

**AGREEMENT BETWEEN**

**THE STATE OF WESTERN AUSTRALIA**

**AND**

**SHIRE OF NANNUP  
ABN 43 038 160 786**

**FINANCIAL ASSISTANCE AGREEMENT FOR  
COMMUNITY SMALL GRANT FUND  
ROUND 2**

This Agreement is made on the 10<sup>th</sup> day of September 2024

BETWEEN

**THE STATE OF WESTERN AUSTRALIA ("State") acting by and through the Department of Jobs, Tourism, Science and Innovation ("Department").**

AND

**SHIRE OF NANNUP,  
15 Adam Street, Nannup WA 6275  
(‘Recipient’)**

## **BACKGROUND**

- A. The State has established a program (the Community Small Grant Fund) to provide funding assistance to community groups and businesses located in regions impacted by the decision to end native forest logging by the end of 2023.
- B. The State has agreed to provide funding to the Recipient to use for the Project in accordance with the provisions of this Agreement.
- C. The State is required by law to ensure accountability for public money, and the Recipient is required to be accountable for all State funding.
- D. The Parties now wish to record the terms and conditions upon which the approved Grant will be provided by the State to the Recipient.

## **OPERATIVE PART**

The Parties agree as follows:

### **1. DEFINITIONS AND INTERPRETATIONS**

#### **1.1 Definitions**

In this Agreement unless the context otherwise requires:

**Acquittal Report** means the Acquittal Report referred to in Schedule 3.

**Agreement** means this Financial Assistance Agreement, including its Background and the Schedules.

**Asset** includes personal, real or incorporated property, with a value of \$5,000 or more, but shall not mean Intellectual Property.

**Authorised Officer** means a person appointed by the Recipient to act as its authorised officer under this Agreement.

**Baseline Report** means the Baseline Report referred to in Schedule 3.

**Budget** means the budget which the Recipient submitted and was approved by the State in writing, as varied from time to time. Such budget is part of the Project Plan.

**Business Day** means a day, not being a Saturday, Sunday or public holiday, on which banks are open for general banking business in Western Australia.

**Commencement Date** means the date the Baseline Report is due. This is 10 days after the last party executes this Agreement.

**Confidential Information** means any information relating to the Minister, this Agreement or the Project which is confidential or which is justifiably specified by a Party as confidential in nature.

**Cth or Commonwealth** means the Commonwealth of Australia.

**Department** means the Department of Jobs, Tourism, Science and Innovation or such other agency or instrumentality of the State which is charged with the administration of this Agreement from time to time for and on behalf of the State.

**Discloser** means the Party who provides Confidential Information to the other Party.

**Event of Default** means an event so described in clause 11.

**Execution Date** means the date when the last party to execute this Agreement does so.

**Grant** means the amount payable by the State to the Recipient under this Agreement as described in Schedule 1

**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 or 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 judgement or order for the payment of money or the recovery of any property;
- (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 or section 585 of the *Corporation 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 which could result in the event;

- (i) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Insurance** means the insurance referred to in clause 12.

**Intellectual Property** or **IP** includes all copyright and associated rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Law** means any rule or requirement of a statute, subordinate legislation, the common law or equity.

**Minister** means the Minister for Forestry.

**Milestone Report** means the Milestone Report described in Schedule 3.

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

**Personnel** means officer, employee or contractor.

**Progress Report** means the Progress Report referred to in Schedule 3.

**Project** means the Project described in Schedule 2 and in the Project Plan.

**Purposes** means the purposes of this Agreement, including the Project

**Schedules** means the Schedules to, and forming part of, this Agreement.

**Specified Person** in relation to a Party, means:

- (k) a related body corporate of that Party;
- (l) an adviser of that Party; or
- (m) Personnel of that Party or any entity referred to in items (a) or (b) of this definition.

**State** means the State of Western Australia.

**Substantial Change** means a substantial change in activities and outcomes from those proposed, described or set out in the Project Plan,

which in terms of their scope or nature or otherwise, are of a kind or magnitude that is likely to materially affect the Budget, timetable for achievement or the reasons for, or purposes or objectives set out in that plan.

