



## ESTIMATES AND FINANCIAL OPERATIONS COMMITTEE

### Department of Primary Industries and Regional Development

#### Hon Martin Aldridge MLC asked:

1. I refer to page 6 of the hearings transcript where the Minister confirmed that a 'specialist local procurement officer' has been appointed in each region and I ask:

(a) What is the name of the employee in each region;

Answer: I am seeking advice as to whether it is appropriate to release names of officers in this way.

(b) What level of employment is each engaged at;

Answer: Between levels 4 and 7.

(c) What is the tenure of each position;

Answer: This is dependent on the current employment status of the designated officer.

(d) Are these new FTEs or redeployed existing employees;

Answer: Existing employees.

(e) If they are redeployed employees, what functions were they previously undertaking at the Regional Development Commission or agency;

Answer: Not Applicable.

(f) What training has been undertaken by each employee in order to undertake this new role; and

Answer: A two day workshop facilitated by the Department of Primary Industries and Regional Development. This was conducted in conjunction with the Department of Finance (DOF) and Department of Jobs, Tourism, Science and Innovation (JTSI) and focused on an overview of the State Supply Commission policies, Common Use Arrangements, Social Procurement, quotes, tenders, dispute resolution and a range of tools, guidelines and templates to enhance capability of the Local Content Officers.

Public/Internet  
22/11/2017

In addition to this ongoing development for Local Content Officers is planned, with the next workshop being held in Perth on the 9th and 10th November 2017.

(g) What will be the duties of the 'specialist local procurement officers'?

Answer: Job Description statements have been developed and focus on;

- Increasing regional businesses' knowledge, skills and capability to capture regional opportunities.
- Increasing the portion of State Government and Industry contracts secured by regional contractors and businesses.
- Providing regional perspectives to support decision making for the awarding of State Government contracts.
- Maximising regional supplier and subcontracting arrangements and outcomes through Industry Participation Plans.
- Engaging with lead contractors and suppliers to promote maximum local jobseeker participation.



## Department of Primary Industries and Regional Development

### Hon Martin Aldridge MLC asked:

2. I refer to the South West Emergency Rescue Helicopter Service and the lack of funding beyond 2017-18 and the claim by the government that it is undertaking a whole of government review of aircraft owned and leased by the State and I ask:

(a) Which agency is undertaking the review;

Answer: The Minister for Emergency Services; Corrective Services, the Hon Francis Logan, MLA, has been tasked with investigating whole-of-Government options for managing the State's rotary and fixed wing aircraft fleet.

(b) What are the terms of reference;

Answer: Please refer this question to the Minister for Emergency for Emergency Services; Corrective Services, the Hon Francis Logan, MLA.

(c) Who is conducting the review;

Answer: Please refer this question to the Minister for Emergency for Emergency Services; Corrective Services, the Hon Francis Logan, MLA.

(d) When is the review due to report; and

Answer: Please refer this question to the Minister for Emergency for Emergency Services; Corrective Services, the Hon Francis Logan, MLA.

(e) Will the review be made public?

Answer: Please refer this question to the Minister for Emergency for Emergency Services; Corrective Services, the Hon Francis Logan, MLA.



## Department of Primary Industries and Regional Development

### Hon Martin Aldridge MLC asked:

3. Please advise what the \$800,000 allocation for 'Rapid Response Signs – Regional' is for on page 224 of Budget Paper 3?

Answer:

The allocation of funding is to contribute to the regional component of the implementation of the Beach Emergency Numbers (BEN) system – named in honour of Ben Gerring. This is a coding system designed to improve emergency service response times through the installation of unique identification numbered signs at beach access points.

These signs will provide specific location information, vital when emergency services are deployed in the event of a shark attack or other beach emergencies.

a

**Department of Primary Industries and Regional Development**

**Hon Martin Aldridge MLC asked:**

4. I refer to the St John Ambulance Community Paramedic Program and I ask:

- (a) Is there any funding in 2017-18 or the forward estimates from Royalties for Regions or the Consolidated Fund for this program; and

Answer: There is no Royalties for Regions funding allocated in the 2017-18 or the forward estimates for the St John Ambulance Community Paramedic Program. Questions regarding funding allocations through the Consolidated Account should be referred to the Minister for Health.

- (b) In what locations are community paramedics located?

Community paramedics are employed by St John Ambulance and we are not in a position to confirm where they are located.



## Department of Primary Industries and Regional Development

### Hon Martin Aldridge MLC asked:

5. I refer to \$22 million allocated to the Central Eastern Aged Care Alliance (CEACA) for the development of 75 aged friendly houses across 11 Local Governments and I ask:

(c) Does a Financial Assistance Agreement exist for the project and on what date was it executed;

Answer: The previous government approved two allocations of funding totalling \$22,062,239 to the Shire of Merredin on behalf of CEACA, to undertake Stages 1 and 2 of the Project. Financial Assistance Agreements with the Shire of Merredin exist for both Stages of the project.

- Stage 1 (\$2,075,800) – Financial Assistance Agreement executed on 21 July 2015
- Stage 2 (\$19,986,439) – Financial Assistance Agreement executed on 27 June 2016

(d) Have funds been transferred to CEACA and if so who holds and controls the funds for the project;

Answer: Funding for both Stages of the project have been transferred to the Shire of Merredin. As per the Financial Assistance Agreements for both Stages, funds have been transferred into separate Western Australian Treasury Corporation Overnight Cash Deposit Facility accounts. The release of funding from these accounts is subject to the Shire meeting the terms and conditions of the relevant Financial Assistance Agreements.

(e) Have tenders been awarded for the project and if so on what date were they awarded;

Answer: The Department of Primary Industries and Regional Development has been advised that the tender for the construction of the 75 units has not been awarded by the Shire of Merredin.

(f) Does the government remain committed to the full scope of the development as outlined in the FAA; and

Answer: Given the increasingly challenging budget situation, the Minister for Regional Development will be reviewing the project closely to ensure it is delivering value for money for tax payers and can be afforded. The Minister will meet with CEACA representatives in the next few weeks to discuss project progress.

(g) Will the Minister please provide the FAA's relevant to the project?

Answer: Yes, I will table the documents.

A handwritten signature in black ink, appearing to be 'E. C.', located to the right of the answer.



Government of Western Australia  
Department of Regional Development



---

**FINANCIAL ASSISTANCE AGREEMENT**

**ROYALTIES FOR REGIONS PROJECT**

---

**STATE OF WESTERN AUSTRALIA**

**AND**

**SHIRE OF MERREDIN**

**ABN: 87 065 676 484**

**On behalf of the Central Eastern Aged Care Alliance Inc**

**GROWING OUR SOUTH**

---

**CEACA SENIORS HOUSING PROJECT - STAGE 2**



## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>RECITALS</b>   | <b>4</b>  |
| <b>OPERATIVE PART</b>   | <b>5</b>  |
| <b>1. DEFINITIONS AND INTERPRETATION</b>  | <b>5</b>  |
| 1.1 Definitions   | 5         |
| 1.2 Interpretation  | 8         |
| <b>2. DEPARTMENT</b>  | <b>9</b>  |
| <b>3. SCOPE OF THIS AGREEMENT</b>   | <b>10</b> |
| <b>4. OBLIGATIONS OF RECIPIENT</b>  | <b>11</b> |
| 4.1 Use of Funding  | 11        |
| 4.2 No Changes  | 11        |
| 4.3 No Endorsement  | 11        |
| 4.4 Acknowledgement of the Department   | 11        |
| 4.5 Accounts and Reporting  | 12        |
| 4.6 General Undertakings of the Recipient   | 12        |
| 4.7 Negation of Employment, Partnership and Agency  | 12        |
| 4.8 Notification  | 13        |
| <b>5. EVALUATION OR AUDIT RIGHTS</b>  | <b>13</b> |
| <b>6. CONTACT OFFICERS</b>  | <b>13</b> |
| <b>7. REPAYMENT AND RETENTION OF THE FUNDING</b>  | <b>14</b> |
| <b>8. LIMITATION OF LIABILITY</b>   | <b>14</b> |
| <b>9. FREEDOM OF INFORMATION ACT 1992, FINANCIAL MANAGEMENT ACT 2006 AND AUDITOR GENERAL ACT 2006</b> | <b>14</b> |
| <b>10. NOTICES</b>  | <b>15</b> |
| <b>11. DEFAULT AND TERMINATION</b>  | <b>15</b> |
| 11.1. Event of Default by the Recipient   | 15        |
| 11.2. Effect of Event of Default  | 16        |
| 11.3. No Further Funding and Recovery of Funding  | 17        |
| <b>12. AGREEMENT BETWEEN THE RECIPIENT AND A THIRD PARTY</b>  | <b>17</b> |

|   |           |
|---|-----------|
| <b>13. GOODS AND SERVICES TAX (GST)</b>   | <b>17</b> |
| <b>14. WAIVER</b>   | <b>18</b> |
| <b>15. ENTIRE AGREEMENT</b>   | <b>18</b> |
| <b>16. ASSIGNMENT</b>   | <b>18</b> |
| <b>17. VARIATION</b>  | <b>19</b> |
| <b>18. RIGHTS, POWERS AND REMEDIES</b>  | <b>19</b> |
| <b>19. GOVERNING LAW</b>  | <b>19</b> |
| <b>20. ACCESS TO LAND</b>   | <b>19</b> |
| <b>21. SCHEDULES</b>  | <b>19</b> |
| <b>SCHEDULE 1 – CONTACT OFFICERS</b>  | <b>20</b> |
| <b>1 Notice Addresses</b>   | <b>20</b> |
| <b>2 Contact Officers</b>   | <b>20</b> |
| <b>SCHEDULE 2 – FINANCIAL REPORT</b>  | <b>22</b> |
| <b>SCHEDULE 3 – PROJECT REPORT</b>  | <b>23</b> |
| <b>SCHEDULE 4 – ROYALTIES FOR REGIONS PROJECT DETAILS</b>   | <b>24</b> |
| <b>1 Use of Funding by the Recipient</b>  | <b>24</b> |
| <b>2 Funding Amount</b>   | <b>24</b> |
| <b>4 Detailed Description of Project</b>  | <b>27</b> |
| <b>5 Special Conditions</b>   | <b>29</b> |
| <b>SCHEDULE 5 – ACCOUNTS AND REPORTING</b>  | <b>37</b> |
| <b>SCHEDULE 6 – PAYMENT OF THE FUNDING</b>  | <b>38</b> |
| <b>SCHEDULE 7 – REQUIREMENT FOR FUNDS TO BE INVESTED WITH THE WESTERN AUSTRALIAN TREASURY CORPORATION</b> | <b>39</b> |
| <b>EXECUTION OF THIS AGREEMENT</b>  | <b>40</b> |

THIS Agreement is made on the 27<sup>th</sup> day of JUNE 2016.

**BETWEEN:**

**The State of Western Australia (State)**

**AND**

**Shire of Merredin (Recipient), of King Street, Merredin WA 6415**

**RECITALS**

- (a) The Department administers Royalties for Regions.
- (b) The Recipient has applied to the State for financial assistance to undertake the Project and the State has agreed to provide the Funding to the Recipient on the terms and conditions set out in this Agreement.

## OPERATIVE PART

THE PARTIES AGREE as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement, unless repugnant to the context:

**Act** means the *Royalties for Regions Act 2009 (WA)*.

**Additional/New Milestones** has the meaning given to it in clause 4.1(c).

**Agreement** means this Financial Assistance Agreement, including its recitals, schedules and annexures.

**ASX** means Australian Securities Exchange.

**Associates** means any officer, employee, agent, consultant, contractor, nominee, licensee or adviser of the State, including any other Government Party.

**Auditor** means the Auditor General or a person who is independent of, and not related in any way to, the Recipient and is a member of CPA Australia, the Institute of Public Accountants in Australia or the Institute of Chartered Accountants in Australia.

**Auditor General** means the Auditor General for the State.

**Authorisation** means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, waiver, approval, authority or exemption from, by or within a Government Agency required under any Laws, and includes any renewal of, or variation to, any of them.

**Best Industry Practice** means:

- (a) the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a reputable and prudent person in providing works and services similar to the Works and under conditions comparable with those applicable to the Works;
- (b) compliance with applicable standards and codes, being the standards and codes specified in this Agreement or, if this Agreement does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied in the circumstances; and
- (c) compliance with all applicable Laws.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in the State.

**Claim** means any claim, proceeding, cause of action, action, demand or suit (including by way of a claim for contribution or an indemnity).

**Commencement Date** means the execution date of this Agreement.

**Commonwealth** means the Commonwealth of Australia.

**Construct** means one or more of construct, build, erect, assemble, renovate, refurbish and any similar or incidental activity or thing.

**Construction** means one or more of construction, building, erection, assembling, renovation, refurbishment and any similar or incidental activity or thing.

**Contact Officer** has the meaning given in clause 6 of this Agreement.

**Date for Project Completion** means the date by which the Recipient must complete the Project set out in item 3.2 of Schedule 4.

**Defect** means:

- a. any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the Works;
- b. any aspect of the Works which is not in accordance with the requirements of this Agreement; or
- c. any failure of the Works to perform at its expected range of capacity and operation in accordance with the relevant technical specifications for the Works and any other the requirements in this Agreement.

**Defects Liability Period** means, where the Recipient has obligations in this Agreement to Construct any Structure and therefore to perform Works, the defects liability period in relation to all or part of those Works contained in an agreement between the Recipient and any other party it engages to carry out all or part of those Works and, if the Recipient engages more than one party to carry out those Works, meaning a defects liability period is contained in more than one agreement, **Defects Liability Period** in this Agreement means the defects liability period in those agreements that finishes on the latest date.

**Department** means the Department of Regional Development which is a department of the State.

**Evaluation or Audit** means one or more of an audit, examination, investigation, inspection, review, evaluation, or a similar activity.

**Event of Default** has the meaning given in clause 11.1.

**Final Report** has the meaning given in Schedule 5 to this Agreement.

**Funding** means the amount specified in item 2 of Schedule 4.

**Government Agency** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

**Government Party** means any governmental, semi-governmental or local government authority, minister, department, statutory corporation, instrumentality or government owned corporation.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations.

**Insolvency Event** means the happening of any of these events:

- a. an order is made, or an application is made to a court for an order, that a body corporate be wound up; or
- b. except to reconstruct or amalgamate while solvent, a body corporate:
  - (i) is wound up or dissolved; or
  - (ii) resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so; or
  - (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or

- c. a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- d. a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened, or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- e. any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against, any asset or undertaking of a body corporate; or
- f. the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment or money or the recovery of any property; or
- g. a body corporate:
  - (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
  - (ii) stops or suspends payment of all, or a class of, its debts; or
  - (iii) is, or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
    - (a) insolvent or unable to pay its debts when they fall due; or
    - (b) the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth); or
  - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth); or
  - (v) ceases, or threatens to cease, to carry on all or a material part of its business; or
- h. a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken that could result in that event; or
- i. anything analogous or having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Law** means all applicable present and future laws including:

- (a) all acts, ordinances, regulations by-laws, orders, awards and proclamations of the State of Western Australia or the Commonwealth;
- (b) Authorisations;
- (c) principles of law or equity;
- (d) standards, codes, policies and guidelines; and
- (e) the ASX listing rules.

**Leveraged Funding** has the meaning given to it in item 4.1 of Schedule 4.

**LGISWA** means LGISWA, ABN 59 780 338 975, established by WALGA under a trust deed made by WALGA on 19 September 1996.

**Liability** means any debt, obligation, Loss, compensation or charge of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

**Loss** means any loss, cost (including legal costs), expense, liability (whether arising in negligence or otherwise) or damage whether direct, indirect or consequential (including

pure economic loss), present or future, ascertained, unascertained, actual, prospective or contingent or any fine or penalty.

**Milestones** means the milestones set out in item 3.2 of Schedule 4, with each milestone in relation to an Obligation being the date by which that Obligation must be completed, and includes the Date for Project Completion.

**Notification** means a notice by the State given in accordance with this Agreement that in the State's opinion the Recipient has properly complied with and fulfilled all of its Obligations, including that the Final Report provided by the Recipient in accordance with Schedule 5 is satisfactory.

**Obligation** means an obligation in this Agreement.

**Party** means each of the State or the Recipient as the context requires, and **Parties** means both of them.

**Project** means the initiative or activities described in item 3 of Schedule 4.

**Project Budget** means the budget set out in item 3.3 of Schedule 4.

**Provision** means any term, condition, undertaking, promise, obligation or warranty of, made or given under this Agreement.

**RCTI** means a recipient-created tax invoice, which term has the same meaning as in the GST Act.

**RDC** means Regional Development Commission.

**Related Body Corporate** has the meaning given to it in the *Corporations Act 2001* (Cth).

**Royalties for Regions** means the State's Royalties for Regions program under which monies standing to the credit of the Fund (as defined in section 3 of the Act) are expended for purposes permitted by the Act.

**Schedule** means any schedule to, and forming part of, this Agreement.

**Senior Staff Member** means a staff member of the Recipient who performs or holds any executive or managerial role including the role of chief executive officer, chief financial officer or an equivalent or similar role, or the role of head of a department or division, manager, senior project officer, or any other senior role.

**Shortfall** has the meaning given to it in item 4.1 of Schedule 4.

**Site** means the site where the Works will be carried out.

**Special Conditions** means the conditions in item 4 of Schedule 4.

**Structure** means any building, structure, construction, infrastructure, facility, form or mode of transport or similar or other thing.

**WALGA** means the Western Australian Local Government Association constituted under section 9.58(1) of the *Local Government Act 1995* as a body corporate with perpetual succession and a common seal.

**Works** has the meaning given in item 4.2 of Schedule 4.

**Third Party Agreement** has the meaning given to it in Clause 12.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;

- (c) references to a person include an individual, the estate of an individual and any type of entity or body of persons, including a corporation, an incorporated or unincorporated association or parties in a joint venture, a partnership or a trust and the legal personal representatives, successors and assigns of that person;
- (d) a reference to the State includes each and every agency department, instrumentality and emanation of the State;
- (e) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) references to this Agreement or any other instrument include this Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the Parties;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail and facsimile transmission;
- (h) an Obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (i) if a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (j) references to this Agreement include its recitals, schedules and annexures;
- (k) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (l) references to time are local time in Perth, Western Australia;
- (m) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (n) references to currency are to Australian currency unless otherwise stated;
- (o) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Agreement or any part thereof;
- (p) a reference to any thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (q) when the day or last day for doing an act is not a Business Day, then the day or last day for doing the act will be the directly preceding Business Day;
- (r) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (s) the phrases "described in", "set out" and "specified in" shall all read as if the words "expressly or impliedly" appeared immediately before them; and
- (t) reference to a contractor or sub-contractor means a contractor or sub-contractor at any tier.

## **2. DEPARTMENT**

- (a) The Department acts for and on behalf of the State and may at any time perform any of the State's Obligations and exercise the State's rights and powers in and under this Agreement, including taking any actions, making any requests and giving or withholding any consents or approvals which the State has the right or obligation to take, make, give or withhold under this Agreement or at Law.



- (b) The Recipient agrees to treat any notices or other communications (including any requests) from the Department as being from and on behalf of the State.
- (c) Where the Recipient has any Obligation to remit or pay monies to the State, the Recipient must make payment to the State in the manner requested by the State, including making payment into a bank account nominated by the State if so requested, which may be a bank account held in the name of the Department.

### **3. SCOPE OF THIS AGREEMENT**

- (a) The Recipient must:
  - (i) carry out all aspects of the Project and fulfil its Obligations in a competent, diligent, satisfactory and professional manner, and to a high standard;
  - (ii) comply with this Agreement; and
  - (iii) provide funding and other resources, including human resources, adequate to properly meet its Obligations.
- (b) Subject to subitem 4.2.2(b) of Schedule 4 to this Agreement, the State must pay to the Recipient the Funding in the manner set out in Schedule 4 which must be used by the Recipient to carry out the Project and for no other purpose. For the avoidance of doubt, and without in any way limiting the State's rights under subitem 4.2.2(b) of Schedule 4, the State has no obligation to pay any part of the Funding to the Recipient until the Recipient has complied with its obligations in item 5.2 of Schedule 4.
- (c) The Recipient must:
  - (i) notify the Department of any actual, pending or threatened Claim, against one or more of the Recipient, a Related Body Corporate or a Senior Staff Member as soon as practicable after the Recipient first becomes aware of that Claim;
  - (ii) notify the Department immediately if the Recipient is in breach of any Law, receives an audit qualification, or breaches, fails to obtain or is under scrutiny through an inquiry or decree in respect to (as applicable) any consent, registration, approval, licence or permit or agreement, order or award binding on the Recipient or which the Recipient requires in order to carry out one or both of the Project or its business; and
  - (iii) notify the Department immediately if the Recipient becomes aware of any fraud or corruption in relation to the Project, the Funding, any interest which accrues on the Funding, or this Agreement.
- (d) The Recipient must:
  - (i) keep and maintain accurate, complete, up-to-date and properly detailed written records of income, expenditure, work, activities, progress, setbacks, problems and business and commercial arrangements and dealings in relation to either or both of this Agreement and the Project, and promptly provide the Department with information or documentation (relating in any way to the Project or this Agreement) requested by the State. The Recipient must ensure that all such information or documentation (as the case may be) is accurate, complete, up-to-date, properly detailed and not in any way misleading or deceptive;
  - (ii) provide the Department within five (5) Business Days of any request with written evidence (to the satisfaction of the State in its absolute discretion) that the Recipient is solvent and financially viable and secure and has the expertise and operational capability and capacity to carry out the Project; and

- (iii) establish a separate account or cost centre within its financial system solely for the Funding and any interest which accrues on the Funding.

#### **4. OBLIGATIONS OF RECIPIENT**

##### **4.1 Use of Funding**

- (a) The Recipient must use the Funding (and any interest which accrues on the Funding) for the carrying out of the Project in accordance with this Agreement and the Project Budget. All of this expenditure must be effected in a commercially prudent, sensible and reasonable manner.
- (b) In carrying out the Project, the Recipient must comply with and meet all Milestones including completing the Project by the Date for Project Completion.
- (c) Without in any way limiting the State's rights under this Agreement, including under clause 11, or under Law, if the Recipient fails to comply with or meet a Milestone, the State may at any time impose additional milestones in relation to any aspect of the Project or replace any Milestones with new milestones (**Additional/New Milestones**). The State has absolute discretion as to whether to impose additional milestones, or replace existing Milestones, and as to what those new or replacement milestones will be and what aspects of the Project or Agreement they will relate to. In carrying out the Project, the Recipient must comply with and meet all Additional/New Milestones. If the Recipient fails to comply with or meet an Additional/New Milestone or any further milestones set by the State, the State has the same rights as set out above to at any time impose new or replacement milestones in its absolute discretion without in any way limiting the State's rights under this Agreement, including under clause 11, or under Law.

