov.au
Item 2 (cl 1.2) (cl 13.3)	Recipient: Address: Phone: Email:	Kiama District Sports Association Incorporated (ABN 50 448 167 455) 30 Hughes Crescent Kiama Downs NSW 2533 0417 287 367 kdsasecretary@iinet.net.au
Item 3 (cl 3.1)	A. Funding period: B. Commencement date: C. Termination date:	5 years 1 July 2022 30 June 2027
Item 4 (cl 4.1)	Funding amount:	\$60,000 (excluding GST) per annum payable upon invoicing by the KDSA
Item 5 (cl 6.3.1)	Amount of required public liability insurance:	\$20,000,000.00

Item 14.5

Enclosure 1

Execution page

Signed as an agreement

Signed for and on behalf of **KIAMA MUNICIPAL COUNCIL (ABN 22 379 679 108)** by an authorised officer of Council in the presence of:

Signature of witness	Signature of authorised officer
Full Name (print)	Full Name (print)
Title	Title

Signed for and on behalf of **KIAMA DISTRICT SPORTS ASSOCIATION INCORPORATED (ABN 50 448 167 455)** in accordance with section 22 of the *Associations Incorporation Act, 2009* (NSW) by two of its authorised signatories pursuant to a resolution of the Committee in the presence of:

Signature of authorised signatory	Signature of authorised signatory
Full name (print)	Full name (print)
Title	Title

Annexure "A"



KDSA/KMC Grant Funding application and report form		
Part 1 of this form should be completed by a KDSA affiliate on application for a grant through the KDSA/KMC grant program and be forwarded to the KDSA Secretary (kdsasecretary@inet.net.au). Part 2 of this form should be completed once the purchase(s) have been made or the project(s) fully completed and the grant process finalised. It should again be forwarded to the KDSA Secretary (kdsasecretary@inet.net.au) by 10th June of the financial year of the grant, who will then forward it to KMC.		
Part 1 : To be completed when applying for a grant		
Year of funding program :		Date of application:
1.	Affiliates Name :	
2.	Details of the funding application : <i>For example, a description of the purchase or project</i>	
3.	Amount applied for :	
<i>Keeping in mind that the amount applied for should be the ex GST cost of the total purchase or project.</i>		
4.	Document(s) to be forwarded to the KDSA Secretary with this application form when applying for the grant.	
a.	Are detailed quote(s) of the purchase(s) or project(s) attached?	YES/NO
b.	If the funding is for equipment or project in a Council facility, or on Council land (ie sports field), have you contacted Kiama Municipal Council and sought relevant approval or consent for this to occur/proceed?	YES/NO
5.	Approval details: <i>KDSA meeting details of when the grant was granted. To be completed by KDSA Secretary</i>	
Part 2 : To be completed once the purchase(s) have been made or the project(s) completed.		
6.	Documents to be forwarded to the KDSA Secretary with this application form at the end of the grant process.	
a.	Are tax Invoice(s) from supplier(s) attached?	YES/NO
b.	Is the Affiliates invoice made out to KDSA for the <u>ex GST component of the total cost</u> of the purchase or project attached?	YES/NO
Has the cost of the purchase(s) or project gone above the initial quote/grant?		YES/NO
If so, has the affiliate applied to the KDSA for an increase in the grant amount?		YES/NO
c.	Are picture(s) of the purchased item(s) or completed project(s) attached?	YES/NO
<i>I certify that the above information is true and correct to the best of my knowledge.</i>		
Signature of affiliates representative :		Date :
Name of affiliate representative :		Position :
Signature of KDSA representative :		Date :
Name of KDSA representative :		Position :