**Term** means the duration of this Agreement as set out in Schedule 1.

## **1.2 Interpretations**

In this Agreement unless the context otherwise requires:

- (n) words importing the singular include the plural and vice versa;
- (o) words importing any gender include the other gender;
- (p) references to persons include corporations;
- (q) references to a person include the legal personal representatives, successors and assigns of that person;
- (r) 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);
- (s) 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;
- (t) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include facsimile transmissions;
- (u) an obligation of two or more persons binds them jointly and severally;
- (v) an obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (w) if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (x) references to this Agreement include its recitals, schedules and annexures (if any);
- (y) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (z) references to time are to local time in Perth, Western Australia;
- (aa) where time is to be reckoned from a day or event, that day or the day of that event is to be included;

- (bb) references to currency are to Australian currency unless otherwise stated;
- (cc) no rule of construction applies to the disadvantage of a Party on the basis that that Party put forward this Agreement or any part of this Agreement;
- (dd) 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 but nothing herein implies that part performance of an obligation equals full performance thereof; and
- (ee) when the day or last day for doing an act is not a Business Day in the place where that act is to be done, then the day or last day for doing the act will be the directly preceding Business Day in the place where that act is to be done.

## **2. GRANT**

### **2.1 Payment**

Subject to the terms of this Agreement, the State agrees to pay the Grant to the Recipient in the instalments and at the times specified in Schedule 1.

Grants paid under the Community Small Grant Fund are not regarded as payment for a supply to the Department.

Therefore, the Department will not increase the grant to include GST, nor will it reimburse a grant recipient for GST paid to a third party.

### **2.2 Approved Project**

The Recipient must use the Grant solely for the purpose of executing the Project specified in Schedule 2 of this Agreement.

The Recipient must ensure that it has all the requisite access to property, contracts and commercial arrangements in place to ensure the proper carrying out of the Project.

If the total actual cost incurred by the Recipient in carrying out the Project is less than the amount of the Grant, the Recipient must within 20 Business Days of submitting their Acquittal Report pay to the Department the difference, unless agreed by the State in writing.

The Recipient must carry out the Project fully, properly, competently, carefully, diligently and efficiently. The Recipient must use the Grant efficiently and not extravagantly, wastefully or irresponsibly.

### **2.3 No Changes**

The Recipient must not implement, or permit or suffer the implementation of any Substantial Change without the prior written approval of the State, which approval must not be unreasonably withheld but may be given with or without conditions.

The Recipient must immediately notify the State if any part of the Grant has not been used in accordance with this Agreement.

Without prejudice to the State's other rights under this Agreement in the event of breach, the Recipient must repay to the State any part of the Grant which has not been used in accordance with this Agreement.

#### **2.4 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 to any person.

#### **2.5 Additional Expenditure**

The Recipient acknowledges and agrees that it is solely responsible for any expenditure in relation to the Project which exceeds the Grant. The State has no liability whatsoever to provide any additional funding to the Recipient over and above the Grant.

### **3. COMMENCEMENT OF PROJECT**

If the Recipient, within three months after the Commencement Date, without the State's prior written consent, does not commence the Project (proof whereof to the State's satisfaction shall be on the Recipient), then the Recipient shall within 20 Business Days pay to the State any instalment of the Grant that has been received by the Recipient.

The State may, at the State's total discretion, if considered fair and reasonable to do so, and if the State considers that the Recipient has at all times acted and will continue to act in good faith and reasonably, extend the aforesaid three month period for a further reasonable period to be determined by the State.