##### **4.2 No Changes**

The Recipient must not make any changes to the Project or any agreed budget (including the Project Budget) without the prior written consent of the State, which consent may be withheld in the State's absolute discretion.

##### **4.3 No Endorsement**

The Recipient agrees that nothing in this Agreement constitutes an endorsement by the State of any goods or services provided by the Recipient.

##### **4.4 Acknowledgement of the Department**

- (a) Any communications in relation to one or more of Royalties for Regions, the Project and this Agreement including presentations, publications, signage, articles, newsletters, or other literary works relating to the Project must:
  - (i) equally represent the Parties when Royalties for Regions' or Project logos are displayed, including containing the Department's and Recipient's logos and names in an equally prominent position; and
  - (ii) be consistent with the Department's Marketing, Communications and Acknowledgements Policy.
- (b) The respective roles of the State, Department and the Recipient must be acknowledged at relevant fora, conferences, and project launches where the Project is promoted.
- (c) The Parties shall:
  - (i) work cooperatively at the senior management and officer levels;

- (ii) maintain open communication, both formal and informal, to progress the objectives of this Agreement;
  - (iii) share information and knowledge as practicable; and
  - (iv) advise any stakeholders in the Project about arrangements between the Parties.
- (d) The Parties must coordinate joint communications when dealing with the media and stakeholders in the Project in relation to the Project on issues of significance or mutual concern, including circulating draft media statements, advertising proposals and advertisements between the Parties for comment prior to publication.
- (e) The Recipient must liaise with the Department prior to releasing, and gain the prior written approval of the State to the release of, any media statement, advertising proposal or advertisement by the Recipient in relation to the Project.

#### **4.5 Accounts and Reporting**

- (a) The Recipient must provide the Department with annual and progress reports containing the information and within the timeframes set out in Schedules 2, 3 and 5 of this Agreement.
- (b) The Recipient must provide the Department with a Final Report within three (3) months after receipt by the Recipient of any written request from the State to do so or of any earlier termination of this Agreement.
- (c) This clause 4.5 survives termination of this Agreement.

#### **4.6 General Undertakings of the Recipient**

The Recipient must:

- (a) at all times duly perform and observe its Obligations and must promptly inform the Department of any occurrence that might adversely affect its ability to do so in a material way;
- (b) undertake its Obligations with integrity, good faith and probity in accordance with good corporate governance practices;
- (c) not, nor attempt to, sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights, entitlements and powers or Obligations under this Agreement;
- (d) comply with all Laws; and
- (e) cooperate fully with the Department in the administration of this Agreement.

#### **4.7 Negation of Employment, Partnership and Agency**

- (a) The Recipient must not represent itself, and must ensure that its employees, contractors, sub-contractors or agents do not represent themselves, as being an employee, partner or agent of the State or the Department or as otherwise able to bind or represent the State or Department.
- (b) The Recipient will not, by virtue of this Agreement, be or for any purpose be deemed to be, an employee, partner, or agent of the State or the Department, or have any power or authority to bind or represent the State or the Department.

#### 4.8 Notification

- (a) The State intends to provide the Recipient with the Notification once it considers that the Recipient has properly complied with and fulfilled all of its Obligations including that the Final Report provided by the Recipient in accordance with Schedule 5 is satisfactory.
- (b) The Recipient acknowledges and agrees that:
  - (i) the State has absolute discretion in:
    - (A) determining whether and when it considers that the Recipient has properly complied with and fulfilled all of its Obligations including that the Final Report provided by the Recipient in accordance with Schedule 5 is satisfactory; and
    - (B) determining whether and when to provide the Notification to the Recipient; and
  - (ii) receipt of the Notification does not in any way preclude, or operate as a waiver of, the exercise or enforcement of any right power or remedy of the State under this Agreement or under any Law in relation to any Obligation of the Recipient which the State subsequently discovers has not been properly complied with by the Recipient.

#### 5. EVALUATION OR AUDIT RIGHTS

At any time until Five (5) years after receipt of the Notification by the Recipient or any earlier termination of this Agreement, the State may arrange for an Evaluation or Audit to be carried out in relation to either or both of the Project and this Agreement by either the Department, an Auditor or any other person that the State in its absolute discretion wishes to carry out the Evaluation or Audit. If the State arranges for an Evaluation or Audit:

- (a) the State must notify the Recipient that the State has arranged for an Evaluation or Audit to be carried out; and
- (b) the Recipient must allow all persons appointed by the State to carry out the Evaluation or Audit to:
  - (i) have full access to all documents, records and premises in the control or possession of the Recipient for the purpose of carrying out the Evaluation or Audit; and
  - (ii) make and take copies of any and all documents and records in the control or possession of the Recipient relating in any way to either or both of the Project and this Agreement.

This clause 5 survives the termination of this Agreement.

#### 6. CONTACT OFFICERS

- (a) Each Party must appoint a staff member to be a contact officer in relation to the Project and this Agreement (this staff member and any replacement staff member performing the same role are referred to in this Agreement as the **Contact Officer**). The Contact Officer for each Party is authorised to act for that Party in relation to this Agreement and is the first point of contact for the other Party in relation to any disputes arising under this Agreement.
- (b) The details of each Party's Contact Officer as at the Commencement Date are set out in Schedule 1.
- (c) If a Party changes its Contact Officer that Party must notify the other Party in writing of the details (being the same categories of information set out in Schedule 1 for

each Contact Officer) of the new Contact Officer within five (5) Business Days after the change.

## **7. REPAYMENT AND RETENTION OF THE FUNDING**

Within twenty (20) Business Days from receipt by the Recipient of any written request from the State to provide a Final Report or any earlier termination of this Agreement, the Recipient must remit to the State any Funding that the State has paid to the Recipient and that has not been spent or committed in accordance with this Agreement and any interest which accrues on that Funding. This clause 7 does not limit clause 11.3 in any way.

## **8. LIMITATION OF LIABILITY**

- (a) The State is not responsible or liable in any way for the success or otherwise of the Project or for any Losses suffered or incurred by the Recipient in undertaking the Project. The Recipient releases the State from all Liability suffered or incurred by the Recipient in relation to one or more of the Project, this Agreement and any related matter and agrees that neither it nor any Related Body Corporate will make a Claim against the State or any of the State's Associates arising directly or indirectly in relation to one or more of the Project, this Agreement and any related matter. This clause 8 may be pleaded by the State or its Associates as a bar to any proceedings commenced by the Recipient against the State or its Associates in relation to one or more of the Project, this Agreement and any related matter.
- (b) If the Funding (and any interest which accrues on the Funding) is insufficient for the Recipient to properly fulfil all of its Obligations, then the Recipient must still fulfil its Obligations at its own cost.
- (c) The Recipient must indemnify the State and must keep it indemnified and hold it and its officers, employees and agents harmless from and against all Claims or Liability, suffered or incurred by or brought against the State or any of its respective officers, employees and agents caused by, arising out of or relating directly or indirectly to any:
  - (i) breach of any Provision by the Recipient;
  - (ii) act or omission of the Recipient or its employees, contractors, officers or agents which relates directly or indirectly to one or more of the Project, this Agreement and any related matter; or
  - (iii) breach of a Law by the Recipient or any of its employees, contractors, officers or agents which relates directly or indirectly to one or more of the Project, this Agreement and any related matter.
- (d) The Recipient must comply with the insurance requirements set out in item 5.2 of Schedule 4.
- (e) This clause 8 survives the termination of this Agreement.

## **9. FREEDOM OF INFORMATION ACT 1992, FINANCIAL MANAGEMENT ACT 2006 AND AUDITOR GENERAL ACT 2006**

- (a) This Agreement and information regarding it is subject to the *Freedom of Information Act 1992*. The State may publicly disclose information in relation to this Agreement, including its terms and the details of the Recipient.
- (b) Despite any express or implied provision of this Agreement to the contrary, nothing in this Agreement in any way alters, limits or affects the operation of the *Auditor General Act 2006*, the *Financial Management Act 2006* or the Recipient's obligations

(if any) in relation to these Acts. To the extent permitted by law, the Recipient must allow the Auditor General, or an authorised representative, to have access to and audit (or otherwise review, examine or evaluate) the Recipient's records and information concerning either or both of this Agreement and the Project.

## **10. NOTICES**

In order for any notice or other communication (including any request, approval or the like) that may or must be given under this Agreement to be effective, that notice or other communication:

- (a) must be in writing;
- (b) must be given by the Contact Officer of the Party giving notice or by another authorised officer of that Party (who must be a Senior Staff Member) if the Contact Officer is unable to give a notice or communication in a particular instance;
- (c) must be:
  - (i) hand-delivered or sent by prepaid post to the address of the Party receiving that notice or other communication set out in item 1 of Schedule 1;
  - (ii) sent by facsimile to the facsimile number of the Party receiving the notice set out in item 1 of Schedule 1; or
  - (iii) where this Agreement provides that the Recipient must notify the Department of, or provide it with, any occurrence or thing, hand-delivered or sent by prepaid post to the address of the Department set out in item 1 of Schedule 1 or sent by facsimile to the facsimile number of the Department set out in item 1 of Schedule 1;
- (d) subject to paragraph (e) of this clause 10, is taken to be received:
  - (i) in the case of hand delivery, on the date of delivery;
  - (ii) in the case of post, on the seventh Business Day after posting; and
  - (iii) in the case of facsimile, on the date of transmission; and
- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

## **11. DEFAULT AND TERMINATION**

### **11.1. Event of Default by the Recipient**

An **Event of Default** occurs if:

- (a) the Recipient breaches any Provision, which (if remediable) continues without remedy for five (5) Business Days after notice in writing has been served on the Recipient by the State. This subclause does not limit any other part of this clause 11.1 in any way; or
- (b) the Recipient breaches any Provision of this Agreement and such breach cannot be remedied. This subclause does not limit any other part of this clause 11.1 in any way; or
- (c) the Recipient fails to comply with or meet a Milestone, an Additional/New Milestone or any other milestone set by the Department in accordance with this Agreement; or
- (d) the Recipient suffers, or is or becomes subject to, an Insolvency Event; or
- (e) the State believes, in its absolute discretion, that the Recipient is unwilling or unable to comply with any one or more of the Provisions; or

- (f) the Recipient repudiates the Agreement; or
- (g) a material warranty given by or representation made by the Recipient is or becomes untrue; or
- (h) the Recipient makes a notification to the Department of the type set out in clause 3(c); or
- (i) the Recipient fails to comply with item 4.2 of Schedule 4; or
- (j) any aspect of this Agreement is or is held to be void, unenforceable, or invalid for whatever reason; or
- (k) the Recipient persistently, regularly, consistently or continually breaches the Provisions. This subclause does not limit any other part of this clause 11.1 in any way; or
- (l) where this Agreement provides for or contemplates the Parties reaching further agreement in relation to anything the subject of, or related to, either or both of this Agreement and the Project, this further agreement is not reached and recorded in writing within a reasonable time.

#### **11.2. Effect of Event of Default**

- (a) If an Event of Default occurs, the State may terminate the Agreement by providing notice in writing to the Recipient and the Agreement is then terminated from the date specified in that notice.
- (b) Without limiting the State's rights under clause 11.2(a), if the Recipient is in breach of this Agreement, the State may suspend the performance of its Obligations until such time as it is satisfied in its absolute discretion that the Recipient has remedied that breach.
- (c) The State may terminate the Agreement by providing notice in writing to the Recipient if, in the opinion of the State exercisable in its absolute discretion, the Project is no longer necessary for any reason and the Agreement is then terminated from the date specified in that notice, although in this instance only, clause 11.3(c) of this Agreement does not apply.
- (d) If the State terminates this Agreement in accordance with this clause 11.2 or otherwise, or this Agreement otherwise comes to an end:
  - (i) clauses 2, 3(c), 4.4, 4.5, 4.7, 5, 7, 8, 9, 10, 11.3, 12 and 14 will survive termination of this Agreement; and
  - (ii) in respect of item 4.2 of Schedule 4:
    - (A) where the Recipient has an obligation in subitem 4.2.1 of Schedule 4 to effect, maintain and keep in force any policy of insurance set out in subitem 4.2.1 for a period referable to "the date the Recipient receives the Notification", that policy of insurance must now be effected, maintained and kept in force as if the words "the date the Recipient receives the Notification" are replaced with the words "the date the Recipient receives notice in writing from the State that the State is terminating this Agreement, or the date this Agreement otherwise comes to an end";
    - (B) where the Recipient has an obligation in subitem 4.2.1 of Schedule 4 to effect, maintain and keep in force any policy of insurance set out in subitem 4.2.1 until the end of any Defects Liability Period, it must continue to effect, maintain and keep in force that policy of insurance until the end of any Defects Liability Period; and

- (C) subitems 4.2.2, 4.2.3, 4.2.4, 4.2.5 and 4.2.6 of Schedule 4 survive until the Recipient no longer has any Obligation to effect, maintain and keep in force any policy of insurance set out in subitem 4.2.1 of Schedule 4.

For the avoidance of doubt, this sub-clause 11.2(d) does not set out an exhaustive list of clauses, rights and obligations that will survive termination and any other clauses, rights and obligations that survive at common law are also intended by the parties to, and do, survive the termination of this Agreement.

### **11.3. No Further Funding and Recovery of Funding**

If the Agreement is terminated under clause 11.2, or terminated unlawfully by the Recipient:

- (a) the State has no further obligation to pay the Recipient any part of the Funding which has not yet been paid to the Recipient;
- (b) the Recipient must remit to the State within twenty (20) Business Days from the termination date specified by the State all Funding paid to the Recipient under the Agreement that has not been spent or committed in accordance with this Agreement by the termination date specified by the State and any interest which has accrued on that Funding; and
- (c) subject to clause 11.2(c), if requested by the State in writing, the Recipient must remit to the State within twenty (20) Business Days from the date of the State's request all Funding paid to the Recipient under the Agreement that has been spent or committed and any interest which has accrued on that Funding. If the State only requests the Recipient to remit part of those monies, then the Recipient must remit that part of those monies within twenty (20) Business Days from the date of the State's request.

## **12. AGREEMENT BETWEEN THE RECIPIENT AND A THIRD PARTY**

If the Recipient enters into an agreement with any other party relating in any way to either or both of this Agreement and the Funding (**Third Party Agreement**), including a Third Party Agreement with a party to deliver or fulfil any of the Recipient's Obligations or to provide services to the Recipient to assist or enable it to fulfil its Obligations, the Recipient must ensure that the other party:

- (a) has obligations in the Third Party Agreement which, if properly fulfilled, will ensure that the Recipient properly fulfils its corresponding Obligations and to the extent necessary to ensure that the other party has these obligations, the Recipient must ensure that the Third Party Agreement mirrors the terms of this Agreement; and
- (b) agrees to the Recipient providing the State with any documents that the other party provides to the Recipient and to the State attending any meetings it has with the Recipient if the State wishes to obtain copies of such documents or attend such meetings.

## **13. GOODS AND SERVICES TAX (GST)**

- (a) For the purposes of this Agreement, including this clause 13, the terms "GST", "recipient-created tax invoice", "registered", "supply", "tax invoice", and "taxable supply" have the same meanings as in the GST Act.
- (b) Subject to clause 13(c) below, If GST is or becomes payable by a party (**Supplier**) in relation to any supply that it makes under, in connection with, or resulting from, this Agreement, then (unless the consideration for that supply is expressly stated to include GST) in addition to any consideration provided by a party (**Supplied Party**) for that supply, the Supplied Party must pay to the Supplier the amount of any GST



for which the Supplier is liable in relation to that supply (**Additional Amount**) at the same time as the relevant consideration or any part of it is provided.

- (c) Subject to clause 13(e) below, the obligation in clause 13(b) above to pay the Additional Amount only arises once the Supplier has issued a tax invoice to the Supplied Party in respect of the Additional Amount.
- (d) If the Funding is consideration for the supply of anything under, in connection with, or resulting from, this Agreement which is a taxable supply under the GST Act, the Funding is exclusive of GST.
- (e) If the Funding is consideration for the supply of anything under, in connection with, or resulting from, this Agreement which is a taxable supply under the GST Act, the State may choose (in its absolute discretion) by notice to the Recipient to have the Department issue a RCTI in respect of the Additional Amount and if the State so chooses:
  - (i) the Department will issue a RCTI in respect of the Additional Amount and the Recipient will not issue a tax invoice in respect of that Additional Amount;
  - (ii) the Recipient warrants that it is registered for GST and will notify the Department as soon as practicable of any change to the Recipient's registration;
  - (iii) the State warrants that the Department is registered for GST and will notify the Recipient as soon as practicable of any change to the Department's registration; and
  - (iv) the State will indemnify and keep indemnified the Recipient for any liability for GST and any related penalty or interest charge that may arise from a statement of GST payable on the supply for which the Department issues a RCTI under this Agreement.

#### **14. WAIVER**

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by both Parties.
- (b) A waiver by either Party will not prejudice that Party's rights in relation to any further breach of this Agreement by the other Party.
- (c) Any failure to enforce any part of this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party, will not be construed as a waiver of any rights under this Agreement or under any Law.

#### **15. ENTIRE AGREEMENT**

This Agreement constitutes the entire, full and complete understanding and agreement between the Parties in relation to its subject matter and supersedes all prior communications, negotiations, arrangements and agreements between the Parties (or between the State and any party negotiating on behalf of the Recipient, including LGISWA) with respect to the subject matter of this Agreement.

#### **16. ASSIGNMENT**

- (a) This Agreement is personal to the Recipient and may not be assigned by the Recipient without the State's consent, which may be withheld in the State's absolute discretion. The State may at any time, in its absolute discretion, assign or transfer its rights and Obligations under this Agreement as it sees fit.
- (b) For the purposes of this clause 16, the Recipient shall be deemed to have assigned this Agreement if any act, matter or thing is done or occurs, the effect of which is, in

the opinion of the State, to transfer, directly or indirectly, the management or control of the Recipient.

**17. VARIATION**

Any modification, amendment or other variation to this Agreement must be made in writing, and must, unless the State in its absolute discretion directs in writing otherwise, be duly executed by both Parties.

**18. RIGHTS, POWERS AND REMEDIES**

The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

**19. GOVERNING LAW**

This Agreement is governed by the laws in force in the State. Each Party irrevocably submits unconditionally to the non-exclusive jurisdiction of the Courts of Western Australia and of all Courts competent to hear appeals therefrom in relation to any legal action, suit or proceeding arising out of or with respect to the Agreement.

**20. ACCESS TO LAND**

If the Project is being undertaken on land (whether freehold or Crown land) that is not owned, leased or managed by the Recipient, the Recipient must obtain and have in place from the Commencement Date until receipt of the Notification by the Recipient the written consent of the person owning or leasing that land to undertake the Project on that land.

**21. SCHEDULES**

- (a) Any express or implied provision of any Schedule to this Agreement is hereby deemed to be a provision of this Agreement and therefore must be complied with (by the relevant Party) in accordance with its terms.
- (b) In clause 21(a), "provision" includes term, condition, warranty, stipulation, right, Obligation, representation and the like.
- (c) Without limiting the preceding provisions of this clause 21, the Recipient agrees to comply with the Special Conditions, if any.

## SCHEDULE 1 – CONTACT OFFICERS

### 1 Notice Addresses

#### 1.1 State and Department

|                  |                                |
|------------------|--------------------------------|
| Registered Mail: | PO Box 1143 WEST PERTH WA 6872 |
| Facsimile:       | (08) 6552 1850                 |

#### 1.2 Recipient

|                  |                            |
|------------------|----------------------------|
| Registered Mail: | PO Box 42 MERREDIN WA 6415 |
| Facsimile:       | (08) 9041 2379             |

### 2. Contact Officers

#### 2.1 State

|                        |   |
|------------------------|---|
| <b>Name:</b>           | Brett Bylsma                                |
| <b>Job Title:</b>      | Senior Project Officer                      |
| <b>Phone:</b>          | (08) 6552 2014                              |
| <b>Facsimile:</b>      | (08) 6552 1850                              |
| <b>Email:</b>          | brett.bylsma@drd.wa.gov.au                  |
| <b>Postal Address:</b> | PO Box 1143, WEST PERTH WA 6872             |
| <b>Street Address:</b> | Level 12, 140 William Street, PERTH WA 6000 |
| <b>Supervisor:</b>     | Geoff Comben, Manager Infrastructure        |

#### 2.2 Recipient

|                        |   |
|------------------------|---|
| <b>Name:</b>           | Greg Powell                                       |
| <b>Job Title:</b>      | Chief Executive Officer                           |
| <b>Phone:</b>          | (08) 9041 1611                                    |
| <b>Facsimile:</b>      | (08) 9041 2379                                    |
| <b>Email:</b>          | ceo@merredin.wa.gov.au                            |
| <b>Postal Address:</b> | PO Box 42, MERREDIN WA 6415                       |
| <b>Street Address:</b> | Corner King and Barrack Streets, MERREDIN WA 6415 |
| <b>Supervisor:</b>     | N/A   |

#### 2.3 Recipient financial contact

|                   |   |
|-------------------|---|
| <b>Name:</b>      | Charlie Brown                           |
| <b>Job Title:</b> | Executive Manager of Corporate Services |
| <b>Phone:</b>     | (08) 9041 1611                          |
| <b>Email:</b>     | emcs@merredin.wa.gov.au                 |

#### 2.4 Regional Development Commission contact

|                        |  |
|------------------------|--|
| <b>Name:</b>           | Grant Arthur                           |
| <b>Job Title:</b>      | Director Regional Services             |
| <b>Phone:</b>          | (08) 9622 7222                         |
| <b>Facsimile:</b>      | (08) 6222 7406                         |
| <b>Email:</b>          | grant.arthur@wheatbelt.wa.gov.au       |
| <b>Postal Address:</b> | PO Box 250, NORTHAM WA 6401            |
| <b>Street Address:</b> | 298 Fitzgerald Street, NORTHAM WA 6401 |
| <b>Supervisor:</b>     | Wendy Newman - CEO                     |

## **SCHEDULE 2 – FINANCIAL REPORT**

*The State intends to provide relevant templates to assist the Recipient in completing its reporting Obligations.*

*The information listed below is indicative of the information requested by the State and may be varied by the State from time to time in its absolute discretion.*

1. Total approved Royalties for Regions budget for the current financial year.
2. Balance brought forward from previous reporting period.
3. Funding received from the State to date.
4. Total monies committed in the current period from Funding and other funds received (if any), including Leveraged Funds.
5. Actual payments to date.
6. Initial estimated cost of the Project.
7. Amount of interest earned on the Funding and on any income generated by the Project.
8. Amount of Leveraged Funding from other sources.
9. Forecast cost to complete the Project.
10. Use of funds: Infrastructure/Services/Administration.

### **SCHEDULE 3 – PROJECT REPORT**

*The State will provide relevant templates to assist the Recipient in completing its reporting Obligations.*

*The information listed below, is indicative of the information requested by the State and may be varied by the State from time to time in its absolute discretion.*

1. Fulfilment of Recipient's Obligations (key performance indicators).
2. To what degree has the Recipient achieved Royalties for Regions' objectives in fulfilling its Obligations.
3. Project indicators.
4. Milestones/achievements target for the reporting period.
5. Milestones/actual achievements for the reporting period.
6. Explanation of variances between target and actual achievements, including reasons why milestones were not achieved, impediments encountered, action taken to overcome these and potential future impediments if any.
7. Risks in relation to the Project, including in relation to completing the Recipient's Obligations and solutions proposed by the Recipient in relation to these risks.
8. Funding allocation by project category.
9. What the Funding received has been spent on.
10. Provide copies of contracts entered into between the Recipient and any other party in relation to the Project, including Third Party Agreements.

## SCHEDULE 4 – ROYALTIES FOR REGIONS PROJECT DETAILS

### 1. Use of Funding by the Recipient

Without limiting clause 8(b) or clause 11.3 in any way, the Recipient must use the Funding (and any interest which accrues on that Funding) to carry out the Project in accordance with this Agreement and for no other purpose.

### 2. Funding Amount

Funding of \$19,986,439 (excluding GST) will be provided by the State to the Recipient in the manner and within the timeframes outlined in item 3.1 of this Schedule 4 and in Schedule 6.

Disbursal of Funding will be subject to availability of funds through the State budget and mid-year review of the State budget each financial year.

### 3. Manner in which Funding is to be Paid

After this Agreement has been executed by both Parties, the Department will authorise the payment of the Funding to the Recipient in the manner described in item 3.1 of Schedule 4, Schedule 6 and Schedule 7. The full amount of the Funding is required to be invested by the Recipient with the Western Australian Treasury Corporation as outlined in Schedule 7. The Recipient may draw funds held under the terms in Schedule 7 in the manner described in item 3.2.

The transfer of the Funding will be subject to an assessment, with the Department being satisfied with the results of the assessment, of actual Project expenditure and material cash at bank balances of the Funding previously paid and available to the Recipient.

#### 3.1. Payment of Royalties for Regions Funding

All the amounts set out in the table below are exclusive of GST.

| Deliverable                                     | Payment details and timing  | Amount<br>\$ |
|---|---|--------------|
| Execution of the Financial Assistance Agreement | <p>The Department will initiate payment following:</p> <ul style="list-style-type: none"> <li>the signing of this Agreement by both Parties,</li> <li>a valid Tax Invoice.</li> </ul> | 19,986,439   |

#### 3.2. Payment of Royalties for Regions Funding held in Western Australian Treasury Corporation Account

All the amounts set out in the table below are exclusive of GST.

| Deliverable        | Payment details and timing   | Amount<br>\$ |
|--------------------|--|--------------|
| Progress Payment 1 | <p>Payment will be authorised within twenty (20) Business Days upon evidence of:</p> <ul style="list-style-type: none"> <li>The transfer of funding to a Western Australian Treasury Corporation account</li> <li>An agreement being executed</li> </ul> | 500,000      |

| Deliverable        | Payment details and timing   | Amount<br>\$ |
|--------------------|--|--------------|
|                    | <p>between the Shire of Merredin and CEACA Inc for the management of Funding to the satisfaction of the Department</p> <ul style="list-style-type: none"> <li>• The CEACA Stage 1 Project is commenced and a plan is provided for its completion.</li> <li>• A minuted commitment from each CEACA Inc member verifying their financial contribution of \$20,000 per constructed unit.</li> <li>• A detailed Project Plan which includes construction scheduling, locations and dates</li> <li>• A detailed Project Execution Strategy which highlights the project management roles and responsibilities including details of governance, ownership and tenancy structures, to the the satisfaction of the Department.</li> <li>• The Project Plan and Project Execution Strategy is completed to the satisfaction of the Department.</li> <li>• A Project Progress report detailing progress against all components of the project being provided to the satisfaction of the Department.</li> <li>• Provision of a valid Western Australian Treasury Corporation Notice of Withdrawal.</li> </ul> |              |
| Progress Payment 2 | <ul style="list-style-type: none"> <li>• A Project Progress report detailing progress against all components of the project, including evidence of orders being placed for the first tranche of units being provided to the satisfaction of the Department.</li> <li>• The provision of a valid Western Australian Treasury Corporation Notice of Withdrawal.</li> </ul>   | 6,000,000    |
| Progress Payment 3 | <ul style="list-style-type: none"> <li>• The first tranche of unit are 'in situ' and the second tranche have been ordered.</li> <li>• A Project Progress report detailing progress against all components of the project being provided to</li> </ul>  | 6,000,000    |



| Deliverable          | Payment details and timing  | Amount<br>\$ |
|----------------------|---|--------------|
| Progress Payment 4   | <p>the satisfaction of the Department.</p> <ul style="list-style-type: none"> <li>• The overall cash balance of the project being less than \$500,000</li> <li>• The provision of a valid Western Australian Treasury Corporation Notice of Withdrawal.</li> </ul> <p>• The first tranche of units are at key handover stage, the second tranche of units are 'in situ' and the third tranche of units have been ordered.</p> <ul style="list-style-type: none"> <li>• A Project Progress report detailing progress against all components of the project being provided to the satisfaction of the Department.</li> <li>• The overall cash balance of the project being less than \$500,000</li> <li>• The provision of a valid Western Australian Treasury Corporation Notice of Withdrawal.</li> </ul> | 3,500,000    |
| Progress Payment 5   | <ul style="list-style-type: none"> <li>• A report on the assessment of the governance structure with recommendations for improvement is received to the satisfaction of the Department.</li> <li>• A Project Progress report detailing progress against all components of the project being provided to the satisfaction of the Department.</li> <li>• The overall cash balance of the project being less than \$500,000</li> <li>• The provision of a valid Western Australian Treasury Corporation Notice of Withdrawal.</li> </ul>   | 3,986,439    |
| <b>Total Payment</b> |   | 19,986,439   |

#### 4. Detailed Description of Project

##### 4.1. Project Description

The assembling and servicing of 21 lots for the construction of independent living units (ILUs) , and the construction of 75 ILUs in 11 Shires (Bruce Rock, Kellerberrin, Koorda, Merredin, Mt Marshall, Mukinbudin, Nungarin, Trayning, Westonia, Wyalkatchem and Yilgarn) in the central and eastern Wheatbelt.

7 ILUS will be sold, with all proceeds being reinvested in the delivery of the Project.

The Proponent enters into Agreement with the State on behalf of the Central Eastern Aged Care Alliance who are the delivery agency for the Project and owner of the Assets.

##### 4.2. Recipient's Obligations and Payment of Royalties for Regions Funding

The Recipient must perform the Obligations set out in the table below by the Milestones (see item 4.3 of this Schedule 4).

| Recipient's Obligations  | Performance Measures  | Performance method Measure  |
|--|---|---|
| Appointment of independent Project Manager   | Project Management Contract in place                                  | Documentation evidencing contract is consistent with the provisions of the Local Government Act (1995) and the Local Government Act (Functions and General) Regulations (1996)                  |
| Competitive tender process   | Tenders called for completion of site works and construction of units | Documentation evidencing a competitive tender process consistent with the provisions of the Local Government Act (1995) and the Local Government Act (Functions and General) Regulations (1996) |
| At least 21 lots prepared and serviced for construction of independent living units including: <ul style="list-style-type: none"> <li>• 1 lot in Bruce Rock</li> <li>• 6 lots in Kellerberrin</li> <li>• 1 lot in Koorda</li> <li>• 12 lots in Merredin</li> <li>• 1 lot in Mt Marshall</li> </ul> | Works completed to specification                                      | Certificates of Practical Completion or other suitable documentation detailing completion of works to specification   |

| Recipient's Obligations   | Performance Measures                                       | Performance method Measure   |
|---|--|--|
| <p>At least 75 independent living units constructed, including:</p> <ul style="list-style-type: none"> <li>• 9 units in Bruce Rock</li> <li>• 14 units in Kellerberrin</li> <li>• 5 units in Koorda</li> <li>• 28 units in Merredin</li> <li>• 3 units in Mt Marshall</li> <li>• 4 units in Mukinbudin</li> <li>• 2 units in Nungarin</li> <li>• 2 units in Trayning/Kununoppin</li> <li>• 2 units in Westonia</li> <li>• 4 units in Wyalkatchem</li> <li>• 2 units in Yilgarn</li> </ul> | Works completed to specification                           | Certificates of Practical Completion or other suitable documentation detailing completion of works to specification      |
| Reinvestment of sale income into the Project  | Income from the sale of 7 ILUs reinvested into the Project | Suitable documentation detailing the reinvestment of sale income into the Project to the satisfaction of the Department. |

#### 4.3. Project Timeframe

The Recipient agrees to commence the Project within six (6) months after execution of the Agreement.

| Obligations (Deliverables)   | Milestone               |
|--|-------------------------|
| 21 lots prepared and serviced for construction of independent living units | 30 June 2019            |
| 75 independent living units constructed                                    | 30 June 2020            |
| <b>Project Completion</b>  | <b>31 December 2020</b> |

#### 4.4. Project Budget

| Item of Expenditure    | Budget (\$) | Source of Funds                   |
|------------------------|-------------|-----------------------------------|
| Project Management     | 384,114     | Royalties for Regions             |
| Professional Fees      | 1,440,426   | Royalties for Regions             |
| Land Acquisition       | 773,000     | CEACA Inc                         |
| Land Assembly and Site | 638,520     | Royalties for Regions (\$428,520) |

| Item of Expenditure                   | Budget (\$)       | Source of Funds   |
|---------------------------------------|-------------------|---|
| Servicing                             |                   | Shires (\$210,000)  |
| Construction                          | 19,422,160        | Royalties for Regions (\$16,312,160)<br>CEACA Inc (\$1,500,000)<br>Sales Income (\$1,610,000) |
| Contingency                           | 1,344,397         | Royalties for Regions   |
| Project Administration and Compliance | 76,822            | Royalties for Regions   |
| <b>Total Budget</b>                   | <b>24,079,439</b> |   |

## 5. Special Conditions

### 5.1. Leveraged Funding

- (a) The Recipient must obtain the funding from the sources set out in the table immediately below (**Leveraged Funding**), which the Recipient must use to carry out the Project in accordance with this Agreement and for no other purpose:

| Source of Leveraged Funding | Amount (\$) |
|-----------------------------|-------------|
| Nil                         | -           |

- (b) Despite anything express or implied to the contrary in this Agreement, before the Recipient is entitled to any payment under this Agreement, it has to provide evidence to the Department which proves to the satisfaction of the State, in its absolute discretion, that the Recipient has obtained the Leveraged Funding. If the Recipient does not obtain any part of the Leveraged Funding (that part being the **Shortfall**), the State may reduce the amount it is to pay the Recipient under this Agreement by the amount of the Shortfall.

### 5.2. Insurance

#### 5.2.1 Policies of insurance

##### 5.2.1.1 Effecting, maintaining and keeping in force policies of insurance

Subject to sub-item 5.2.1.3 below, the Recipient must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, from the Commencement Date until it receives the Notification (or for a longer period where it is required to keep any insurance current for a longer period as set out in this subitem below) adequate insurance cover in its name for its rights and interests in relation to the Project:

- (a) with a reputable and solvent insurer (with a Standard and Poor's rating of not less than A minus) which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company; or
- (b) only for insurance policies which the Recipient effects, maintains and keeps in force, with LGISWA instead of an insurer of the type set out in subitem 5.2.1.1(a) immediately above,

including effecting, maintaining and keeping in force, or causing to be effected, maintained and kept in force, the following policies of insurance for the Project:

- (c) a public liability policy for an amount of indemnity of not less than ONE HUNDRED MILLION DOLLARS (\$100,000,000) (or any higher sum as is determined by the State from time to time (acting reasonably)) for any one occurrence and unlimited as to the number of occurrences which must:
  - (i) be effected, maintained and kept in force from the Commencement Date until the later of one year from the date the Recipient receives the Notification and the end of any Defects Liability Period;
  - (ii) must contain or be endorsed to contain an indemnity extension in favour of the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the negligent acts or omissions of the Recipient, its employees, contractors or agents in their performance or non-performance of the Project;
  - (iii) cover liability resulting from loss of or damage to property and the death or illness of, or injury to, any person (other than liability which is required by Law to be insured under a workers compensation policy of insurance) arising out of or in connection with the Project, this Agreement or both;
  - (iv) be endorsed to cover:
    - (A) the use of unregistered motor vehicles, plant and equipment; and
    - (B) sudden and accidental pollution.
- (d) where the Recipient has obligations in this Agreement to Construct any Structure, a policy of insurance in relation to all work required for and incidental to the Construction of that Structure and rectifying Defects (**Works**) which must:
  - (i) be in the joint names of the Recipient and all agents and contractors employed from time to time in relation to the Works and:
    - (A) note the State as a person to whom the benefit of the insurance cover provided by that insurance policy extends; and
    - (B) expressly provide that to the extent (if any) that noting the State in the manner set out in subitem 5.2.1.1(d)(i)(A) above does not have the effect that the State's interests and rights, and liabilities of, and owed to, the State (howsoever these interests, rights and liabilities arise, including if they arise under clause 8(c) of this Agreement) are noted on that insurance policy, that insurance policy also notes those interests, rights and liabilities;
  - (ii) cover against any and all physical loss or damage to the Works including covering the:
    - (A) full replacement value of that Structure, including any extension of or addition to that Structure;
    - (B) the cost of removal of materials and debris from the Site;
    - (C) any loss or damage to any equipment used in relation to the Works;
  - (iii) covering the cost of making good resultant damage arising in connection with faulty design;
  - (iv) provide that any breach of the conditions of this policy of insurance by an insured under the policy will not in any way prejudice or diminish any rights which any other person has under the policy;

- (v) provide that the insurance provided under this policy is primary with respect to the interest of the State and any other insurance or self insurance arrangements maintained by the State is excess to and not contributory with this policy; and
  - (vi) be effected, maintained and kept in force from the Commencement Date until the end of any Defects Liability Period, or if there is no Defects Liability Period, then until one year from the date the Recipient receives the Notification;
- (e) where the Recipient has obligations in this Agreement to Construct any Structure, a vehicle and equipment policy of insurance for the Recipient's vehicles, registered plant and equipment brought on to the Site or used in connection with the Project whether owned, hired or leased (**Recipient's Vehicles**) in addition to any compulsory motor vehicle third party insurance required to be taken out by the Recipient under any Law. This vehicle and equipment insurance policy must:
- (i) cover third party liability for personal injury or death (other than compulsory third party motor vehicle insurance) and property loss or damage involving the Recipient's Vehicles;
  - (ii) be for not less than \$50,000,000 third party liability insurance for any one occurrence and unlimited as to the number of occurrences;
  - (iii) to the extent available at the times of placement and each renewal, be endorsed to cover the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the use of the Recipient's vehicles; and
  - (iv) be effected, maintained and kept in force from the Commencement Date until the later of one year from the date the Recipient receives the Notification and the end of any Defects Liability Period;
- (f) where the Recipient has obligations in this Agreement to Construct any Structure, in addition to the insurance cover set out in subitems 5.2.1.1(d) and 5.2.1.1(e) of this Schedule 4, it must take out, or cause to be taken out, any other policies of insurance consistent with Best Industry Practice for the engineering, design, procurement, supply, Construction, testing and commissioning of the Project, which must be effected, maintained and kept in force from the Commencement Date until the end of any Defects Liability Period, or if there is no Defects Liability Period, then until one year from the date the Recipient receives the Notification;
- (g) where the Recipient is in the business of providing professional services, has Obligations to provide professional services, or both, a professional indemnity policy of insurance, which must:
- (i) to the extent available at the times of placement and each renewal, be endorsed to contain an indemnity extension in favour of the State if the Recipient has Obligations to provide professional services;
  - (ii) include one full automatic reinstatement of the limit of liability;
  - (iii) cover liability arising from any negligent act or omission in connection with or arising out of the professional activities and duties under this Agreement;
  - (iv) cover claims in respect of this Agreement or otherwise under the *Competition and Consumer Act 2010 (Cth)*, *Fair Trading Act 2010 (WA)*, *Fair Trading Act 1987 (WA)*, and any similar legislation in any other state or territory insofar as they relate to the provision of professional advice; and
  - (v) be effected, maintained and kept in force from the Commencement Date until seven (7) years from the date the Recipient receives the Notification for not less than \$1,000,000 for each and every claim and in the aggregate annually; and
- (h) a policy of insurance which:

- (i) insures against liability under any applicable statute relating to workers or accident compensation for death of, or illness or injury to, natural persons employed or engaged by the Recipient which are required to be insured under the *Workers' Compensation and Injury Management Act 1981 (WA)* or equivalent legislation in other Australian jurisdictions in work under this Agreement including liability by statute and, where available, at common law; and
- (ii) which must be effected, maintained and kept in force from the Commencement Date until the date the Recipient receives the Notification. Where common law claims are not fully covered under this policy of insurance, the Recipient must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, from the Commencement Date until the date the Recipient receives the Notification a policy of insurance which insures against employer's liability at common law for not less than fifty million dollars (\$50,000,000.00) for any one event.

#### 5.2.1.2 *Noting the State*

In accordance with subitem 5.2.1.1(d), where the Recipient has obligations in this Agreement to Construct any Structure, it must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, a policy of insurance in relation to the Works in the terms set out in that subitem, including noting the State in the manner set out in subitem 5.2.1.1(d)(i). Each other policy of insurance which the Recipient effects, maintains and keeps in force (or causes to be effected, maintained and kept in force) in relation to the Project, must note the interests of the State.

#### 5.2.1.3 *State may extend time by which Recipient has to procure certain policies of insurance*

The Recipient must comply in full with subitem 5.2.1.1 of this Schedule 4 except that, with respect to the policies of insurance required to be effected, maintained and kept in force (or caused to be effected, maintained and kept in force) set out in subitems 5.2.1.1(d), 5.2.1.1(e) and 5.2.1.1(f), if the State has provided written notice to the Recipient prior to the Commencement Date (which notice, notwithstanding that this Agreement had not been executed at the time the notice was given, must comply with clause 10 of this Agreement as if both parties were bound by clause 10 at the time the notice was given) which:

- (a) provides that the Recipient may effect (or cause to be effected) one or more of those policies of insurance from a later date than the Commencement Date; and
- (b) specifies the date from which the Recipient must effect, maintain and keep in force (or cause to be effected, maintained and kept in force) that policy of insurance or those policies of insurance (as the case may be),

then the Recipient may effect (or cause to be effected) that policy of insurance or those policies of insurance (as the case may be) from the date specified in that written notice. For the avoidance of doubt, if the State provides written notice of the type outlined in this subitem 5.2.1.3:

- (c) the policy of insurance or policies of insurance (as the case may be) to be effected, maintained and kept in force by the Recipient (or which it causes to be effected maintained and kept in force) specified in that written notice must comply in all other respects with the relevant Provisions in subitem 5.2.1.1 (and comply with subitem 5.2.1.2) and only the time by which the Recipient must effect that policy of insurance or those policies of insurance (as the case may be) is altered; and
- (d) if that notice only alters the time by which one or some of the policies of insurance set out in subitems 5.2.1.1(d), 5.2.1.1(e) and 5.2.1.1(f) must be effected, the Recipient

must still effect the other policy of insurance or policies of insurance (as the case may be) by the Commencement Date.

#### 5.2.2 *Proof of insurance*

(a) Within ten (10) Business Days from:

- (i) the Commencement Date;
- (ii) the date the Recipient receives the Notification (except in relation to insurance cover which is only required under this Agreement to be maintained until receipt by the Recipient of the Notification);
- (iii) the date any insurance policy is renewed or varied; and
- (iv) any other request by the State,

the Recipient must provide the Department with the following information in relation to all insurance cover for the Project (regardless of whether the Recipient or another party effected the policies or whether one or more of the policies are in the joint names of the Recipient and one or more other parties):

- (v) certificates of currency from the insurer which provided the insurance. These certificates of currency must be accurate as at the time of issue, must not contain a general disclaimer to the effect that they can not be relied upon and must contain sufficient information to enable the Recipient to demonstrate to the satisfaction of the State in its absolute discretion that the Recipient has complied with its Obligations under item 5.2 of Schedule 4. Where, in the opinion of the State in its absolute discretion, these certificates of currency do not provide this information, then the Recipient must provide such further information as the State may require to demonstrate compliance with the Recipient's Obligations under item 5.2 of Schedule 4. The Recipient is entitled to redact commercially sensitive information in any insurance policies which relates to other projects; and
  - (vi) receipts for premiums paid for each policy of insurance.
- (b) If, after being requested in writing by the State to do so, the Recipient fails to produce evidence (to the satisfaction of the State in its absolute discretion) of compliance with its Obligations under Item 5.2 of Schedule 4, the State may do one or more of the following:
- (i) effect and maintain the required insurance and pay the premiums. The amount paid by the State in effecting and maintaining the required insurance is a debt due and payable on demand from the Recipient to the State;
  - (ii) exercise its rights under clause 11 of this Agreement; or
  - (iii) suspend one or both of the performance of the Recipient's Obligations and the provision of Funding to the Recipient until evidence that the Recipient has complied with its Obligations under item 5.2 of Schedule 4 is provided to the Department and is satisfactory to the State in its absolute discretion.

The rights given to the State by this subitem 5.2.2(b) of Schedule 4 are in addition to any other rights the State may have.