### **4. RECIPIENT'S UNDERTAKINGS**

#### **4.1 Recipient's General Undertakings**

The Recipient covenants and agrees in favour of the State that during the Term:

- (a) (representation or warranty incorrect) it will notify the State promptly if any representation or warranty made or taken to be made by or on behalf of the Recipient under, in or in connection with this Agreement is found to be incorrect or misleading when made or taken to be made, or has become or is likely to become untrue;

- (b) (performance of obligations) it will at all times duly perform and observe its obligations arising out of or in connection with this Agreement and will promptly inform the State of any occurrence which might materially adversely affect its ability to perform;
- (c) (authorisations) it will comply with the terms of each authorisation necessary to enter into this Agreement, observe obligations under it and allow it to be enforced and it will obtain and renew on time each such authorisation;
- (d) (acknowledge) it acknowledges that funding provided under this Agreement is public money and is subject to compliance by the Recipient with the terms of the Grant as detailed in this Agreement;
- (e) (undertake) it will undertake its responsibilities under this Agreement with integrity, good faith and probity in accordance with good corporate governance practices;
- (f) (cooperate) it will cooperate fully with the State in the administration of this Agreement;
- (g) (laws) it will comply with all State and Commonwealth Laws; and
- (h) (inspection) it will permit the State, any officers of the Department or any other person authorised by any of them to enter the Recipient's premises at any reasonable time to determine whether the Recipient is performing its obligations under this Agreement, provided that any person entering the Recipient's premises does so in a manner so as to cause minimal disruption to the Recipient's business.

## **5. REPRESENTATIONS AND WARRANTIES**

### **5.1 Recipient's Warranties**

The Recipient represents and warrants that:

- (a) it is duly authorised and has the power to enter into and observe its obligations under this Agreement;
- (b) its obligations under this Agreement are valid and binding and are enforceable against it in accordance with their terms;
- (c) all authorisations, registrations, consents, approvals licences and permits which are or will be required in connection with the performance by the Recipient of its obligations under this Agreement have been or will be obtained or effected and are or will be and will remain in force and effect for as long as necessary;

- (d) to the best of its knowledge or belief there is no litigation, arbitration or administrative proceedings currently taking place, pending or threatened against the Recipient which could have materially adverse effects on the Recipient's ability to perform this Agreement or on the State's reputation;
- (e) to the best of its knowledge or belief this Agreement and performance under it does not violate any law or government order or decree or any consent, registration, approval, licence or permit or agreement, order or award binding on the Recipient;
- (f) all information provided by or on behalf of the Recipient to the State or to the Department relating to the Recipient's affairs and this Agreement are true, accurate and complete and, without limiting this clause 5.1(f), all financial information provided by or on behalf of the Recipient to the State or the Department is, in all material respects, a true, fair and accurate statement of its financial position as at the date of preparation of the information; and
- (g) it has, after diligent inquiry and investigation, fully disclosed to the Department and the State all material information which could reasonably be regarded as affecting in any way the State's decision to enter into this Agreement;
- (h) it will comply with all prior representations made by it in connection with the Recipient or this Agreement.

## **5.2 Made Continuously**

The representation and warranties made by the Recipient under clause 5.1 are taken to be made continuously throughout the Term.

## **6. ASSETS**

- (a) For Assets purchased with the Grant, the Recipient must follow ordinary and commercially prudent procedures and arrangements for the purchase, installation, maintenance and preservation of such Assets.
- (b) Assets purchased with the Grant must vest in the Recipient.
- (c) Assets purchased with the Grant should be kept within the State unless the State has first given the Recipient written approval to move any items outside Western Australia.
- (d) The Recipient must not sell, transfer, dispose of, mortgage, charge or otherwise encumber Assets purchased with the Grant without the prior written consent of the State.

## **7. ASSIGNMENT AND SUB-CONTRACTING**

- (a) The Recipient shall not assign this Agreement without the State's prior written consent.

- (b) If the Recipient intends to sub-contract out a substantial or significant aspect of the Project, then it shall give the State reasonable written notice of its intention. The State may prevent such sub-contracting from happening (by withholding its consent to the same), but only on reasonable grounds.

## **8. REPORTS, INFORMATION AND AUDIT**

### **8.1 Records**

The Recipient shall keep proper, detailed, accurate, complete and up-to-date written records of:

- (a) its income, expenditure and financial commitments in relation to the Project (including bills, accounts, invoices, dockets, receipts and the like); and
- (b) the activities, performance, progress, successes, achievements, setbacks and failures of and associated with the Project.