#### 5.2.3 *Recipient's Obligations and Recipient's further obligations*

- (a) Unless the Recipient first obtains the State's prior written consent, which consent can be given or withheld by the State in its absolute discretion, the Recipient must not:
- (i) do, allow to be done by another person (except the State), or suffer the doing of, anything which adversely affects any insurance cover taken out by, or on behalf of, the Recipient or the State in relation to the Project or this Agreement or both, or which may increase the premium on that insurance;



- (ii) store or use inflammable, volatile or explosive substances on the site or premises on which the Project is being carried out except those normally used in the Recipient's business; or
  - (iii) settle or compromise, or allow any other person (except an insurer who is legally entitled to, and does, take over conduct of the matter) to settle or compromise, any claim under any policy of insurance relating to the Project or this Agreement, or both.
- (b) The Recipient must give notice to the Department immediately if:
- (i) an event occurs which may give rise to a claim under any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project) and must keep the Department informed of subsequent developments concerning the claim. This requirement does not apply to those occurrences that may give rise to a motor vehicle or worker's compensation claim;
  - (ii) an event occurs which could adversely affect any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project); or
  - (iii) any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project) are cancelled.
- (c) The Recipient must pay (or procure the payment of) all premiums and all deductibles applicable to the policies of insurance effected by it, or which it causes to be effected, in relation to the Project and promptly reinstate any of these policies which lapse or under which cover is exhausted.
- (d) Each policy of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project must:
- (i) provide that where the number of persons (in each case, an "insured") who are either:
    - (1) named on that policy of insurance; or
    - (2) otherwise entitled to insurance cover under that policy of insurance, exceeds one person, that policy of insurance must include a cross liability clause in which the insurer agrees to waive all express and implied rights of subrogation against any insured under that policy and agrees that the term "insured" applies to each insured under that policy as if a separate policy of insurance has been issued to each of them in the same terms as that policy of insurance but not so as to increase the limit of liability or sum insured under that policy;
  - (ii) state that they are governed by the laws of Western Australia and that each insurer irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia; and
  - (iii) provide that the excess in any of these policies must not exceed 1% of the insurance amount.
- (e) The Recipient must not do or omit to do, and must ensure that the Recipient's personnel (including its agents and contractors) not do or omit to do, any act or thing that would be grounds for an insurer to refuse to pay the whole of or any part of a claim made under any of the insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project.
- (f) The Recipient must give the Department prior notice of at least one (1) month of the cancellation, non-renewal, or a material alteration to the detriment of cover of any of the

insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project or in accordance with the *Insurance Contracts Act 1984 (Cth)*.

#### 5.2.4 *Insurance policies primary*

- (a) Each policy of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project is primary and not secondary to the indemnity given by the Recipient to the State in clause 8(c) of this Agreement. However, the State is not obliged to make a claim or institute proceedings against any insurer under any of these insurance policies before enforcing any of its rights or remedies under the indemnity given by the Recipient to the State in clause 8(c) of this Agreement, or generally. In addition, the parties acknowledge that if a claim is made under any of these insurance policies by the State, it is their intention that the insurer cannot require the State to exhaust the indemnity given by the Recipient to the State in clause 8(c) of this Agreement before the insurer considers or meets the relevant claim.
- (b) The Recipient acknowledges that regardless of whether any of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project respond or not, and regardless of the reason why any of these insurance policies respond or fail to respond, the Recipient is not released (in whole or in part), from any of its obligations under the indemnity given by the Recipient to the State in clause 8(c) of this Agreement, or any of its Obligations generally.

#### 5.2.5 *Settlement of claims*

Upon settlement of a claim under any of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project, to the extent that the work to be reinstated or services to be repeated have been the subject of a payment of Funding by the State to the Recipient, the State may determine in its absolute discretion whether the Recipient must repay that Funding (and any interest accrued on that Funding) to the State out of the proceeds of insurance or use the proceeds of insurance to reinstate the work or repeat the services for which the Funding was provided. If the State requests that the Recipient repay that Funding (and any interest accrued on that Funding), or any part of that Funding (and any interest accrued on that Funding), to the State, the Recipient must do so:

- (a) within ten (10) Business Days of the date of the State's request (if the Recipient has already received the proceeds of insurance); and
- (b) within ten (10) Business Days of receipt of the proceeds of insurance (if the Recipient has not received the proceeds of insurance by the date of the State's request).

In order to ensure that the Recipient can fulfil its obligations under this subitem 5.2.5, the Recipient must ensure that any other party (except the State) named as an insured or otherwise noted or covered under any of the policies of insurance effected by the Recipient in relation to the Project, or which the Recipient causes to be effected in relation to the Project, has a contractual obligation to the Recipient to, if it receives proceeds of insurance under any of those policies, pay on request:

- (a) the Recipient; or
- (b) the State if directed by the Recipient to do so,

within a sufficient timeframe a sufficient part of those proceeds of insurance, to enable the Recipient to fulfil its obligation to the State in this subitem 5.2.5.

#### 5.2.6 *Insurance review*

- (a) The State may, from time to time, review the adequacy and appropriateness of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project. As part of this review, the State may ascertain whether, in the

State's reasonable opinion, any additional insurance policies are required, or whether any insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project and maintained at the time of the review are still required or require amendment.

- (b) To allow the State to perform this function, it may make a request for the documents set out in subitem 5.2.2 of this Schedule 4 which the Recipient must comply with.
- (c) The Recipient must commence negotiations to obtain insurances or amend the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project within ten (10) Business Days of receiving notice from the State to do so, and must, as soon as practicable thereafter at the Recipient's own cost, obtain insurances or amend the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project to reflect the recommendations made by the State following its review.
- (d) The Recipient must promptly notify the Department if it is unable to, or it becomes apparent that it will be unable to, comply with the recommendations arising in connection with the State's review. The parties must determine what action, if any, is to be taken following receipt of this notice.

### *5.3. Regional Development Commission (RDC) Managed Agreements*

- (a) The Wheatbelt Development Commission acts for and on behalf of the State and may at any time perform any of the State's Obligations and exercise the State's rights and powers in and under this Agreement, including taking any actions, making any requests and giving or withholding any consents or approvals which the State has the right or obligation to take, make, give or withhold under this Agreement.
- (b) The Recipient agrees to treat any notices or other communications (including any requests) from the Wheatbelt Development Commission as being from and on behalf of the State.
- (c) Where the Recipient has any Obligation to remit or pay monies to the State, the Recipient must make payment to the State in the manner requested by the State, including making payment into a bank account nominated by the State if so requested, which may be a bank account held in the name of the Wheatbelt Development Commission
- (d) Clause 6 will apply to the Wheatbelt Development Commission, including that the Contact Officer (set out in Schedule 1) for the Wheatbelt Development Commission is authorised to act for the Wheatbelt Development Commission in relation to this Agreement, is the first point of contact in relation to any disputes arising under the Agreement and is responsible, on behalf of the Wheatbelt Development Commission, for liaising with the Recipient to ensure that the Recipient properly complies with its Obligations. The State may, in its absolute discretion, at any time withdraw this authorisation in respect of all or part of the Wheatbelt Development Commission's functions; and
- (e) The Department may countermand any direction or request made or given by the Wheatbelt Development Commission and in that case the Recipient must comply with the Department's direction or request (as the case may be).

## SCHEDULE 5 – ACCOUNTS AND REPORTING

- (a) The Recipient is to provide to the Department progress reports on a quarterly basis (as at 30 September, 31 December, 31 March and 30 June), or as determined from time to time by the State, until receipt by the Recipient of the Notification. These progress reports must be certified by the Chief Financial Officer or other accountable officer of the Recipient and include:
- (i) a financial report containing information with respect to the Project, which must include the information set out in Schedule 2; and
  - (ii) a project report which must include the information set out in Schedule 3, showing how and to what extent the Funding (and any interest accrued on the Funding) was spent and the extent to which the Recipient's Obligations were performed and the Milestones met.

Note – quarterly reports are to be submitted within one (1) month after the end of each quarter.

For the avoidance of doubt the State may:

- (i) request progress reports at more regular intervals than one progress report every quarter but must not request progress reports at more regular intervals than every week; and
  - (ii) determine in its absolute discretion what information the Recipient is required to include in a progress report and requiring less information in a progress report than that prescribed in item (a) of this Schedule 5 in any one instance does not constitute a waiver of the State's right to receive the information prescribed in item (a) of this Schedule 5 in every other progress report.
- (b) The Recipient is to provide to the Department an annual report on the Project based on a financial year ending 30 June until receipt by the Recipient of the Notification. These annual reports must be certified by the Chief Financial Officer or other accountable officer of the Recipient and audited by an Auditor, and include:
- (i) a financial report containing information with respect to the Project which must include the information set out in Schedule 2; and
  - (ii) a project report which must include the information set out in Schedule 3, showing how and to what extent the Funding (and any interest accrued on the Funding) was spent and the extent to which the Recipient's Obligations were performed and the Milestones and met.

Note – the annual report on the Project is to be submitted within three (3) months after the end of the financial year to which the annual report relates.

- (c) The Recipient must provide the Department with a report (**Final Report**) within three (3) months after receipt by the Recipient of any written request from the State to do so or of any earlier termination of this Agreement, which must be certified by the Chief Financial Officer or other accountable officer of the Recipient and audited by an Auditor, and include:
- (i) a financial report) certifying that the Funding (and any interest accrued on the Funding) was used for the Project, confirming the amount of Funding spent and which must include the information set out in Schedule 2; and
  - (ii) a project report which must include the information set out in Schedule 3, showing how and to what extent the Funding (and any interest accrued on the Funding) was spent and the extent to which the Recipient's Obligations were performed and the Milestones met.

**SCHEDULE 6 – PAYMENT OF THE FUNDING**

Funding will be made available subject to, in the manner outlined in, and for the purpose outlined in, this Agreement.

The payment of the Funding or each tranche of the Funding (if applicable) will be processed by the State and by the time required by this Agreement, transferred into the following bank account of the Recipient by electronic funds transfer:

|                        |                   |
|------------------------|-------------------|
| <b>Account name:</b>   | Shire of Merredin |
| <b>BSB:</b>            | 066-518           |
| <b>Account number:</b> | 0000-0010         |

## **SCHEDULE 7 – REQUIREMENT FOR FUNDS TO BE INVESTED WITH THE WESTERN AUSTRALIAN TREASURY CORPORATION**

The full amount of the Funding provided under this Agreement, is required to be invested by the Recipient with the Western Australian Treasury Corporation (WATC) until expended as per the Approved Budget detailed in Schedule 4.

The Recipient must invest the Funding with the WATC by opening a separate Overnight Cash Deposit Facility (OCDF) and depositing in the OCDF the Funding, within seven (7) days of receipt of the Funding from the Department. This facility gives the Recipient access to their funds at call. Interest is calculated daily and paid monthly.

The Recipient is required to authorise the Wheatbelt Development Commission as joint signatory to its WATC OCDF account relating to the Funding and all withdrawals/drawdowns will require the approved signatures of the Wheatbelt Development Commission and the Recipient before WATC will release the funds.

The Recipient provides authority for the WATC to send to the Department and Wheatbelt Development Commission copies of all investment confirmations and monthly statements as evidence of investments and/or transactions.

The Recipient may invest the whole or any part of the Funding from the OCDF into one or more WATC Short Term Inscribed Stock facility (STIS facility). On maturity of investment of the Funding in a STIS facility, the Funding may be reinvested in a further STIS facility. The Funding must be redeposited into the OCDF once it is no longer held in a STIS facility.

Any interest earned from either the Recipient's OCDF account or a STIS facility must be deposited into the OCDF and utilised for the Project in accordance with this Agreement.

The contact at Western Australian Treasury Corporation is:

Tamara Marsh  
Client Relationship Manager, Client Services  
Western Australian Treasury Corporation  
PO Box 7282  
Perth Cloisters Square, WA 6850  
Tel: (08) 9235 9153  
Fax: (08) 9235 9199  
Email: Tamara.Marsh@wadc.wa.gov.au

**EXECUTION OF THIS AGREEMENT**

EXECUTED by the Parties as an Agreement.

SIGNED for and on behalf of the STATE )  
OF WESTERN AUSTRALIA by David )  
(Ralph) Addis of the DEPARTMENT OF )  
REGIONAL DEVELOPMENT in the )  
presence of: )



Dawn Rouse

Signature of Department witness

**DAWN ROUSE - Exec Asst to the Director General**

Full name and position of Department witness



Signed for and on behalf of the Shire or Merredin

The Common Seal of the Shire of Merredin was hereto duly affixed in the presence of:

Signature Ken Hooper

Director/Board Member/ Office Holder

KEN HOOPER

Print full name of Authorised Person

SHIRE PRESIDENT

Print the position of the Authorised Person

Signature Greg Powell

Director/Board Member/ Office Holder

GREG POWELL

Print full name of Authorised Person

CHIEF EXECUTIVE OFFICER

Print the position of the Authorised Person



Government of **Western Australia**  
Department of **Regional Development**



**ROYALTIES  
FOR REGIONS**

---

**FINANCIAL ASSISTANCE AGREEMENT**

**ROYALTIES FOR REGIONS PROJECT**

---

**STATE OF WESTERN AUSTRALIA**

**AND**

**SHIRE OF MERREDIN**

**ABN: 87 065 676 484**

**SOUTHERN INVESTMENT INITIATIVE**

---

**CEACA SENIOR HOUSING PROJECT  
STAGE ONE LAND ASSEMBLY AND SERVICING**



## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>RECITALS</b>   | <b>4</b>  |
| <b>OPERATIVE PART</b>   | <b>5</b>  |
| <b>1. DEFINITIONS AND INTERPRETATION</b>  | <b>5</b>  |
| 1.1 Definitions   | 5         |
| 1.2 Interpretation  | 9         |
| <b>2. DEPARTMENT</b>  | <b>10</b> |
| <b>3. SCOPE OF THIS AGREEMENT</b>   | <b>10</b> |
| <b>4. OBLIGATIONS OF RECIPIENT</b>  | <b>11</b> |
| 4.1 Use of Funding  | 11        |
| 4.2 No Changes  | 12        |
| 4.3 No Endorsement  | 12        |
| 4.4 Acknowledgement of the Department   | 12        |
| 4.5 Accounts and Reporting  | 13        |
| 4.6 General Undertakings of the Recipient   | 13        |
| 4.7 Negation of Employment, Partnership and Agency  | 13        |
| 4.8 Notification  | 14        |
| <b>5. EVALUATION OR AUDIT RIGHTS</b>  | <b>14</b> |
| <b>6. CONTACT OFFICERS</b>  | <b>15</b> |
| <b>7. REPAYMENT AND RETENTION OF THE FUNDING</b>  | <b>15</b> |
| <b>8. LIMITATION OF LIABILITY</b>   | <b>15</b> |
| <b>9. FREEDOM OF INFORMATION ACT 1992, FINANCIAL<br/>MANAGEMENT ACT 2006 AND AUDITOR GENERAL ACT 2006</b> | <b>16</b> |
| <b>10. NOTICES</b>  | <b>16</b> |
| <b>11. DEFAULT AND TERMINATION</b>  | <b>17</b> |
| 11.1. Event of Default by the Recipient   | 17        |
| 11.2. Effect of Event of Default  | 17        |
| 11.3. No Further Funding and Recovery of Funding  | 18        |

|   |           |
|---|-----------|
| <b>12. AGREEMENT BETWEEN THE RECIPIENT AND A THIRD PARTY</b>  | <b>19</b> |
| <b>13. GOODS AND SERVICES TAX (GST)</b>   | <b>19</b> |
| <b>14. WAIVER</b>   | <b>20</b> |
| <b>15. ENTIRE AGREEMENT</b>   | <b>20</b> |
| <b>16. ASSIGNMENT</b>   | <b>20</b> |
| <b>17. VARIATION</b>  | <b>21</b> |
| <b>18. RIGHTS, POWERS AND REMEDIES</b>  | <b>21</b> |
| <b>19. GOVERNING LAW</b>  | <b>21</b> |
| <b>20. ACCESS TO LAND</b>   | <b>21</b> |
| <b>21. SCHEDULES</b>  | <b>21</b> |
| <b>SCHEDULE 1 – CONTACT OFFICERS</b>  | <b>22</b> |
| <b>1 Notice Addresses</b>   | <b>22</b> |
| <b>2 Contact Officers</b>   | <b>22</b> |
| <b>SCHEDULE 2 – FINANCIAL REPORT</b>  | <b>24</b> |
| <b>SCHEDULE 3 – PROJECT REPORT</b>  | <b>25</b> |
| <b>SCHEDULE 4 – ROYALTIES FOR REGIONS PROJECT DETAILS</b>   | <b>26</b> |
| <b>1 Use of Funding by the Recipient</b>  | <b>26</b> |
| <b>2 Funding Amount</b>   | <b>26</b> |
| <b>3 Manner in which Funding is to be Paid</b>  | <b>26</b> |
| <b>4 Detailed Description of Project</b>  | <b>28</b> |
| <b>5 Special Conditions</b>   | <b>30</b> |
| <b>SCHEDULE 5 – ACCOUNTS AND REPORTING</b>  | <b>39</b> |
| <b>SCHEDULE 6 – PAYMENT OF THE FUNDING</b>  | <b>41</b> |
| <b>SCHEDULE 7 – REQUIREMENT FOR FUNDS TO BE INVESTED WITH<br/>THE WESTERN AUSTRALIAN TREASURY CORPORATION</b> | <b>42</b> |
| <b>EXECUTION OF THIS AGREEMENT</b>  | <b>43</b> |

THIS Agreement is made on the 21 day of July 2015.

**BETWEEN:**

**The State of Western Australia (State)**

**AND**

**Shire of Merredin (Recipient), of King Street, Merredin WA 6415.**

**RECITALS**

- (a) The Department administers Royalties for Regions.
- (b) The Recipient has applied to the State for financial assistance to undertake the Project and the State has agreed to provide the Funding to the Recipient on the terms and conditions set out in this Agreement.

## OPERATIVE PART

THE PARTIES AGREE as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement, unless repugnant to the context:

**Act** means the *Royalties for Regions Act 2009* (WA).

**Additional/New Milestones** has the meaning given to it in clause 4.1(c).

**Agreement** means this Financial Assistance Agreement, including its recitals, schedules and annexures.

**ASX** means Australian Securities Exchange.

**Associates** means any officer, employee, agent, consultant, contractor, nominee, licensee or adviser of the State, including any other Government Party.

**Auditor** means the Auditor General or a person who is independent of, and not related in any way to, the Recipient and is a member of CPA Australia, the Institute of Public Accountants in Australia or the Institute of Chartered Accountants in Australia.

**Auditor General** means the Auditor General for the State.

**Authorisation** means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, waiver, approval, authority or exemption from, by or within a Government Agency required under any Laws, and includes any renewal of, or variation to, any of them.

**Best Industry Practice** means:

- (a) the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a reputable and prudent person in providing works and services similar to the Works and under conditions comparable with those applicable to the Works;
- (b) compliance with applicable standards and codes, being the standards and codes specified in this Agreement or, if this Agreement does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied in the circumstances; and
- (c) compliance with all applicable Laws.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in the State.

**Claim** means any claim, proceeding, cause of action, action, demand or suit (including by way of a claim for contribution or an indemnity).

**Commencement Date** means the execution date of this Agreement.

**Commonwealth** means the Commonwealth of Australia.

**Construct** means one or more of construct, build, erect, assemble, renovate, refurbish and any similar or incidental activity or thing.

**Construction** means one or more of construction, building, erection, assembling, renovation, refurbishment and any similar or incidental activity or thing.

**Contact Officer** has the meaning given in clause 6 of this Agreement.

**Date for Project Completion** means the date by which the Recipient must complete the Project set out in item 4.3 of Schedule 4.

**Defect** means:

- a. any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the Works;
- b. any aspect of the Works which is not in accordance with the requirements of this Agreement; or
- c. any failure of the Works to perform at its expected range of capacity and operation in accordance with the relevant technical specifications for the Works and any other the requirements in this Agreement.

**Defects Liability Period** means, where the Recipient has obligations in this Agreement to Construct any Structure and therefore to perform Works, the defects liability period in relation to all or part of those Works contained in an agreement between the Recipient and any other party it engages to carry out all or part of those Works and, if the Recipient engages more than one party to carry out those Works, meaning a defects liability period is contained in more than one agreement, **Defects Liability Period** in this Agreement means the defects liability period in those agreements that finishes on the latest date.

**Department** means the Department of Regional Development which is a department of the State.

**Evaluation or Audit** means one or more of an audit, examination, investigation, inspection, review, evaluation, or a similar activity.

**Event of Default** has the meaning given in clause 11.1.

**Final Report** has the meaning given in Schedule 5 to this Agreement.

**Funding** means the amount specified in item 2 of Schedule 4.

**Government Agency** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

**Government Party** means any governmental, semi-governmental or local government authority, minister, department, statutory corporation, instrumentality or government owned corporation.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations.

**Insolvency Event** means the happening of any of these events:

- a. an order is made, or an application is made to a court for an order, that a body corporate be wound up; or

- b. except to reconstruct or amalgamate while solvent, a body corporate:
  - (i) is wound up or dissolved; or
  - (ii) resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so; or
  - (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or
- c. a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- d. a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened, or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- e. any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against, any asset or undertaking of a body corporate; or
- f. the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment of money or the recovery of any property; or
- g. a body corporate:
  - (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
  - (ii) stops or suspends payment of all, or a class of, its debts; or
  - (iii) is, or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
    - a. insolvent or unable to pay its debts when they fall due; or
    - b. the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth); or
  - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth); or
  - (v) ceases, or threatens to cease, to carry on all or a material part of its business; or
- h. a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken that could result in that event; or
- i. anything analogous or having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Law** means all applicable present and future laws including:

- a. all acts, ordinances, regulations by-laws, orders, awards and proclamations of the State of Western Australia or the Commonwealth;
- b. Authorisations;
- c. principles of law or equity;
- d. standards, codes, policies and guidelines; and
- e. the ASX listing rules.

**Leveraged Funding** has the meaning given to it in item 5.1 of Schedule 4.

**LGISWA** means LGISWA, ABN 59 780 338 975, established by WALGA under a trust deed made by WALGA on 19 September 1996.

**Liability** means any debt, obligation, Loss, compensation or charge of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

**Loss** means any loss, cost (including legal costs), expense, liability (whether arising in negligence or otherwise) or damage whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual, prospective or contingent or any fine or penalty.

**Milestones** means the milestones set out in item 4.3 of Schedule 4, with each milestone in relation to an Obligation being the date by which that Obligation must be completed, and includes the Date for Project Completion.

**Notification** means a notice by the State given in accordance with this Agreement that in the State's opinion the Recipient has properly complied with and fulfilled all of its Obligations, including that the Final Report provided by the Recipient in accordance with Schedule 5 is satisfactory.

**Obligation** means an obligation in this Agreement.

**Party** means each of the State or the Recipient as the context requires, and **Parties** means both of them.

**Project** means the initiative or activities described in item 4 of Schedule 4.

**Project Budget** means the budget set out in item 4.4 of Schedule 4.

**Provision** means any term, condition, undertaking, promise, obligation or warranty of, made or given under this Agreement.

**RCTI** means a recipient-created tax invoice, which term has the same meaning as in the GST Act.

**RDC** means Regional Development Commission.

**Related Body Corporate** has the meaning given to it in the *Corporations Act 2001* (Cth).

**Royalties for Regions** means the State's Royalties for Regions program under which monies standing to the credit of the Fund (as defined in section 3 of the Act) are expended for purposes permitted by the Act.

**Schedule** means any schedule to, and forming part of, this Agreement.

**Senior Staff Member** means a staff member of the Recipient who performs or holds any executive or managerial role including the role of chief executive

officer, chief financial officer or an equivalent or similar role, or the role of head of a department or division, manager, senior project officer, or any other senior role.

**Shortfall** has the meaning given to it in item 5.1 of Schedule 4.

**Site** means the site where the Works will be carried out.

**Special Conditions** means the conditions in item 5 of Schedule 4.

**Structure** means any building, structure, construction, infrastructure, facility, form or mode of transport or similar or other thing.

**WALGA** means the Western Australian Local Government Association constituted under section 9.58(1) of the *Local Government Act 1995* as a body corporate with perpetual succession and a common seal.

**Works** has the meaning given in item 5.2 of Schedule 4.

**Third Party Agreement** has the meaning given to it in Clause 12.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to a person include an individual, the estate of an individual and any type of entity or body of persons, including a corporation, an incorporated or unincorporated association or parties in a joint venture, a partnership or a trust and the legal personal representatives, successors and assigns of that person;
- (d) a reference to the State includes each and every agency department, instrumentality and emanation of the State;
- (e) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) references to this Agreement or any other instrument include this Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the Parties;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail and facsimile transmission;
- (h) an Obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (i) if a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (j) references to this Agreement include its recitals, schedules and annexures;



- (k) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (l) references to time are local time in Perth, Western Australia;
- (m) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (n) references to currency are to Australian currency unless otherwise stated;
- (o) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Agreement or any part thereof;
- (p) a reference to any thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (q) when the day or last day for doing an act is not a Business Day, then the day or last day for doing the act will be the directly preceding Business Day;
- (r) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (s) the phrases "described in", "set out" and "specified in" shall all read as if the words "expressly or impliedly" appeared immediately before them; and
- (t) reference to a contractor or sub-contractor means a contractor or sub-contractor at any tier.

## **2. DEPARTMENT**

- (a) The Department acts for and on behalf of the State and may at any time perform any of the State's Obligations and exercise the State's rights and powers in and under this Agreement, including taking any actions, making any requests and giving or withholding any consents or approvals which the State has the right or obligation to take, make, give or withhold under this Agreement or at Law.
- (b) The Recipient agrees to treat any notices or other communications (including any requests) from the Department as being from and on behalf of the State.
- (c) Where the Recipient has any Obligation to remit or pay monies to the State, the Recipient must make payment to the State in the manner requested by the State, including making payment into a bank account nominated by the State if so requested, which may be a bank account held in the name of the Department.

## **3. SCOPE OF THIS AGREEMENT**

- (a) The Recipient must:
  - (i) carry out all aspects of the Project and fulfil its Obligations in a competent, diligent, satisfactory and professional manner, and to a high standard;
  - (ii) comply with this Agreement; and

- (iii) provide funding and other resources, including human resources, adequate to properly meet its Obligations.
- (b) Subject to subitem 5.2.2(b) of Schedule 4 to this Agreement, the State must pay to the Recipient the Funding in the manner set out in Schedule 4 which must be used by the Recipient to carry out the Project and for no other purpose. For the avoidance of doubt, and without in any way limiting the State's rights under subitem 5.2.2(b) of Schedule 4, the State has no obligation to pay any part of the Funding to the Recipient until the Recipient has complied with its obligations in item 5.2 of Schedule 4.
- (c) The Recipient must:
  - (i) notify the Department of any actual, pending or threatened Claim, against one or more of the Recipient, a Related Body Corporate or a Senior Staff Member as soon as practicable after the Recipient first becomes aware of that Claim;
  - (ii) notify the Department immediately if the Recipient is in breach of any Law, receives an audit qualification, or breaches, fails to obtain or is under scrutiny through an inquiry or decree in respect to (as applicable) any consent, registration, approval, licence or permit or agreement, order or award binding on the Recipient or which the Recipient requires in order to carry out one or both of the Project or its business; and
  - (iii) notify the Department immediately if the Recipient becomes aware of any fraud or corruption in relation to the Project, the Funding, any interest which accrues on the Funding, or this Agreement.
- (d) The Recipient must:
  - (i) keep and maintain accurate, complete, up-to-date and properly detailed written records of income, expenditure, work, activities, progress, setbacks, problems and business and commercial arrangements and dealings in relation to either or both of this Agreement and the Project, and promptly provide the Department with information or documentation (relating in any way to the Project or this Agreement) requested by the State. The Recipient must ensure that all such information or documentation (as the case may be) is accurate, complete, up-to-date, properly detailed and not in any way misleading or deceptive;
  - (ii) provide the Department within five (5) Business Days of any request with written evidence (to the satisfaction of the State in its absolute discretion) that the Recipient is solvent and financially viable and secure and has the expertise and operational capability and capacity to carry out the Project; and
  - (iii) establish a separate account or cost centre within its financial system solely for the Funding and any interest which accrues on the Funding.

#### **4. OBLIGATIONS OF RECIPIENT**

##### **4.1 Use of Funding**

- (a) The Recipient must use the Funding (and any interest which accrues on the Funding) for the carrying out of the Project in accordance with this Agreement and the Project Budget. All of this expenditure must be effected in a commercially prudent, sensible and reasonable manner.
- (b) In carrying out the Project, the Recipient must comply with and meet all Milestones including completing the Project by the Date for Project Completion.
- (c) Without in any way limiting the State's rights under this Agreement, including under clause 11, or under Law, if the Recipient fails to comply with or meet a Milestone, the State may at any time impose additional milestones in relation to any aspect of the Project or replace any Milestones with new milestones (**Additional/New Milestones**). The State has absolute discretion as to whether to impose additional milestones, or replace existing Milestones, and as to what those new or replacement milestones will be and what aspects of the Project or Agreement they will relate to. In carrying out the Project, the Recipient must comply with and meet all Additional/New Milestones. If the Recipient fails to comply with or meet an Additional/New Milestone or any further milestones set by the State, the State has the same rights as set out above to at any time impose new or replacement milestones in its absolute discretion without in any way limiting the State's rights under this Agreement, including under clause 11, or under Law.

#### **4.2 No Changes**

The Recipient must not make any changes to the Project or any agreed budget (including the Project Budget) without the prior written consent of the State, which consent may be withheld in the State's absolute discretion.

#### **4.3 No Endorsement**

The Recipient agrees that nothing in this Agreement constitutes an endorsement by the State of any goods or services provided by the Recipient.

#### **4.4 Acknowledgement of the Department**

- (a) Any communications in relation to one or more of Royalties for Regions, the Project and this Agreement including presentations, publications, signage, articles, newsletters, or other literary works relating to the Project must:
  - (i) equally represent the Parties when Royalties for Regions' or Project logos are displayed, including containing the Department's and Recipient's logos and names in an equally prominent position; and
  - (ii) be consistent with the Department's Marketing, Communications and Acknowledgements Policy.
- (b) The respective roles of the State, Department and the Recipient must be acknowledged at relevant fora, conferences, and project launches where the Project is promoted.
- (c) The Parties shall:

- (i) work cooperatively at the senior management and officer levels;
  - (ii) maintain open communication, both formal and informal, to progress the objectives of this Agreement;
  - (iii) share information and knowledge as practicable; and
  - (iv) advise any stakeholders in the Project about arrangements between the Parties.
- (d) The Parties must coordinate joint communications when dealing with the media and stakeholders in the Project in relation to the Project on issues of significance or mutual concern, including circulating draft media statements, advertising proposals and advertisements between the Parties for comment prior to publication.
- (e) The Recipient must liaise with the Department prior to releasing, and gain the prior written approval of the State to the release of, any media statement, advertising proposal or advertisement by the Recipient in relation to the Project.

#### **4.5 Accounts and Reporting**

- (a) The Recipient must provide the Department with annual and progress reports containing the information and within the timeframes set out in Schedules 2, 3 and 5 of this Agreement.
- (b) The Recipient must provide the Department with a Final Report within three (3) months after receipt by the Recipient of any written request from the State to do so or of any earlier termination of this Agreement.
- (c) This clause 4.5 survives termination of this Agreement.

#### **4.6 General Undertakings of the Recipient**

The Recipient must:

- (a) at all times duly perform and observe its Obligations and must promptly inform the Department of any occurrence that might adversely affect its ability to do so in a material way;
- (b) undertake its Obligations with integrity, good faith and probity in accordance with good corporate governance practices;
- (c) not, nor attempt to, sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights, entitlements and powers or Obligations under this Agreement;
- (d) comply with all Laws; and
- (e) cooperate fully with the Department in the administration of this Agreement.

#### **4.7 Negation of Employment, Partnership and Agency**

- (a) The Recipient must not represent itself, and must ensure that its employees, contractors, sub-contractors or agents do not represent themselves, as being an employee, partner or agent of the State or the

Department or as otherwise able to bind or represent the State or Department.

- (b) The Recipient will not, by virtue of this Agreement, be or for any purpose be deemed to be, an employee, partner, or agent of the State or the Department, or have any power or authority to bind or represent the State or the Department.

#### **4.8 Notification**

- (a) The State intends to provide the Recipient with the Notification once it considers that the Recipient has properly complied with and fulfilled all of its Obligations including that the Final Report provided by the Recipient in accordance with Schedule 5 is satisfactory.
- (b) The Recipient acknowledges and agrees that:
  - (i) the State has absolute discretion in:
    - (A) determining whether and when it considers that the Recipient has properly complied with and fulfilled all of its Obligations including that the Final Report provided by the Recipient in accordance with Schedule 5 is satisfactory; and
    - (B) determining whether and when to provide the Notification to the Recipient; and
  - (ii) receipt of the Notification does not in any way preclude, or operate as a waiver of, the exercise or enforcement of any right power or remedy of the State under this Agreement or under any Law in relation to any Obligation of the Recipient which the State subsequently discovers has not been properly complied with by the Recipient.

#### **5. EVALUATION OR AUDIT RIGHTS**

At any time until Five (5) years after receipt of the Notification by the Recipient or any earlier termination of this Agreement, the State may arrange for an Evaluation or Audit to be carried out in relation to either or both of the Project and this Agreement by either the Department, an Auditor or any other person that the State in its absolute discretion wishes to carry out the Evaluation or Audit. If the State arranges for an Evaluation or Audit:

- (a) the State must notify the Recipient that the State has arranged for an Evaluation or Audit to be carried out; and
- (b) the Recipient must allow all persons appointed by the State to carry out the Evaluation or Audit to:
  - (i) have full access to all documents, records and premises in the control or possession of the Recipient for the purpose of carrying out the Evaluation or Audit; and
  - (ii) make and take copies of any and all documents and records in the control or possession of the Recipient relating in any way to either or both of the Project and this Agreement.

This clause 5 survives the termination of this Agreement.

## **6. CONTACT OFFICERS**

- (a) Each Party must appoint a staff member to be a contact officer in relation to the Project and this Agreement (this staff member and any replacement staff member performing the same role are referred to in this Agreement as the **Contact Officer**). The Contact Officer for each Party is authorised to act for that Party in relation to this Agreement and is the first point of contact for the other Party in relation to any disputes arising under this Agreement.
- (b) The details of each Party's Contact Officer as at the Commencement Date are set out in Schedule 1.
- (c) If a Party changes its Contact Officer that Party must notify the other Party in writing of the details (being the same categories of information set out in Schedule 1 for each Contact Officer) of the new Contact Officer within five (5) Business Days after the change.

## **7. REPAYMENT AND RETENTION OF THE FUNDING**

Within twenty (20) Business Days from receipt by the Recipient of any written request from the State to provide a Final Report or any earlier termination of this Agreement, the Recipient must remit to the State any Funding that the State has paid to the Recipient and that has not been spent or committed in accordance with this Agreement and any interest which accrues on that Funding. This clause 7 does not limit clause 11.3 in any way.

## **8. LIMITATION OF LIABILITY**

- (a) The State is not responsible or liable in any way for the success or otherwise of the Project or for any Losses suffered or incurred by the Recipient in undertaking the Project. The Recipient releases the State from all Liability suffered or incurred by the Recipient in relation to one or more of the Project, this Agreement and any related matter and agrees that neither it nor any Related Body Corporate will make a Claim against the State or any of the State's Associates arising directly or indirectly in relation to one or more of the Project, this Agreement and any related matter. This clause 8 may be pleaded by the State or its Associates as a bar to any proceedings commenced by the Recipient against the State or its Associates in relation to one or more of the Project, this Agreement and any related matter.
- (b) If the Funding (and any interest which accrues on the Funding) is insufficient for the Recipient to properly fulfil all of its Obligations, then the Recipient must still fulfil its Obligations at its own cost.
- (c) The Recipient must indemnify the State and must keep it indemnified and hold it and its officers, employees and agents harmless from and against all Claims or Liability, suffered or incurred by or brought against the State or any of its respective officers, employees and agents caused by, arising out of or relating directly or indirectly to any:
  - (i) breach of any Provision by the Recipient;

- (ii) act or omission of the Recipient or its employees, contractors, officers or agents which relates directly or indirectly to one or more of the Project, this Agreement and any related matter; or
- (iii) breach of a Law by the Recipient or any of its employees, contractors, officers or agents which relates directly or indirectly to one or more of the Project, this Agreement and any related matter.
- (d) The Recipient must comply with the insurance requirements set out in item 5.2 of Schedule 4.
- (e) This clause 8 survives the termination of this Agreement.

**9. FREEDOM OF INFORMATION ACT 1992, FINANCIAL MANAGEMENT ACT 2006 AND AUDITOR GENERAL ACT 2006**

- (a) This Agreement and information regarding it is subject to the *Freedom of Information Act 1992*. The State may publicly disclose information in relation to this Agreement, including its terms and the details of the Recipient.
- (b) Despite any express or implied provision of this Agreement to the contrary, nothing in this Agreement in any way alters, limits or affects the operation of the *Auditor General Act 2006*, the *Financial Management Act 2006* or the Recipient's obligations (if any) in relation to these Acts. To the extent permitted by law, the Recipient must allow the Auditor General, or an authorised representative, to have access to and audit (or otherwise review, examine or evaluate) the Recipient's records and information concerning either or both of this Agreement and the Project.

**10. NOTICES**

In order for any notice or other communication (including any request, approval or the like) that may or must be given under this Agreement to be effective, that notice or other communication:

- (a) must be in writing;
- (b) must be given by the Contact Officer of the Party giving notice or by another authorised officer of that Party (who must be a Senior Staff Member) if the Contact Officer is unable to give a notice or communication in a particular instance;
- (c) must be:
  - (i) hand-delivered or sent by prepaid post to the address of the Party receiving that notice or other communication set out in item 1 of Schedule 1;
  - (ii) sent by facsimile to the facsimile number of the Party receiving the notice set out in item 1 of Schedule 1; or
  - (iii) where this Agreement provides that the Recipient must notify the Department of, or provide it with, any occurrence or thing, hand-delivered or sent by prepaid post to the address of the Department set out in item 1 of Schedule 1 or sent by facsimile to the facsimile number of the Department set out in item 1 of Schedule 1;

- (d) subject to paragraph (e) of this clause 10, is taken to be received:
  - (i) in the case of hand delivery, on the date of delivery;
  - (ii) in the case of post, on the seventh Business Day after posting; and
  - (iii) in the case of facsimile, on the date of transmission; and
- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

## **11. DEFAULT AND TERMINATION**

### **11.1. Event of Default by the Recipient**

An **Event of Default** occurs if:

- (a) the Recipient breaches any Provision, which (if remediable) continues without remedy for five (5) Business Days after notice in writing has been served on the Recipient by the State. This subclause does not limit any other part of this clause 11.1 in any way; or
- (b) the Recipient breaches any Provision of this Agreement and such breach cannot be remedied. This subclause does not limit any other part of this clause 11.1 in any way; or
- (c) the Recipient fails to comply with or meet a Milestone, an Additional/New Milestone or any other milestone set by the Department in accordance with this Agreement; or
- (d) the Recipient suffers, or is or becomes subject to, an Insolvency Event; or
- (e) the State believes, in its absolute discretion, that the Recipient is unwilling or unable to comply with any one or more of the Provisions; or
- (f) the Recipient repudiates the Agreement; or
- (g) a material warranty given by or representation made by the Recipient is or becomes untrue; or
- (h) the Recipient makes a notification to the Department of the type set out in clause 3(c); or
- (i) the Recipient fails to comply with item 5.2 of Schedule 4; or
- (j) any aspect of this Agreement is or is held to be void, unenforceable, or invalid for whatever reason; or
- (k) the Recipient persistently, regularly, consistently or continually breaches the Provisions. This subclause does not limit any other part of this clause 11.1 in any way; or
- (l) where this Agreement provides for or contemplates the Parties reaching further agreement in relation to anything the subject of, or related to, either or both of this Agreement and the Project, this further agreement is not reached and recorded in writing within a reasonable time.

### **11.2. Effect of Event of Default**

- (a) If an Event of Default occurs, the State may terminate the Agreement by providing notice in writing to the Recipient and the Agreement is then terminated from the date specified in that notice.



- (b) Without limiting the State's rights under clause 11.2(a), if the Recipient is in breach of this Agreement, the State may suspend the performance of its Obligations until such time as it is satisfied in its absolute discretion that the Recipient has remedied that breach.
- (c) The State may terminate the Agreement by providing notice in writing to the Recipient if, in the opinion of the State exercisable in its absolute discretion, the Project is no longer necessary for any reason and the Agreement is then terminated from the date specified in that notice, although in this instance only, clause 11.3(c) of this Agreement does not apply.
- (d) If the State terminates this Agreement in accordance with this clause 11.2 or otherwise, or this Agreement otherwise comes to an end:
  - (i) clauses 2, 3(c), 4.4, 4.5, 4.7, 5, 7, 8, 9, 10, 11.3, 12 and 14 will survive termination of this Agreement; and
  - (ii) in respect of item 5.2 of Schedule 4:
    - (A) where the Recipient has an obligation in subitem 5.2.1 of Schedule 4 to effect, maintain and keep in force any policy of insurance set out in subitem 5.2.1 for a period referable to "the date the Recipient receives the Notification", that policy of insurance must now be effected, maintained and kept in force as if the words "the date the Recipient receives the Notification" are replaced with the words "the date the Recipient receives notice in writing from the State that the State is terminating this Agreement, or the date this Agreement otherwise comes to an end";
    - (B) where the Recipient has an obligation in subitem 5.2.1 of Schedule 4 to effect, maintain and keep in force any policy of insurance set out in subitem 5.2.1 until the end of any Defects Liability Period, it must continue to effect, maintain and keep in force that policy of insurance until the end of any Defects Liability Period; and
    - (C) subitems 5.2.2, 5.2.3, 5.2.4, 5.2.5 and 5.2.6 of Schedule 4 survive until the Recipient no longer has any Obligation to effect, maintain and keep in force any policy of insurance set out in subitem 5.2.1 of Schedule 4.

For the avoidance of doubt, this sub-clause 11.2(d) does not set out an exhaustive list of clauses, rights and obligations that will survive termination and any other clauses, rights and obligations that survive at common law are also intended by the parties to, and do, survive the termination of this Agreement.

### **11.3. No Further Funding and Recovery of Funding**

If the Agreement is terminated under clause 11.2, or terminated unlawfully by the Recipient:

- (a) the State has no further obligation to pay the Recipient any part of the Funding which has not yet been paid to the Recipient;

- (b) the Recipient must remit to the State within twenty (20) Business Days from the termination date specified by the State all Funding paid to the Recipient under the Agreement that has not been spent or committed in accordance with this Agreement by the termination date specified by the State and any interest which has accrued on that Funding; and
- (c) subject to clause 11.2(c), if requested by the State in writing, the Recipient must remit to the State within twenty (20) Business Days from the date of the State's request all Funding paid to the Recipient under the Agreement that has been spent or committed and any interest which has accrued on that Funding. If the State only requests the Recipient to remit part of those monies, then the Recipient must remit that part of those monies within twenty (20) Business Days from the date of the State's request.

## 12. AGREEMENT BETWEEN THE RECIPIENT AND A THIRD PARTY

If the Recipient enters into an agreement with any other party relating in any way to either or both of this Agreement and the Funding (**Third Party Agreement**), including a Third Party Agreement with a party to deliver or fulfil any of the Recipient's Obligations or to provide services to the Recipient to assist or enable it to fulfil its Obligations, the Recipient must ensure that the other party:

- (a) has obligations in the Third Party Agreement which, if properly fulfilled, will ensure that the Recipient properly fulfils its corresponding Obligations and to the extent necessary to ensure that the other party has these obligations, the Recipient must ensure that the Third Party Agreement mirrors the terms of this Agreement; and
- (b) agrees to the Recipient providing the State with any documents that the other party provides to the Recipient and to the State attending any meetings it has with the Recipient if the State wishes to obtain copies of such documents or attend such meetings.

## 13. GOODS AND SERVICES TAX (GST)

- (a) For the purposes of this Agreement, including this clause 13, the terms "GST", "recipient-created tax invoice", "registered", "supply", "tax invoice", and "taxable supply" have the same meanings as in the GST Act.
- (b) Subject to clause 13(c) below, If GST is or becomes payable by a party (**Supplier**) in relation to any supply that it makes under, in connection with, or resulting from, this Agreement, then (unless the consideration for that supply is expressly stated to include GST) in addition to any consideration provided by a party (**Supplied Party**) for that supply, the Supplied Party must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (**Additional Amount**) at the same time as the relevant consideration or any part of it is provided.
- (c) Subject to clause 13(e) below, the obligation in clause 13(b) above to pay the Additional Amount only arises once the Supplier has issued a tax invoice to the Supplied Party in respect of the Additional Amount.

- (d) If the Funding is consideration for the supply of anything under, in connection with, or resulting from, this Agreement which is a taxable supply under the GST Act, the Funding is exclusive of GST.
- (e) If the Funding is consideration for the supply of anything under, in connection with, or resulting from, this Agreement which is a taxable supply under the GST Act, the State may choose (in its absolute discretion) by notice to the Recipient to have the Department issue a RCTI in respect of the Additional Amount and if the State so chooses:
  - (i) the Department will issue a RCTI in respect of the Additional Amount and the Recipient will not issue a tax invoice in respect of that Additional Amount;
  - (ii) the Recipient warrants that it is registered for GST and will notify the Department as soon as practicable of any change to the Recipient's registration;
  - (iii) the State warrants that the Department is registered for GST and will notify the Recipient as soon as practicable of any change to the Department's registration; and
  - (iv) the State will indemnify and keep indemnified the Recipient for any liability for GST and any related penalty or interest charge that may arise from a statement of GST payable on the supply for which the Department issues a RCTI under this Agreement.