Such records must be kept for five years after the termination or expiration of this Agreement (as the case may be), whichever is the earlier. The State may access the above records at all times.

### **8.2 Reporting**

The Recipient must comply with the reporting requirements set out in Schedule 3. All such reports must be in writing and properly detailed, accurate, complete and up-to-date and in no way misleading or deceptive.

### **8.3 Notification**

- (a) The Recipient must provide to the State notification of any legal proceedings or debt recovery actions against the Recipient or any of its officers or employees, where such legal proceedings could have a materially adverse effect on the ability of the Recipient to perform its obligations under this Agreement.
- (b) Any information provided under paragraph (a) above shall be provided on a confidential basis, and may only be used by the State for the purposes of considering or enforcing its rights under this Agreement.

### **8.4 Information**

- (a) The Recipient must promptly provide to the State information and documents (including supporting evidence) in connection with the Recipient or this Agreement that the State requests from time to time including, without limitation, any information and documents (including supporting evidence) which the State requires in considering whether the State is or should be satisfied of any matter in connection with this Agreement.

- (b) Where:
  - (i) any document or other matter previously provided under this Agreement has changed and that change would, or might, result in, or cause, circumstances which would, or might, adversely affect the ability of the Recipient to comply with its obligations under this Agreement; or
  - (ii) any accounts or financial statements provided by the Recipient under this Agreement have been replaced by later accounts or financial statements since having been provided to the State,

the Recipient must promptly provide the State with full details of the change or with updated copies of the accounts or financial statements (as the case may be).
- (c) All information and documentation provided by the Recipient to the State hereunder must be true, accurate, complete, sufficiently detailed, up-to-date and in no way misleading or deceptive.

## **8.5 Audit Rights**

The State may arrange, at its own cost, for an independent audit to be carried out of the Recipient's activities and finances that relate directly to the Project and the Grant. If the State arranges for an independent audit to be carried out:

- (a) the State must provide reasonable written notice to the Recipient that the State has arranged for an independent audit to be carried out;
- (b) the Recipient must allow all persons appointed by the State to carry out the independent audit to have full access to the financial records of the Recipient that relate directly to the Project and the Grant for the purpose of carrying out the independent audit;
- (c) the Recipient must allow the Auditor General for the State, the Internal Audit Branch of the Department, or an authorised representative, to have access to and examine records and information concerning the Project and the Grant.

Where the State considers that any information or evidence provided by the Recipient under this Agreement is incorrect, incomplete or inaccurate and arranges for an independent audit to be carried out in respect of that information or evidence, and where the audit substantiates the State's concern, then the independent audit will be at the Recipient's expense.

## **9. RELATIONSHIP**

The Parties acknowledge and agree that nothing in this Agreement may be construed to make either of them a partner, agent, employee or joint venturer of the other.

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, nor shall the Recipient have any power or authority to bind or represent the State or the Department.

The Recipient must not represent itself, and must ensure that its employees, contractors (at any tier), 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 the Department.

## **10. DEFAULT**

### **10.1 Event of Default**

The State and Recipient agree that it is an Event of Default if:

- (a) the Recipient breaches this Agreement and such breach cannot be remedied;
- (b) a representation or warranty made or taken to be made by the Recipient under or in connection with this Agreement is found or is notified by the State to be materially incorrect or misleading when made;
- (c) an undertaking given to the State or its legal representatives by or on behalf of the Recipient is breached or not wholly performed within the period specified in the undertaking or, if no period is specified, within five Business Days from the date of the undertaking;
- (d) a person is appointed under legislation to investigate or manage any part of the affairs of the Recipient;
- (e) an Insolvency Event occurs in respect of the Recipient;
- (f) without the prior written consent of the State which consent will not be unreasonably withheld, the persons who at the date of this Agreement have control of the Recipient, cease to have control of the Recipient;
- (g) this Agreement is or becomes wholly or partly void, voidable, unenforceable or ineffective, or is claimed to be so by the Recipient;
- (h) the Recipient persistently or regularly breaches this Agreement;
- (i) the Recipient does not observe any obligation under this Agreement and, if the non-observance can be remedied, does not remedy the non-observance within five Business Days or

other period as may be mutually agreed between the parties depending on the nature of the non-observance;

- (j) in the reasonable opinion of the State the reputation of the State is, or is likely to be, damaged by any act or omission of, or any conduct by, the Recipient; or
- (k) this Agreement expressly provides for or contemplates the Parties reaching further agreement on something and they fail to do so within a reasonable time.