#### **14. WAIVER**

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by both Parties.
- (b) A waiver by either Party will not prejudice that Party's rights in relation to any further breach of this Agreement by the other Party.
- (c) Any failure to enforce any part of this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party, will not be construed as a waiver of any rights under this Agreement or under any Law.

#### **15. ENTIRE AGREEMENT**

This Agreement constitutes the entire, full and complete understanding and agreement between the Parties in relation to its subject matter and supersedes all prior communications, negotiations, arrangements and agreements between the Parties (or between the State and any party negotiating on behalf of the Recipient, including LGISWA) with respect to the subject matter of this Agreement.

#### **16. ASSIGNMENT**

- (a) This Agreement is personal to the Recipient and may not be assigned by the Recipient without the State's consent, which may be withheld in the State's absolute discretion. The State may at any time, in its absolute discretion, assign or transfer its rights and Obligations under this Agreement as it sees fit.

- (b) For the purposes of this clause 16, the Recipient shall be deemed to have assigned this Agreement if any act, matter or thing is done or occurs, the effect of which is, in the opinion of the State, to transfer, directly or indirectly, the management or control of the Recipient.

**17. VARIATION**

Any modification, amendment or other variation to this Agreement must be made in writing, and must, unless the State in its absolute discretion directs in writing otherwise, be duly executed by both Parties.

**18. RIGHTS, POWERS AND REMEDIES**

The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

**19. GOVERNING LAW**

This Agreement is governed by the laws in force in the State. Each Party irrevocably submits unconditionally to the non-exclusive jurisdiction of the Courts of Western Australia and of all Courts competent to hear appeals therefrom in relation to any legal action, suit or proceeding arising out of or with respect to the Agreement.

**20. ACCESS TO LAND**

If the Project is being undertaken on land (whether freehold or Crown land) that is not owned, leased or managed by the Recipient, the Recipient must obtain and have in place from the Commencement Date until receipt of the Notification by the Recipient the written consent of the person owning or leasing that land to undertake the Project on that land.

**21. SCHEDULES**

- (a) Any express or implied provision of any Schedule to this Agreement is hereby deemed to be a provision of this Agreement and therefore must be complied with (by the relevant Party) in accordance with its terms.
- (b) In clause 21(a), "provision" includes term, condition, warranty, stipulation, right, Obligation, representation and the like.
- (c) Without limiting the preceding provisions of this clause 21, the Recipient agrees to comply with the Special Conditions, if any.

## SCHEDULE 1 – CONTACT OFFICERS

### 1 Notice Addresses

#### 1.1 State and Department

|                  |                                |
|------------------|--------------------------------|
| Registered Mail: | PO Box 1143 WEST PERTH WA 6872 |
| Facsimile:       | (08) 6552 1850                 |

#### 1.2 Recipient

|                  |                            |
|------------------|----------------------------|
| Registered Mail: | PO Box 42 MERREDIN WA 6415 |
| Facsimile:       | (08) 9041 2379             |

## 2. Contact Officers

### 2.1 State

|                        |   |
|------------------------|---|
| <b>Name:</b>           | Brett Bylsma                                |
| <b>Job Title:</b>      | Senior Project Officer                      |
| <b>Phone:</b>          | (08) 6552 2014                              |
| <b>Facsimile:</b>      | (08) 6552 1850                              |
| <b>Email:</b>          | brett.bylsma@drd.wa.gov.au                  |
| <b>Postal Address:</b> | PO Box 1143, WEST PERTH WA 6872             |
| <b>Street Address:</b> | Level 12, 140 William Street, PERTH WA 6000 |
| <b>Supervisor:</b>     | Geoff Comben, Manager Infrastructure        |

### 2.2 Recipient

|                        |   |
|------------------------|---|
| <b>Name:</b>           | Greg Powell                                       |
| <b>Job Title:</b>      | Chief Executive Officer                           |
| <b>Phone:</b>          | (08) 9041 1611                                    |
| <b>Facsimile:</b>      | (08) 9041 2379                                    |
| <b>Email:</b>          | ceo@merredin.wa.gov.au                            |
| <b>Postal Address:</b> | PO Box 42, MERREDIN WA 6415                       |
| <b>Street Address:</b> | Corner King and Barrack Streets, MERREDIN WA 6415 |
| <b>Supervisor:</b>     | N/A   |

### 2.3 Recipient financial contact

|                   |   |
|-------------------|---|
| <b>Name:</b>      | Charlie Brown                           |
| <b>Job Title:</b> | Executive Manager of Corporate Services |
| <b>Phone:</b>     | (08) 9041 1611                          |
| <b>Email:</b>     | emcs@merredin.wa.gov.au                 |

#### 2.4 Regional Development Commission contact

|                        |  |
|------------------------|--|
| <b>Name:</b>           | Lauren Clarke                          |
| <b>Job Title:</b>      | Research Officer                       |
| <b>Phone:</b>          | (08) 9881 5888                         |
| <b>Facsimile:</b>      | (08) 9622 7406                         |
| <b>Email:</b>          | lauren.clarke@wheatbelt.wa.gov.au      |
| <b>Postal Address:</b> | PO Box 250, NORTHAM WA 6401            |
| <b>Street Address:</b> | 298 Fitzgerald Street, NORTHAM WA 6401 |
| <b>Supervisor:</b>     | Wendy Newman                           |

## **SCHEDULE 2 – FINANCIAL REPORT**

*The State intends to provide relevant templates to assist the Recipient in completing its reporting Obligations.*

*The information listed below is indicative of the information requested by the State and may be varied by the State from time to time in its absolute discretion.*

1. Total approved Royalties for Regions budget for the current financial year.
2. Balance brought forward from previous reporting period.
3. Funding received from the State to date.
4. Total monies committed in the current period from Funding and other funds received (if any), including Leveraged Funds.
5. Actual payments to date.
6. Initial estimated cost of the Project.
7. Amount of interest earned on the Funding and on any income generated by the Project.
8. Amount of Leveraged Funding from other sources.
9. Forecast cost to complete the Project.
10. Use of funds: Infrastructure/Services/Administration.

### **SCHEDULE 3 – PROJECT REPORT**

*The State will provide relevant templates to assist the Recipient in completing its reporting Obligations.*

*The information listed below, is indicative of the information requested by the State and may be varied by the State from time to time in its absolute discretion.*

1. Fulfilment of Recipient's Obligations.
2. To what degree has the Recipient achieved Royalties for Regions' objectives in fulfilling its Obligations.
3. Project indicators.
4. Milestones/achievements target for the reporting period.
5. Milestones/actual achievements for the reporting period.
6. Explanation of variances between target and actual achievements, including reasons why milestones were not achieved, impediments encountered, action taken to overcome these and potential future impediments if any.
7. Risks in relation to the Project, including in relation to completing the Recipient's Obligations and solutions proposed by the Recipient in relation to these risks.
8. Funding allocation by project category.
9. What the Funding received has been spent on.
10. Provide copies of contracts entered into between the Recipient and any other party in relation to the Project, including Third Party Agreements.



## SCHEDULE 4 – ROYALTIES FOR REGIONS PROJECT DETAILS

### 1. Use of Funding by the Recipient

Without limiting clause 8(b) or clause 11.3 in any way, the Recipient must use the Funding (and any interest which accrues on that Funding) to carry out the Project in accordance with this Agreement and for no other purpose.

### 2. Funding Amount

Funding of \$2,075,800 (excluding GST) will be provided by the State to the Recipient in the manner and within the timeframes outlined in item 3.1 of this Schedule 4 and in Schedule 6.

Disbursal of Funding will be subject to availability of funds through the State budget and mid-year review of the State budget each financial year.

### 3. Manner in which Funding is to be Paid

After this Agreement has been executed by both Parties, the Department will authorise the payment of the Funding to the Recipient in the manner described in item 3.1 of Schedule 4, Schedule 6 and Schedule 7. The full amount of the Funding is required to be invested by the Recipient with the Western Australian Treasury Corporation as outlined in Schedule 7. The Recipient may draw funds held under the terms in Schedule 7 in the manner described in item 3.2.

The transfer of the Funding will be subject to an assessment, with the Department being satisfied with the results of the assessment, of actual Project expenditure and material cash at bank balances of the Funding previously paid and available to the Recipient.

#### 3.1. *Payment of Royalties for Regions Funding*

All the amounts set out in the table below are exclusive of GST.

| <b>Deliverable</b>                              | <b>Payment details and timing</b>   | <b>Amount<br/>\$</b> |
|---|---|----------------------|
| Execution of the Financial Assistance Agreement | The Department will initiate payment following: <ul style="list-style-type: none"><li>the signing of this Agreement by both Parties,</li><li>a valid Tax Invoice.</li></ul> | 2,075,800            |

**3.2. Payment of Royalties for Regions Funding held in Western Australian Treasury Corporation Account**

All the amounts set out in the table below are exclusive of GST.

| <b>Deliverable</b>                          | <b>Payment details and timing</b>  | <b>Amount<br/>\$</b> |
|---|--|----------------------|
| Execution of this Agreement by both Parties | <p>1<sup>st</sup> payment will be authorised following:</p> <ul style="list-style-type: none"> <li>• execution of this Agreement by both Parties.</li> <li>• evidence of a Memorandum of Understanding between the CEACA local Governments, valid for the project duration</li> <li>• provision of a valid Western Australian Treasury Corporation Notice of Withdrawal.</li> </ul>  | 500,000              |
| Commencement of the project                 | <p>2<sup>nd</sup> payment will be authorised following:</p> <ul style="list-style-type: none"> <li>• evidence of the commencement of site works</li> <li>• evidence of the engagement of a Project Manager to manage the project</li> <li>• evidence of the Incorporation of the CEACA organisation</li> <li>• evidence that the Department of Aboriginal Affairs has been consulted in regards to the proposed Nungarin site</li> <li>• provision of a valid Western Australian Treasury Corporation Notice of Withdrawal.</li> </ul> | 1,000,000            |
| Project 50% complete                        | <p>3<sup>rd</sup> payment will be authorised following:</p> <ul style="list-style-type: none"> <li>• evidence of project 50% complete</li> <li>• provision of a valid Western Australian Treasury Corporation Notice of Withdrawal.</li> </ul>   | 575,800              |
| <b>Total Payment</b>                        |  | <b>2,075,800</b>     |

#### 4. Detailed Description of Project

##### 4.1. Project Description

The assembling and servicing of 54 lots for the construction of Independent Living Units in 10 Shires (Bruce Rock, Kellerberrin, Koorda, Merredin, Mt Marshall, Mukinbudin, Nungarin, Trayning, Wyalkatchem, and Yilgarn).

##### 4.2. Recipient's Obligations

The Recipient must perform the Obligations set out in the table below by the Milestones (see item 4.3 of this Schedule 4).

| Recipient's Obligations   | Performance Measures                        | Performance method Measure  |
|---|---|---|
| Competitive tender process  | Tenders called for completion of site works | Documentation evidencing a competitive tender process consistent with the provisions of the Local Government Act (1995) and the Local Government Act (Functions and General) Regulations (1996) |
| <p>At least 54 lots prepared and serviced for construction of independent living units including:</p> <ul style="list-style-type: none"> <li>• 8 lots in Bruce Rock</li> <li>• 8 lots in Kellerberrin</li> <li>• 4 lots in Koorda</li> <li>• 8 lots in Merredin</li> <li>• 4 lots in Mt Marshall</li> <li>• 2 lots in Mukinbudin</li> <li>• 3 lots in Nungarin</li> <li>• 4 lots in Trayning</li> <li>• 5 lots in Wyalkatchem</li> <li>• 8 lots in Yilgarn</li> </ul> | Works completed to specification            | Certificates of Practical Completion or other suitable documentation detailing completion of works to specification   |

#### 4.3. Project Timeframe

The Recipient agrees to commence the Project within six (6) months after execution of the Agreement.

| Obligations (Deliverables)   | Milestone               |
|--|-------------------------|
| Project planning & procurement   | 30 September 2015       |
| Detailed site investigations including soil testing and cadastral and feature survey | 31 December 2015        |
| Master planning and engineering design of services and infrastructure                | 31 December 2015        |
| Final approvals and permits as required  | 30 March 2016           |
| Forward works by Shires  | 30 March 2016           |
| Letting of works package   | 30 June 2016            |
| Site works   | 30 September 2016       |
| <b>Project Completion</b>  | <b>31 December 2016</b> |

#### 4.4. Project Budget

| Item of Expenditure                 | Budget (\$)      | Source of Funds<br>(What is your source of funding?) |
|-------------------------------------|------------------|--|
| Project management                  | 38,100           | Royalties for Regions                                |
| Professional fees                   | 168,000          | Royalties for Regions                                |
| Site Development                    | 1,858,000        | Royalties for Regions                                |
|                                     | 382,000          | Shires   |
| Project administration & compliance | 11,700           | Royalties for Regions                                |
|                                     | 5,000            | Shires   |
| <b>Total Budget</b>                 | <b>2,462,800</b> |  |

## 5. Special Conditions

### 5.1. Leveraged Funding

The Recipient must obtain the funding from the sources set out in the table immediately below (**Leveraged Funding**), which the Recipient must use to carry out the Project in accordance with this Agreement and for no other purpose:

| Source of Leveraged Funding | Amount (\$) |
|-----------------------------|-------------|
| Nil                         | -           |

- (a) Despite anything express or implied to the contrary in this Agreement, before the Recipient is entitled to any payment under this Agreement, it has to provide evidence to the Department which proves to the satisfaction of the State, in its absolute discretion, that the Recipient has obtained the Leveraged Funding. If the Recipient does not obtain any part of the Leveraged Funding (that part being the **Shortfall**), the State may reduce the amount it is to pay the Recipient under this Agreement by the amount of the Shortfall.

### 5.2. Insurance

#### 5.2.1 Policies of insurance

##### 5.2.1.1 Effecting, maintaining and keeping in force policies of insurance

Subject to sub-item 5.2.1.3 below, the Recipient must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, from the Commencement Date until it receives the Notification (or for a longer period where it is required to keep any insurance current for a longer period as set out in this subitem below) adequate insurance cover in its name for its rights and interests in relation to the Project:

- (a) with a reputable and solvent insurer (with a Standard and Poor's rating of not less than A minus) which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company; or
- (b) only for insurance policies which the Recipient effects, maintains and keeps in force, with LGISWA instead of an insurer of the type set out in subitem 5.2.1.1(a) immediately above,

including effecting, maintaining and keeping in force, or causing to be effected, maintained and kept in force, the following policies of insurance for the Project:

- (c) a public liability policy for an amount of indemnity of not less than ONE HUNDRED MILLION DOLLARS (\$100,000,000) (or any higher sum as is determined by the State from time to time (acting reasonably)) for any one occurrence and unlimited as to the number of occurrences which must:
- (i) be effected, maintained and kept in force from the Commencement Date until the later of one year from the date the Recipient receives the Notification and the end of any Defects Liability Period;

- (ii) must contain or be endorsed to contain an indemnity extension in favour of the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the negligent acts or omissions of the Recipient, its employees, contractors or agents in their performance or non-performance of the Project;
- (iii) cover liability resulting from loss of or damage to property and the death or illness of, or injury to, any person (other than liability which is required by Law to be insured under a workers compensation policy of insurance) arising out of or in connection with the Project, this Agreement or both;
- (iv) be endorsed to cover;
  - (A) the use of unregistered motor vehicles, plant and equipment; and
  - (B) sudden and accidental pollution.
- (d) where the Recipient has obligations in this Agreement to Construct any Structure, a policy of insurance in relation to all work required for and incidental to the Construction of that Structure and rectifying Defects (**Works**) which must:
  - (i) be in the joint names of the Recipient and all agents and contractors employed from time to time in relation to the Works and:
    - (A) note the State as a person to whom the benefit of the insurance cover provided by that insurance policy extends; and
    - (B) expressly provide that to the extent (if any) that noting the State in the manner set out in subitem 5.2.1.1(d)(i)(A) above does not have the effect that the State's interests and rights, and liabilities of, and owed to, the State (howsoever these interests, rights and liabilities arise, including if they arise under clause 8(c) of this Agreement) are noted on that insurance policy, that insurance policy also notes those interests, rights and liabilities;
  - (ii) cover against any and all physical loss or damage to the Works including covering the:
    - (A) full replacement value of that Structure, including any extension of or addition to that Structure;
    - (B) the cost of removal of materials and debris from the Site;
    - (C) any loss or damage to any equipment used in relation to the Works;
  - (iii) covering the cost of making good resultant damage arising in connection with faulty design;
  - (iv) provide that any breach of the conditions of this policy of insurance by an insured under the policy will not in any way prejudice or diminish any rights which any other person has under the policy;
  - (v) provide that the insurance provided under this policy is primary with respect to the interest of the State and any other insurance or self insurance arrangements maintained by the State is excess to and not contributory with this policy; and

- (vi) be effected, maintained and kept in force from the Commencement Date until the end of any Defects Liability Period, or if there is no Defects Liability Period, then until one year from the date the Recipient receives the Notification;
- (e) where the Recipient has obligations in this Agreement to Construct any Structure, a vehicle and equipment policy of insurance for the Recipient's vehicles, registered plant and equipment brought on to the Site or used in connection with the Project whether owned, hired or leased (**Recipient's Vehicles**) in addition to any compulsory motor vehicle third party insurance required to be taken out by the Recipient under any Law. This vehicle and equipment insurance policy must:
  - (i) cover third party liability for personal injury or death (other than compulsory third party motor vehicle insurance) and property loss or damage involving the Recipient's Vehicles;
  - (ii) be for not less than \$50,000,000 third party liability insurance for any one occurrence and unlimited as to the number of occurrences;
  - (iii) to the extent available at the times of placement and each renewal, be endorsed to cover the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the use of the Recipient's vehicles; and
  - (iv) be effected, maintained and kept in force from the Commencement Date until the later of one year from the date the Recipient receives the Notification and the end of any Defects Liability Period;
- (f) where the Recipient has obligations in this Agreement to Construct any Structure, in addition to the insurance cover set out in subitems 5.2.1.1(d) and 5.2.1.1(e) of this Schedule 4, it must take out, or cause to be taken out, any other policies of insurance consistent with Best Industry Practice for the engineering, design, procurement, supply, Construction, testing and commissioning of the Project, which must be effected, maintained and kept in force from the Commencement Date until the end of any Defects Liability Period, or if there is no Defects Liability Period, then until one year from the date the Recipient receives the Notification;
- (g) where the Recipient is in the business of providing professional services, has Obligations to provide professional services, or both, a professional indemnity policy of insurance, which must:
  - (i) to the extent available at the times of placement and each renewal, be endorsed to contain an indemnity extension in favour of the State if the Recipient has Obligations to provide professional services;
  - (ii) include one full automatic reinstatement of the limit of liability;
  - (iii) cover liability arising from any negligent act or omission in connection with or arising out of the professional activities and duties under this Agreement;
  - (iv) cover claims in respect of this Agreement or otherwise under the *Competition and Consumer Act 2010 (Cth)*, *Fair Trading Act 2010 (WA)*, *Fair Trading Act 1987 (WA)*, and any similar legislation in any other

state or territory insofar as they relate to the provision of professional advice; and

- (v) be effected, maintained and kept in force from the Commencement Date until seven (7) years from the date the Recipient receives the Notification for not less than \$1,000,000 for each and every claim and in the aggregate annually; and
- (h) a policy of insurance which:
  - (i) insures against liability under any applicable statute relating to workers or accident compensation for death of, or illness or injury to, natural persons employed or engaged by the Recipient which are required to be insured under the *Workers' Compensation and Injury Management Act 1981 (WA)* or equivalent legislation in other Australian jurisdictions in work under this Agreement including liability by statute and, where available, at common law; and
  - (ii) which must be effected, maintained and kept in force from the Commencement Date until the date the Recipient receives the Notification. Where common law claims are not fully covered under this policy of insurance, the Recipient must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, from the Commencement Date until the date the Recipient receives the Notification a policy of insurance which insures against employer's liability at common law for not less than fifty million dollars (\$50,000,000.00) for any one event.

#### 5.2.1.2 *Noting the State*

In accordance with subitem 5.2.1.1(d), where the Recipient has obligations in this Agreement to Construct any Structure, it must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, a policy of insurance in relation to the Works in the terms set out in that subitem, including noting the State in the manner set out in subitem 5.2.1.1(d)(i). Each other policy of insurance which the Recipient effects, maintains and keeps in force (or causes to be effected, maintained and kept in force) in relation to the Project, must note the interests of the State.

#### 5.2.1.3 *State may extend time by which Recipient has to procure certain policies of insurance*

The Recipient must comply in full with subitem 5.2.1.1 of this Schedule 4 except that, with respect to the policies of insurance required to be effected, maintained and kept in force (or caused to be effected, maintained and kept in force) set out in subitems 5.2.1.1(d), 5.2.1.1(e) and 5.2.1.1(f), if the State has provided written notice to the Recipient prior to the Commencement Date (which notice, notwithstanding that this Agreement had not been executed at the time the notice was given, must comply with clause 10 of this Agreement as if both parties were bound by clause 10 at the time the notice was given) which:

- (a) provides that the Recipient may effect (or cause to be effected) one or more of those policies of insurance from a later date than the Commencement Date; and



- (b) specifies the date from which the Recipient must effect, maintain and keep in force (or cause to be effected, maintained and kept in force) that policy of insurance or those policies of insurance (as the case may be),

then the Recipient may effect (or cause to be effected) that policy of insurance or those policies of insurance (as the case may be) from the date specified in that written notice. For the avoidance of doubt, if the State provides written notice of the type outlined in this subitem 5.2.1.3:

- (c) the policy of insurance or policies of insurance (as the case may be) to be effected, maintained and kept in force by the Recipient (or which it causes to be effected maintained and kept in force) specified in that written notice must comply in all other respects with the relevant Provisions in subitem 5.2.1.1 (and comply with subitem 5.2.1.2) and only the time by which the Recipient must effect that policy of insurance or those policies of insurance (as the case may be) is altered; and
- (d) if that notice only alters the time by which one or some of the policies of insurance set out in subitems 5.2.1.1(d), 5.2.1.1(e) and 5.2.1.1(f) must be effected, the Recipient must still effect the other policy of insurance or policies of insurance (as the case may be) by the Commencement Date.

#### 5.2.2 *Proof of insurance*

- (a) Within ten (10) Business Days from:
  - (i) the Commencement Date;
  - (ii) the date the Recipient receives the Notification (except in relation to insurance cover which is only required under this Agreement to be maintained until receipt by the Recipient of the Notification);
  - (iii) the date any insurance policy is renewed or varied; and
  - (iv) any other request by the State,

the Recipient must provide the Department with the following information in relation to all insurance cover for the Project (regardless of whether the Recipient or another party effected the policies or whether one or more of the policies are in the joint names of the Recipient and one or more other parties):

- (v) certificates of currency from the insurer which provided the insurance. These certificates of currency must be accurate as at the time of issue, must not contain a general disclaimer to the effect that they can not be relied upon and must contain sufficient information to enable the Recipient to demonstrate to the satisfaction of the State in its absolute discretion that the Recipient has complied with its Obligations under item 5.2 of Schedule 4. Where, in the opinion of the State in its absolute discretion, these certificates of currency do not provide this information, then the Recipient must provide such further information as the State may require to demonstrate compliance with the Recipient's Obligations under item 5.2 of Schedule 4. The Recipient is entitled to redact commercially sensitive information in any insurance policies which relates to other projects; and
  - (vi) receipts for premiums paid for each policy of insurance.
- (b) If, after being requested in writing by the State to do so, the Recipient fails to produce evidence (to the satisfaction of the State in its absolute discretion) of

compliance with its Obligations under Item 5.2 of Schedule 4, the State may do one or more of the following:

- (i) effect and maintain the required insurance and pay the premiums. The amount paid by the State in effecting and maintaining the required insurance is a debt due and payable on demand from the Recipient to the State;
- (ii) exercise its rights under clause 11 of this Agreement; or
- (iii) suspend one or both of the performance of the Recipient's Obligations and the provision of Funding to the Recipient until evidence that the Recipient has complied with its Obligations under item 5.2 of Schedule 4 is provided to the Department and is satisfactory to the State in its absolute discretion.

The rights given to the State by this subitem 5.2.2(b) of Schedule 4 are in addition to any other rights the State may have.

### *5.2.3 Recipient's Obligations and Recipient's further obligations*

- (a) Unless the Recipient first obtains the State's prior written consent, which consent can be given or withheld by the State in its absolute discretion, the Recipient must not:
  - (i) do, allow to be done by another person (except the State), or suffer the doing of, anything which adversely affects any insurance cover taken out by, or on behalf of, the Recipient or the State in relation to the Project or this Agreement or both, or which may increase the premium on that insurance;
  - (ii) store or use inflammable, volatile or explosive substances on the site or premises on which the Project is being carried out except those normally used in the Recipient's business; or
  - (iii) settle or compromise, or allow any other person (except an insurer who is legally entitled to, and does, take over conduct of the matter) to settle or compromise, any claim under any policy of insurance relating to the Project or this Agreement, or both.
- (b) The Recipient must give notice to the Department immediately if:
  - (i) an event occurs which may give rise to a claim under any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project) and must keep the Department informed of subsequent developments concerning the claim. This requirement does not apply to those occurrences that may give rise to a motor vehicle or worker's compensation claim;
  - (ii) an event occurs which could adversely affect any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project); or
  - (iii) any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project) are cancelled.

- (d) The Recipient must pay (or procure the payment of) all premiums and all deductibles applicable to the policies of insurance effected by it, or which it causes to be effected, in relation to the Project and promptly reinstate any of these policies which lapse or under which cover is exhausted.
- (e) Each policy of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project must:
  - (i) provide that where the number of persons (in each case, an "insured") who are either:
    - (1) named on that policy of insurance; or
    - (2) otherwise entitled to insurance cover under that policy of insurance, exceeds one person, that policy of insurance must include a cross liability clause in which the insurer agrees to waive all express and implied rights of subrogation against any insured under that policy and agrees that the term "insured" applies to each insured under that policy as if a separate policy of insurance has been issued to each of them in the same terms as that policy of insurance but not so as to increase the limit of liability or sum insured under that policy;
  - (ii) state that they are governed by the laws of Western Australia and that each insurer irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia; and
  - (iii) provide that the excess in any of these policies must not exceed 1% of the insurance amount.
- (f) The Recipient must not do or omit to do, and must ensure that the Recipient's personnel (including its agents and contractors) not do or omit to do, any act or thing that would be grounds for an insurer to refuse to pay the whole of or any part of a claim made under any of the insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project.
- (g) The Recipient must give the Department prior notice of at least one (1) month of the cancellation, non-renewal, or a material alteration to the detriment of cover of any of the insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project or in accordance with the *Insurance Contracts Act 1984 (Cth)*.

#### 5.2.4 Insurance policies primary

- (a) Each policy of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project is primary and not secondary to the indemnity given by the Recipient to the State in clause 8(c) of this Agreement. However, the State is not obliged to make a claim or institute proceedings against any insurer under any of these insurance policies before enforcing any of its rights or remedies under the indemnity given by the Recipient to the State in clause 8(c) of this Agreement, or generally. In addition, the parties acknowledge that if a claim is made under any of these insurance policies by the State, it is their intention that the insurer cannot require the State to exhaust the indemnity given by the Recipient to the State in clause 8(c) of this Agreement before the insurer considers or meets the relevant claim.

- (b) The Recipient acknowledges that regardless of whether any of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project respond or not, and regardless of the reason why any of these insurance policies respond or fail to respond, the Recipient is not released (in whole or in part), from any of its obligations under the indemnity given by the Recipient to the State in clause 8(c) of this Agreement, or any of its Obligations generally.

#### 5.2.5 *Settlement of claims*

Upon settlement of a claim under any of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project, to the extent that the work to be reinstated or services to be repeated have been the subject of a payment of Funding by the State to the Recipient, the State may determine in its absolute discretion whether the Recipient must repay that Funding (and any interest accrued on that Funding) to the State out of the proceeds of insurance or use the proceeds of insurance to reinstate the work or repeat the services for which the Funding was provided. If the State requests that the Recipient repay that Funding (and any interest accrued on that Funding), or any part of that Funding (and any interest accrued on that Funding), to the State, the Recipient must do so:

- (a) within ten (10) Business Days of the date of the State's request (if the Recipient has already received the proceeds of insurance); and
- (b) within ten (10) Business Days of receipt of the proceeds of insurance (if the Recipient has not received the proceeds of insurance by the date of the State's request).

In order to ensure that the Recipient can fulfil its obligations under this subitem 5.2.5, the Recipient must ensure that any other party (except the State) named as an insured or otherwise noted or covered under any of the policies of insurance effected by the Recipient in relation to the Project, or which the Recipient causes to be effected in relation to the Project, has a contractual obligation to the Recipient to, if it receives proceeds of insurance under any of those policies, pay on request:

- (a) the Recipient; or
- (b) the State if directed by the Recipient to do so,

within a sufficient timeframe a sufficient part of those proceeds of insurance, to enable the Recipient to fulfil its obligation to the State in this subitem 5.2.5.

#### 5.2.6 *Insurance review*

- (a) The State may, from time to time, review the adequacy and appropriateness of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project. As part of this review, the State may ascertain whether, in the State's reasonable opinion, any additional insurance policies are required, or whether any insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project and maintained at the time of the review are still required or require amendment.
- (b) To allow the State to perform this function, it may make a request for the documents set out in subitem 5.2.2 of this Schedule 4 which the Recipient must comply with.

- (c) The Recipient must commence negotiations to obtain insurances or amend the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project within ten (10) Business Days of receiving notice from the State to do so, and must, as soon as practicable thereafter at the Recipient's own cost, obtain insurances or amend the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project to reflect the recommendations made by the State following its review.
- (d) The Recipient must promptly notify the Department if it is unable to, or it becomes apparent that it will be unable to, comply with the recommendations arising in connection with the State's review. The parties must determine what action, if any, is to be taken following receipt of this notice.

### *5.3. Regional Development Commission (RDC) Managed Agreements*

The Wheatbelt Development Commission acts for and on behalf of the State and may at any time perform any of the State's Obligations and exercise the State's rights and powers in and under this Agreement, including taking any actions, making any requests and giving or withholding any consents or approvals which the State has the right or obligation to take, make, give or withhold under this Agreement.

The Recipient agrees to treat any notices or other communications (including any requests) from the Wheatbelt Development Commission as being from and on behalf of the State.

Where the Recipient has any Obligation to remit or pay monies to the State, the Recipient must make payment to the State in the manner requested by the State, including making payment into a bank account nominated by the State if so requested, which may be a bank account held in the name of the Wheatbelt Development Commission.

Clause 6 will apply to the Wheatbelt Development Commission, including that the Contact Officer (set out in Schedule 1) for the Wheatbelt Development Commission is authorised to act for the Wheatbelt Development Commission in relation to this Agreement, is the first point of contact in relation to any disputes arising under the Agreement and is responsible, on behalf of the Wheatbelt Development Commission, for liaising with the Recipient to ensure that the Recipient properly complies with its Obligations. The State may, in its absolute discretion, at any time withdraw this authorisation in respect of all or part of the Wheatbelt Development Commission's functions; and

The Department may countermand any direction or request made or given by the Wheatbelt Development Commission and in that case the Recipient must comply with the Department's direction or request (as the case may be).

## SCHEDULE 5 – ACCOUNTS AND REPORTING

- (a) The Recipient is to provide to the Department progress reports on a quarterly basis (as at 30 September, 31 December, 31 March and 30 June), or as determined from time to time by the State, until receipt by the Recipient of the Notification. These progress reports must be certified by the Chief Financial Officer or other accountable officer of the Recipient and include:
- (i) a financial report containing information with respect to the Project, which must include the information set out in Schedule 2; and
  - (ii) a project report which must include the information set out in Schedule 3, showing how and to what extent the Funding (and any interest accrued on the Funding) was spent and the extent to which the Recipient's Obligations were performed and the Milestones met.

Note – quarterly reports are to be submitted within one (1) month after the end of each quarter.

For the avoidance of doubt the State may:

- (i) request progress reports at more regular intervals than one progress report every quarter but must not request progress reports at more regular intervals than every week; and
  - (ii) determine in its absolute discretion what information the Recipient is required to include in a progress report and requiring less information in a progress report than that prescribed in item (a) of this Schedule 5 in any one instance does not constitute a waiver of the State's right to receive the information prescribed in item (a) of this Schedule 5 in every other progress report.
- (b) The Recipient is to provide to the Department an annual report on the Project based on a financial year ending 30 June until receipt by the Recipient of the Notification. These annual reports must be certified by the Chief Financial Officer or other accountable officer of the Recipient and audited by an Auditor, and include:
- (i) a financial report containing information with respect to the Project which must include the information set out in Schedule 2; and
  - (ii) a project report which must include the information set out in Schedule 3, showing how and to what extent the Funding (and any interest accrued on the Funding) was spent and the extent to which the Recipient's Obligations were performed and the Milestones and met.

Note – the annual report on the Project is to be submitted within three (3) months after the end of the financial year to which the annual report relates.

- (c) The Recipient must provide the Department with a report (**Final Report**) within three (3) months after receipt by the Recipient of any written request from the State to do so or of any earlier termination of this Agreement, which must be certified by the Chief Financial Officer or other accountable officer of the Recipient and audited by an Auditor, and include:
- (i) a financial report) certifying that the Funding (and any interest accrued on the Funding) was used for the Project, confirming the amount of Funding spent and which must include the information set out in Schedule 2; and

- (ii) a project report which must include the information set out in Schedule 3, showing how and to what extent the Funding (and any interest accrued on the Funding) was spent and the extent to which the Recipient's Obligations were performed and the Milestones met.

## **SCHEDULE 6 – PAYMENT OF THE FUNDING**

Funding will be made available subject to, in the manner outlined in, and for the purpose outlined in, this Agreement.

The payment of the Funding or each tranche of the Funding (if applicable) will be processed by the State and by the time required by this Agreement, transferred into the following bank account of the Recipient by electronic funds transfer:

|                        |                   |
|------------------------|-------------------|
| <b>Account name:</b>   | Shire of Merredin |
| <b>BSB:</b>            | 066-518           |
| <b>Account number:</b> | 0000-0010         |



## **SCHEDULE 7 – REQUIREMENT FOR FUNDS TO BE INVESTED WITH THE WESTERN AUSTRALIAN TREASURY CORPORATION**

The full amount of the Funding provided under this Agreement is required to be invested by the Recipient with the Western Australian Treasury Corporation (WATC) until expended as per the Approved Budget detailed in Schedule 4.

The Recipient must invest the Funding with the WATC by opening a separate Overnight Cash Deposit Facility (OCDF) and depositing in the OCDF the Funding, within seven (7) days of receipt of the Funding from the Department. This facility gives the Recipient access to their funds at call. Interest is calculated daily and paid monthly.

The Recipient is required to authorise the Wheatbelt Development Commission as a joint signatory to its WATC OCDF account relating to the Funding and all withdrawals/drawdowns will require the approved signatures of both the Wheatbelt Development Commission and the Recipient before WATC will release the funds.

The Recipient provides authority for the WATC to send to both the Wheatbelt Development Commission and the Department copies of all investment confirmations and monthly statements as evidence of investments and/or transactions.

The Recipient may invest the whole or any part of the Funding from the OCDF into one or more WATC Short Term Inscribed Stock facility (STIS facility). On maturity of investment of the Funding in a STIS facility, the Funding may be reinvested in a further STIS facility. The Funding must be redeposited into the OCDF once it is no longer held in a STIS facility.

Any interest earned from either the Recipient's OCDF account or a STIS facility must be deposited into the OCDF and utilised for the Project in accordance with this Agreement.

The contact at Western Australian Treasury Corporation is:

Tamara Marsh  
Client Relationship Manager, Client Services  
Western Australian Treasury Corporation  
PO Box 7282  
Perth Cloisters Square, WA 6850  
Tel: (08) 9235 9153  
Fax: (08) 9235 9199  
Email: [Tamara.Marsh@watc.wa.gov.au](mailto:Tamara.Marsh@watc.wa.gov.au)

**EXECUTION OF THIS AGREEMENT**

**EXECUTED** by the Parties as an Agreement.

**SIGNED** for and on behalf of the **STATE** )  
**OF WESTERN AUSTRALIA** by Geoff )  
Comben of the **DEPARTMENT OF** )  
**REGIONAL DEVELOPMENT** in the )  
presence of: )



Signature of Department witness

BRETT SYLVA - SENIOR PROJECT OFFICER

Full name and position of Department witness



Signed for and on behalf of Shire of Merredin.

The Common Seal of Shire of Merredin was hereto duly affixed in the presence of:



Signature

Director/Board Member/ Office Holder

KEN HOOPER

Print full name of Authorised Person

SHIRE PRESIDENT

Print the position of the Authorised Person



Signature

Director/Board Member/ Office Holder

GREG POWELL

Print full name of Authorised Person

CHIEF EXECUTIVE OFFICER Print the position of the Authorised Person

## Department of Primary Industries and Regional Development

Hon Martin Aldridge MLC asked:

6. I refer to Budget Paper 3, page 224 and the line item 'Regional Aged Accommodation Program' and I ask:

(a) What will the \$22.7 million across the forward estimates be spent on;

Answer: The Regional Aged Accommodation Program will provide funding to support suitable aged accommodation for seniors living in regional areas. Funding will be provided for either the upgrade of existing facilities or construction of fit-for-purpose accommodation.

(b) Does the funding relate to existing projects or new projects not yet identified;

Answer: Consideration will be given to all aged accommodation projects that are investment ready, where there is a demonstrated demand and represent value for money.

(c) Which agency will provide the funding and to who?

Answer: Funding will be provided by the Department of Primary Industries and Regional Development (DPIRD). Funds will be provided to the approved applicant organisations via a Financial Assistance Agreement following an assessment process administered by DPIRD.

Q .

## Department of Primary Industries and Regional Development

### Hon Martin Aldridge MLC asked:

7. Can you please define the approval and acquittal process for Royalties for Regions funding and how this might differ to what was adopted by the former government?

Answer:

The allocation of Royalties for Regions funding is approved through the normal State Budget bilateral processes. The Department of Primary Industries and Regional Development (DPIRD) and Department of Treasury provide advice on the suitability of funding before consideration by the Minister for Regional Development, the Expenditure Review Committee and ultimately Cabinet.

DPIRD works with funding recipients to develop a suitable investment proposal, ensuring the requirements of the *Royalties for Regions Act 2009* are met prior to finalising funding arrangements.

Within three months of project completion, a final report that acquits funding and is certified by an independent auditor, is required to be submitted.

The former government applied a two stage approval process whereby funding was notionally approved in the Royalties for Regions budget each year through the State Budget process, and then a subsequent approval was required (usually by Cabinet) before funds could be expended.

The revised approval process aligns Royalties for Regions with the rest of the budget, increases efficiency and removes a number of overly administrative activities.

There has been no change to the process or requirements for the final report and acquittal of funding.



**Department of Primary Industries and Regional Development**

**Hon Martin Aldridge MLC asked:**

8) I refer to budget paper 2, page 294 in relation to biosecurity and the increase in FTE staff in 2017-18 and I ask;

a) In what location will these staff be based;

Answer: Geraldton, Moora, Northam, South Perth, Narrogin, Bunbury, Katanning and Albany.

b) What functions will these additional staff undertake;

Answer: The functions will primarily relate to the delivery of the 19 recommendations as detailed in the Animal Welfare Review Report and to respond to biosecurity incidents.

c) When will they be appointed to the new positions;

Answer: Recruitment is already underway for some positions. Other positions will be filled in the first half of 2018.

d) Please identify their funding source and amount with respect to the additional positions?

Answer: The 20 additional FTE's identified in page 294 of budget paper 2 will be funded at an estimated \$1.67 million from the Consolidated Account - Item 24 Net appropriations.

ca

## Department of Primary Industries and Regional Development

### Hon Martin Aldridge MLC asked:

9) I refer to the \$1.5 million Horticultural Research Recovery Fund announced by the Minister on 6 July 2017 and I ask:

a) Where are these funds contained in the budget;

Answer: The funds are currently contained within the budget of the Agricultural Science Research and Development Fund referred to in Table 1, Page 217, Budget Paper No. 3.

b) What is the spend profile over the budget year and forward estimates under this fund.

Answer: This is yet to be finalised pending determination of the program of work. DPIRD continues to work with the industry to determine priorities areas and projects.

c) Who will expend the funds and on what purpose; and

Answer: This is currently being finalised as part of the program.

d) How much money has been expended to date from this fund.

Answer: There has been no expenditure to date as the program is yet to be finalised.

a.

**Department of Primary Industries and Regional Development**

**Hon Martin Aldridge MLC asked:**

10) I refer to the Regional Visitor Centre's Program and I ask:

- i) Which centres are expected to be supported by this program in 2017-18 and please detail the value of that support to each centre; and

Answer: A total of \$981,758.45 was allocated to 33 Visitors Centres as part of the Regional Visitors Centre Sustainability Grants Program for 2017-18. The following table provides a summary of funding awarded to each.

|    | <u>Visitor Centre</u>  | <u>Funding Awarded</u> |
|----|--|------------------------|
| 1  | Balingup & Districts Tourism Association Inc; Balingup Visitor Centre        | \$11,880.00            |
| 2  | Broome Tourist Bureau Inc.   | \$99,000.00            |
| 3  | City of Bunbury; Bunbury Visitor Centre                                      | \$34,120.80            |
| 4  | City of Greater Geraldton: Geraldton Visitor Centre                          | \$11,016.00            |
| 5  | Denmark Tourism Incorporated; Denmark Visitor Centre                         | \$40,000.00            |
| 6  | Derby Tourist Bureau Incorporated  | \$21,254.00            |
| 7  | Dryandra Country Visitor Centre Inc.   | \$39,349.00            |
| 8  | Ferguson Valley Marketing and Promotions Inc; Ferguson Valley Visitor Centre | \$25,000.00            |
| 9  | Kalbarri Visitor Centre Incorporated   | \$26,493.00            |
| 10 | Kalgoorlie Boulder Tourist Centre Inc.                                       | \$14,500.00            |
| 11 | Lake Grace Visitor Centre Incorporated                                       | \$7,724.42             |
| 12 | Manjimup Tourist Bureau Inc.   | \$18,266.00            |
| 13 | Monochorum Ltd; New Norcia Museum & Art Gallery                              | \$39,578.00            |
| 14 | Mount Barker Tourist Bureau Inc.   | \$9,917.45             |
| 15 | Margaret River Busselton Tourism Association Inc; Busselton Visitor Centre   | \$28,000.00            |

|    | <u>Visitor Centre</u>   | <u>Funding Awarded</u> |
|----|---|------------------------|
| 16 | Margaret River Busselton Tourism Association; Dunsborough Visitor Centre        | \$39,976.00            |
| 17 | Margaret River Busselton Tourism Association Inc; Margaret River Visitor Centre | \$100,000.00           |
| 18 | Ningaloo Visitor Centre Management Committee Inc; Ningaloo Visitor Centre       | \$35,414.44            |
| 19 | Northampton Tourist Association Incorporated                                    | \$18,000.00            |
| 20 | Ord Tourist Bureau; Kununurra Visitor Centre                                    | \$26,304.80            |
| 21 | Quairading Community Resource Centre Inc.                                       | \$5,008.28             |
| 22 | Shire of Carnarvon; Carnarvon Visitor Centre                                    | \$8,586.76             |
| 23 | Shire of Chittering; Chittering Visitor Centre                                  | \$22,381.00            |
| 24 | Shire of Dandaragan; Turquoise Coast Visitor Centre                             | \$8,006.06             |
| 25 | Shire of Derby West Kimberley; Fitzroy Crossing Visitor Centre                  | \$36,477.80            |
| 26 | Shire of Merredin; Central Wheatbelt Visitor Centre                             | \$20,239.00            |
| 27 | Shire of Murray; Dwellingup History & Visitor Information Centre                | \$83,619.43            |
| 28 | Shire of Northam  | \$15,750.00            |
| 29 | Shire of Shark Bay; Shark Bay Discovery & Visitor Centre                        | \$24,879.00            |
| 30 | Walpole Tourist Bureau Inc.   | \$12,888.40            |
| 31 | City of Albany; Albany Visitor Centre   | \$73,000.00            |
| 32 | Shire of Esperance; Esperance Visitor Centre                                    | \$20,000.00            |
| 33 | Shire of Kulin  | \$5,128.81             |
|    | Total   | \$981,758.45           |

b) Of those identified in (a) how many are also Community Resource Centre's?

Answer: Two. Quairading Community Resource Centre and the Shire of Kulin.



**Department of Primary Industries and Regional Development**

**Hon Martin Aldridge MLC asked:**

14. I refer to your answer to question on notice 7 prior to estimates hearings and I ask:

- (d) Does the government intend to honour its 2013 election commitment to provide an investment of \$30 million into tier 3 railway lines?

Answer: The Government is implementing the package of commitments it took to the 2016 election.



**Department of Primary Industries and Regional Development**

**Hon Martin Aldridge MLC asked:**

15. I refer to the Government's commitment to establish an Urgent Care Clinic in Geraldton and I ask:

(a) Is this project funded by Royalties for Regions;

Answer: No.

(b) What amount is allocated in the budget for this project and in what years;

Answer: As there is no Royalties for Regions money involved in this initiative the question should be referred to the Minister for Health.

(c) Is the funding capital or recurrent in nature; and

Answer: As there is no Royalties for Regions money involved in this initiative the question should be referred to the Minister for Health.

(d) What is the intended scope of the funding with respect to Geraldton?

Answer: As there is no Royalties for Regions money involved in this initiative the question should be referred to the Minister for Health.

*a*

**Department of Primary Industries and Regional Development**

**Hon Martin Aldridge MLC asked:**

16. I refer to your answer during estimates hearings that \$49.7 million is allocated for stage 1 redevelopment of Geraldton Health Campus and \$8.745 million for acute and sub-acute mental health beds at the Geraldton Health Campus and I ask:

(a) Are both of these allocations located within 'Administered Items' of the Royalties for Regions budget;

Answer: Yes

(b) Do both projects have ERC approval;

Answer: No

(c) What is the expected expenditure profile for these projects across the budget year and forward estimates; and

Answer: The expenditure profiles and exact funding commitments for these projects will be considered in the coming budget process.

(d) When can business case development be expected to be complete?

Answer: Planning work is being undertaken by the Department of Health which will enable the completion of an investment proposal. Further details relating to timeframes for completion of a business case will need to be directed to the Minister for Health.



**Department of Primary Industries and Regional Development**

**Hon Martin Aldridge MLC asked:**

17. I refer to question on notice number 11 prior to estimates hearings and I ask:

- a) Can you confirm that this grant of funds is from the Consolidated Fund and not Royalties for Regions; and

Answer: Yes, from the Consolidated Account.

- b) With respect to your refusal to provide the business case in response to part (d) of the question, do you intend to satisfy your obligations under Section 82 of the *Financial Management Act 2006*?

Answer: As this funding is simply a continuation of a suite of services many of which have been operating for a number of years and were supported by the previous Government, no business case was prepared.



**Department of Primary Industries and Regional Development**

**Hon Martin Aldridge MLC asked:**

18. I refer to question on notice number 10 prior to estimates hearings and I ask:

- (a) Your answer to part (c) of the question does not appear to be relevant to the question asked or the topic raised, can you please clarify your answer;

Answer: The Federal Liberal National Government has determined Round 3 without any engagement with States or Territories. If a new joint funding program is restored we will consider allocating funds.

- (b) The \$40 million allocated under 'Regional Telecommunications Project' appears based on your answer to be already committed to previously announced rounds of the Regional Telecommunications Project and Mobile Black Spot Program, is that correct; and

Answer: Yes.

- (c) If yes to (b) is it therefore the case that there is no funding in the budget for future partnerships with the Federal Government and future rounds of the Mobile Black Spot Program?

Answer: Refer to (a).



## Department of Primary Industries and Regional Development

Hon Martin Aldridge MLC asked:

19. I refer to question on notice number 9 prior to estimates hearings and I ask:

- (a) Given that all staff of the Regional Development Commissions (RDC) are now employees of the Department of Primary Industries and Regional Development excluding the Chief Executive Officer/Director of each, what is the reporting relationship of these staff with respect to the RDC CEO and DPIRD Director General; and

Answer: Department of Primary Industries and Regional Development (DPIRD) staff based in Regional Development Commissions (RDCs) are responsible to the Director General of DPIRD in the delivery of their duties. A Memorandum of Understanding (MoU) between the DPIRD Director General and each RDC Director/Chief Executive Officer has been put in place to provide CEO's with access to staff and resources to support them in managing day to day Commission operations and such staff are subject to CEO direction in this regard.

- (b) Who does the Chief Executive Officer/Director of RDC's report to and what is their current responsibility in that role given they have no staff subordinate to them?

Answer: The RDC Director/Chief Executive Officers are appointed under the *Public Sector Management Act 1994* to occupy the statutory role of director as specified under the *Regional Development Commissions Act 1993*. As such, they are responsible to the Minister for Regional Development and Public Sector Commissioner. The objects and functions of the RDCs remain as currently prescribed in Section 23 of the *Regional Development Commissions Act 1993*. DPIRD staff based in Regional Development Commissions continue to be available to support the RDC Director/Chief Executive Officer in the day to day operations of the Commissions.



**Department of Primary Industries and Regional Development**

**Hon Martin Aldridge MLC asked:**

20. I refer to question on notice number 8 prior to estimates hearing and your answer with respect to part (b) and I ask:
- (c) Do these FTE figures exclude those staff engaged as part of the 'Seizing the Opportunity in Agriculture' initiative funded by Royalties for Regions; and

Answer: No, the answer provided included all FTE engaged in Agriculture and Food activities, including those engaged within the Seizing the Opportunity in agriculture initiative.

- (d) If yes to (a) what was the FTE staffing level provided by this program to the former department?

Answer: Not applicable.



## ESTIMATES AND FINANCIAL OPERATIONS COMMITTEE

### Department of Primary Industries and Regional Development

#### Hon Martin Aldridge MLC asked:

21. I refer to question on notice number 4 prior to estimates hearing and your answer to part (a) which advises 'The 2.7 million was not expended in 2016-17' and I ask:

(a) Are the budget papers in this respect incorrect; and

Answer: No, the budget papers are correct. The amount reflects the estimated actual at the time of the bilaterals and is corrected with an actual expenditure at mid year review.

(b) If yes to (a), what is the correct spend profile across the budget year and forward estimates?

Answer: Not Applicable.





**Department of Primary Industries and Regional Development**

**Hon Rick Mazza MLC asked:**

1. Budget Paper No 3. Page 225, Line Item 1 "Investing in our Roads and Ports". There is a \$10 million allocation for Ag Lime Routes in the 2018-19 forward estimate.

(a) Why is there no allocation for the current year?

Answer: \$10 million in funding for the Ag Lime Routes project has been provided in 2018-19 to provide sufficient time to undertake necessary planning in preparation for road upgrades.

(b) Is the 2018 -- 10 allocation for the upgrading of roads?

Answer: Yes. The project scope includes upgrades to a number of intersections and priority sections of local roads within Aglime Route 2.

(c) If so, which roads and where?

Answer: Aglime Route 2 between Lancelin and Goomalling. The roads are in the Shire of Gingin and Shire of Victoria Plains.

(d) Will it upgrade those roads to higher RAV category?

Answer: The project is not intended to fund road upgrades to a higher RAV category.



**Department of Primary Industries and Regional Development**

**Hon Rick Mazza MLC asked:**

2. Budget Paper No. 3. Page 217, Line Item 21 -"Doppler Radar Project".

(a) Does the government plan to extend Doppler radar coverage?

Answer: Yes.

(b) If so, in which areas - and if not in the Agricultural Region, why is Doppler radar coverage required?

Answer: Funding under the Extension of Doppler Radar Coverage project will upgrade the digital weather radars from analogue to digital Doppler capability in Geraldton, Albany and Esperance.

Previous funding allocated to Doppler Radar Project provided for three Doppler radars to be constructed and commissioned in Newdegate, South Doodlakine and Watheroo.



## Department of Primary Industries and Regional Development

Hon Rick Mazza, MLC asked:

3) Budget Paper No 3, Page 217, Line Item 8 - "Boosting Biosecurity Defences".

- a) Considering there is no allocation in the forward estimates, how will Biosecurity Defences be funded?

Answer: Biosecurity is a core function for the Department of Primary Industries and Regional Development (DPIRD). DPIRD will continue to deliver biosecurity services with an annual operating budget of around \$80 million dedicated towards this function. DPIRD will also explore opportunities to seek external funding to supplement core services.

- b) What pests are covered by the \$3.7 million allocation?

Answer: All declared pests under the *Biosecurity and Agriculture Management Act 2007* (BAM Act). This includes Australian High Priority Plant Pests and Nationally notifiable animal diseases.

- c) Does the government consider this adequate?

Answer: The \$3.7 million is part of the total budget of \$83.1 million for biosecurity service in 2017-18.

The Government recognises that biosecurity is important for productivity, market access and market growth; and is committed to maintaining a biosecurity system which facilitates the export of livestock, animal products and plant commodities without exposing the State's primary industries, environment and communities to unacceptable levels of biosecurity risks.

- d) DPI is currently considering placing feral cats on the Declared Pest list.

Answer: DPIRD is assisting the Department of Biodiversity, Conservation and Attractions (DBCA) to assess declaration of feral cats by undertaking a technical assessment under the BAM Act.

DPIRD is further assisting the DBCA to identify key stakeholders for consultation.

- e) What funding has been allocated to the eradication of feral cats and where does it appear in the Budget Papers?

Answer: DPIRD has not allocated funding towards the eradication of feral cats.

f) How are levies collected by industry allocated?

Answer: Industry contributions to biosecurity, collected through the Industry Funding Schemes, are allocated by the industry-based Management Committees that oversee the schemes. The Management Committees consult their respective industries each year to ensure that the funds are being targeted towards the industry's priority declared pests and diseases.



## Department of Primary Industries and Regional Development

**Hon Rick Mazza MLC asked:**

4) Budget Paper No. 3. Page 218, Line Item 17 - "Rebuilding Our Ag Capability".

a) What aspect of agricultural capability will the funding address?

Answer: The funding will maintain and build capability areas that would otherwise have been reduced with a number of the Royalties for Regions Seizing the Opportunity Agriculture Initiative Programs coming to the end of their funding period at the end of 2017-18. A key focus will be ensuring the State builds its biosecurity capabilities.

b) How was this identified as a priority?

Answer: Under the previous government, funding for the former Department of Agriculture and Food was cut by 26 per cent. Over the forward estimates as set out in 2016/17 budget, this was set to fall by a further 36 percent.

This funding will ensure critical capabilities are maintained or improved, including those areas identified through the independent review into the Tomato Potato Psyllid response.

c) Is it anticipated that funding will be spent on buildings, service provision or R&D?

Answer: Refer to a).

d) Is this all that is left of the Seizing the Opportunity Agriculture Program?

Answer: No. Funding will continue for over 20 agricultural projects, with a total Royalties for Regions investment of \$256 million committed through the forward estimates. The funding covers a range of projects including research, development and innovation, biosecurity, Doppler radar coverage extension, securing water for agriculture, premium food development, and northern beef industry development.



## Department of Primary Industries and Regional Development

Hon Dr Steve Thomas MLC asked:

1. I refer to Budget Paper 2 volume 1 page 294 Item 8. Biosecurity and Product Integrity and I ask -:

a) What invasive animals, plant or disease species has the Department managed to eradicate from Western Australia in the last twenty five years:

Answer: Animal disease incursions eradicated in the last 25 years include: liver fluke, bovine Johnes disease (5 occasions), Anthrax and Bovine Tuberculosis.

The high priority plant-related pests (pests, diseases and weeds) that have been eradicated since 1998 (when electronic records commenced) include: Creeping Knapweed, Parrots Feather, Codling Moth, Mediterranean Fruit Fly (3 occasions), Kochia, Formosan Termite, Crazy Ant, Potato Spindle Tuber Viroid (3 occasions), Western Drywood Termite, West Indian Drywood Termite, Drywood Termite, Potato Virus Y (3 occasions), Queensland Fruit Fly (3 occasions), Purple Flowered Devils Claw, Cherry Aphid, Khapra Beetle, Karnal Bunt, Rusty Longhorned Beetle, Parthenium Weed (3 occasions), Exotic Drywood Termite, Fusarium Wilt, Tutsan Weed, Flair Tutsan Weed, Bitou Bush, Browsing Ant, Giraffe Thorn, Destructive or dark Flour Beetle, Camel Thorn, Water Lettuce, and Star of Bethlehem.

Populations of vertebrate pests eradicated in the last 25 years include: Indian ringneck parakeets, Alexandrine parakeets, Indian house crows, Eurasian magpies, European house sparrows, European starlings (multiple occasions), Tree sparrows, Red-eared slider turtles, and European blackbirds.

i. Which of these species were eradicated since the passing of the Biosecurity and Agricultural Management Act 2007 (BAM Act);

Answer: Bovine Johnes Disease, European Starlings, Tree Sparrows, Khapra Beetle, Potato Spindle Tuber Viroid, Karnal Bunt, Rusty Longhorned Beetle, Mediterranean Fruit Fly, Parthenium Weed, Exotic Drywood Termite, Potato Virus Y, Fusarium Wilt, Tutsan, Flair Tutsan, Queensland Fruit Fly, Bitou Bush, Browsing Ant, Giraffe Thorn, Destructive or Dark Flour Beetle, Camel Thorn, Water Lettuce and Star of Bethlehem.

*al.*

- b) Given the three control categories of prohibited organisms under the BAM Act of C1 (exclusion), C2 (eradication) and C3 (management), how many and what species has the Department managed to move from C2 (eradication) to C3 (management) since these categories were determined; and

Answer: A review of the declared vertebrate and weed pests under the BAM Act was undertaken in 2017 and is awaiting Gazettal. Under this review one species, Parrots Feather (*Myriophyllum aquaticum*), will move from C2 to C3. Five species will move from C2 categorisation in some shires to C3 categorisation in all shires. These are: Golden Dodder (*Cuscuta campestris*), and four species of Blackberry (*Rubus anglocandicans*, *R. audatu*, *R. rugosus* and *R. ulmifolius*).

- c) How many species listed under the previous declared species regime prior to the BAM Act 2007 of P1 to P5 for plants and A1 to A6 for animals have been eradicated from Western Australia in the last 25 years:

Answer: Liver Fluke, Anthrax, Bovine Tuberculosis, Bovine Johnes Disease (4 occasions), Creeping Knapweed, Parrots Feather, Codling Moth, Mediterranean Fruit Fly, Kochia, Formosan Termite, Crazy Ant, Potato Spindle Tuber Viroid, Western Drywood Termite, West Indian Drywood Termite, Drywood Termite, Potato Virus Y, Queensland Fruit Fly, Purple Flowered Devils Claw and Cherry Aphid.

- i. How many of the species categorized as P1 to P5 or A1 to A6 did the Department manage to move to a lower category number - that is to a higher control requirement - in the last 25 years; and

Answer: Not yet definitively known. DPIRD is currently undertaking a comparison of species declarations from 1992 to 2007.

- ii. How many of the same species categorized as P1 to P5 or A1 to A6 were moved to a higher category number in the last 25 years?

Answer: Ovine Johnes disease (*Mycobacterium paratuberculosis* sheep strain) was moved to a higher category once it was found to be endemic.

Q

## Department of Primary Industries and Regional Development

Hon Dr Steve Thomas MLC asked:

2. I refer to Budget Paper 3 page 227 and the end of the table of Royalty for Regions expenditure where there is a line item titled Overprogramming Provision and I ask:

(a) what is the overprogramming provision and how does it impact this budget;

Answer: Overprogramming recognises that not all projects will spend all their respective budgets in a given year, leading to a Royalties for Regions underspend. Overprogramming allows an increase in the total Royalties for Regions budget, while still ensuring that the total actual expenditure does not exceed the Cabinet-approved expenditure limit.

(b) given that the equivalent over programming provision in the 2016-17 budget was -\$677.5 million over the four year budget and forward estimate period with no provision in 2019-20 and 2020-21, why has this changed significantly in this budget to -\$183.1 million of the equivalent four year period;

Answer: Overprogramming is effectively an unfunded liability and must therefore be managed carefully. A decision was taken to only include an overprogramming provision for the first two years of the forward estimates. A determination on the need for overprogramming will be assessed in the formation of each budget.

The scale of the practice under the previous Government was building a bough wave of unfunded commitments which was unsustainable.

(c) if this provision is designed to maximize the spend of a program in a particular year has it not been successful in previous years; and

Answer: The overprogramming allowance was introduced in 2013-14 and led to an immediate and significant increase in total spend, minimising underspends.

(d) why is no overprogramming provision required or expected in 2019-20 and 2020-21?

Answer: See answer to 2(b).





## Department of Primary Industries and Regional Development

Hon Dr Steve Thomas MLC asked:

3. I refer to Budget Paper 3 commencing page 217 showing Royalties for Regions Expenditure and ask:

(a) What is the value of projects retained but reduced in value under the Royalties for Regions fund?

Answer: \$599.938 million

(i) Can you provide a list of these projects, identifying the original funding and the new funding level announced in this budget; and

Answer:

|  | Total Original Funding from 2017/18 to 2020/21<br>\$M | Total New Funding Level from 2017/18 to 2020/21<br>\$M |
|--|---|--|
| AgLime Routes  | 15.000  | 10.000   |
| Better Beginnings - Early Literacy                           | 0.846   | 0.750  |
| Boarding Away From Home                                      | 4.000   | 2.000  |
| Community Pool Revitalisation                                | 3.300   | 0.500  |
| Community Resource Centres                                   | 56.000  | 42.000   |
| Country Age Pension Fuel Card                                | 142.861   | 136.400  |
| DRD Operational Funding                                      | 103.950   | 92.283   |
| Exploration Incentive Scheme                                 | 30.000  | 20.000   |
| Karratha City Centre Infrastructure Works Project - Stage 2a | 24.954  | 2.000  |
| Lucky Bay Campground Redevelopment Stage 2                   | 2.955   | 0.900  |
| Margaret River Perimeter Road                                | 45.260  | 35.000   |
| NGO Housing Strategic Intervention - Stage 2                 | 17.356  | 0.585  |
| NWHI - Camarvon Residential Aged Care Facility               | 15.577  | 10.577   |
| NWHI - Newman Health Service Redevelopment project           | 49.245  | 36.933   |
| NWHI - Tom Price Hospital Redevelopment                      | 38.243  | 5.250  |
| Parks and Wildlife Headquarters                              | 17.496  | 0.500  |
| Pilbara Education Partnership Programs- Unallocated          | 9.924   | 7.000  |
| Pilbara Health Partnership                                   | 11.701  | 6.849  |
| Pilbara Underground Power - Stage 2                          | 18.806  | 12.806   |
| Regional Athlete Support Program                             | 5.032   | 3.000  |
| Regional Centres Development Plan                            | 8.000   | 4.000  |
| Regional Services Reform Unit                                | 13.548  | 4.471  |
| Regional Workers Incentives Allowance Payments               | 112.427   | 86.634   |
| SIHI (2) District Medical Workforce Investment Program       | 80.992  | 58.000   |
| STOA Local Government Commodity Freight Roads Fund           | 40.763  | 10.000   |
| Turquoise Coast Health Initiative                            | 21.750  | 1.000  |
| Volunteer Fuel Card  | 7.379   | 4.000  |
| Watering WA  | 29.300  | 6.500  |
| <b>Total</b>   | <b>1,078.244</b>                                      | <b>599.938</b>   |

- (b) What is the value of projects recashflowed to the years outside the budget forward estimates?

Answer: \$175.3 million

- (i) Can you provide a list of these projects, identifying the original funding timeframe and funding and the new timeframes and funding announced in this budget?

Answer:

| Program  | Original Funding \$M | Year of Funding Commencement (Funding Term) | New Funding \$M | Year of Funding Commencement (Funding Term) |
|--|----------------------|---|-----------------|---|
| STOA Myalup-Wellington Water for Growth                | 37.000               | 2017/18 (4 Years)                           | 37.000          | 2019/20 (4 Years)                           |
| STOA Southern Forests Irrigation Scheme                | 19.000               | 2017/18 (3 Years)                           | 19.000          | 2018/19 (3 Years)                           |
| North West Aboriginal Housing Initiative - Unallocated | 100.000              | 2017/18 (3 Years)                           | 100.000         | 2017/18 (5 Years)                           |
| Pilbara Aboriginal Town Based Reserves - Unallocated   | 19.300               | 2017/18 (3 Years)                           | 19.300          | 2017/18 (5 Years)                           |
| Total  | 175.300              |   | 175.300         |   |



## Department of Primary Industries and Regional Development

### Hon Dr Steve Thomas MLC asked:

4. I refer to Budget Paper 2 Volume 1 page 294 item 8 Biosecurity which involves the Department's legislative role to manage declared weeds, pests and diseases and I ask:

a) how many Pest Exclusion Notices have been given under section 27 of the Biosecurity and Agricultural Management Act 2007 since the Act came into operation:

Answer: 121

i. In each case what penalty was enforced;

Answer: None. The Pest Exclusion Notices were issued for managing suspicion of notifiable disease, not for non-compliance.

b) on how many occasions has section 30 - Duty to controlled pest - of the Biosecurity and Agricultural Management Act 2007 been used to require a landholder to control declared pests on their land since the Act came into operation:

Answer: Section 30 - Duty to control declared pest, is a standing obligation and is not a legislative instrument that is issued.

i. In each case what penalty was enforced;

Answer: Not applicable.

c) what assessments has the Department made of declared weeds, pests and diseases on land owned or managed by local governments and state government departments:

Answer: None.

i. how many Pest Exclusion Notices under section 27 of the BAM Act 2007 or enforcements under section 30 of the Act has the Department delivered since the Act came into operation;

Answer: As above at 4.a) – 121 Pest Exclusion Notices; and as above at 4.b) in respect to Section 30 obligation.

ii. on how many occasions has any local government or state government department had a reference to failure to control declared weeds, pests or diseases included in their own annual report or in the annual report of the

Department of Agriculture and Food WA since the BAM Act came into operation; and

Answer: None.

iii. Please list those occasions?

Answer: Not applicable.



**Department of Primary Industries and Regional Development**

**Hon Dr Steve Thomas MLC asked:**

5. I refer to Budget Paper and I also refer to the Biosecurity and Agricultural Management Act 2007 section 30 "Duty to control declared pest" and I ask
- a) In relation to lands managed by the Department of Biosecurity, Conservation and Attractions, is the Department of Biosecurity, Conservation and Attractions compliant with section 30 of the Biosecurity and Agricultural Management Act 2007 "Duty to control declared pest";

Answer: Management plans including declared pest control are available for some of the conservation estate. In other areas of the conservation estate, including Unallocated Crown Land, the Department of Biodiversity, Conservation and Attractions (DBCA) prioritises declared pest control based on threats to assets and neighbours, and actions are implemented as resources determine.

- b) What assessment has the Department of Primary Industries and Regional Development made of the compliance level of the Department of Biosecurity, Conservation and Attractions to section 30 of the BAM Act on lands under its control:

Answer: The Department of Primary Industries and Regional Development does not conduct any assessments on land owned or managed by the state government.

- i. Please provide a list of investigations undertaken by the Department of Primary Industries and Regional Development as identified in part (b) of this questions;

Answer: Not Applicable.

- ii. Please provide a list of site investigations undertaken as a result of the assessments made in part (b) of this question;

Answer: Not applicable.

- c) What penalties have been applied to the Department of Biosecurity, Conservations and Attractions as a result of any breach of section 30 of the BAM Act?

Answer: Not applicable.