## **10.2 Suspension During Breach**

Whilst a Party is in breach of this Agreement, the other Party may suspend the performance of its obligations under this Agreement.

## **11. CONSEQUENCES OF EVENT OF DEFAULT**

If an Event of Default occurs during the Term, the State may terminate this Agreement with notice to the Recipient whereupon:

- (a) the State shall cease to be liable for any unpaid amount of the Grant;
- (b) the Recipient must not incur any further commitments or make any further expenditure relating to the Purpose of this Agreement unless permitted in writing by the State to do so;
- (c) the State, in its absolute discretion, may by notice in writing to the Recipient, demand that part or all of the Grant disbursed is due and payable by the Recipient to the State; and
- (d) if the State makes a demand under clause 11(c), the Grant or the part thereof demanded is due and payable by the Recipient to the State in immediately available funds within 20 Business Days after the date of the notice is received by Recipient.

## **12. INSURANCE**

### **12.1 Insurance must be obtained**

The Recipient must obtain and maintain (or procures the obtaining and maintenance of) during the Term:

- (a) insurance in respect of workers' compensation in accordance with statutory requirements;
- (b) insurance to cover the full replacement value of the Assets purchased with Grant monies;
- (c) public liability insurance in the minimum amount of \$10,000,000 per claim; and

with:

- (i) an Australian Prudential Regulatory Authority approved insurer; or
- (ii) an overseas insurer with a Standard and Poor's, or any other internationally recognised financial rating Agency, with a credit rating of at least A minus (A-); or
- (iii) an insurer established under either Commonwealth or State law.

## **12.2 Undertakings in Relation to Insurance**

The Recipient must:

- (d) pay or ensure the payment of all premiums and amounts necessary for effecting and keeping up the Insurance before the same are due and obtain a receipt upon payment;
- (e) if requested, provide or arrange to be provided to the State, as soon as practicable after the Recipient receives it, a copy of any certificate of currency of the Insurance;
- (f) not do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective any Insurance;
- (g) provide written notice to the State of any enforced, conducted or settled claims related to this Project under any policy of Insurance;
- (h) comply with the requirements of the Insurer in relation to the Insurance at all times so as to prevent the invalidation of the policy or policies of Insurance and not to do, permit, or suffer to be done any act, matter, thing, or other circumstance which might prejudice the Insurance or reduce the obligations of the Insurer; and
- (i) not at any time reduce the amount of the Insurance or transfer or change the same to any other insurer without providing written notice to the State.

## **13. INDEMNITY**

- (a) The Recipient hereby agrees to indemnify and keep indemnified the State and the State's respective officers, employees and agents against all damages, losses, liabilities, cost and expenses (including legal fees) claimed, suffered or incurred by the State or any of the State's respective officers, employees and agents whether before or after the date of this Agreement to the extent directly caused by any:
  - (i) breach of an obligation of this Agreement by the Recipient;
  - (ii) negligent or other wrongful or unlawful act or omission of the Recipient or its officers, employees, partners,

joint venturers, contractors (at any tier), officers or agents; or

- (iii) breach of a State or Commonwealth law relevant to the Agreement by the Recipient or its officers, employees, partners, joint venturers, contractors (at any tier), officers or agents.
- (b) This indemnity is reduced to the extent that the indemnified party caused or contributed to the liability or damage.
- (c) This indemnity shall survive expiration or termination of this Agreement.

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

At the completion of the Project or the conclusion of this Agreement (whichever occurs first), the Recipient must remit to the Department within 20 Business Days any part of the Grant which the Department has paid and which has not been used or committed in accordance with this Agreement.

At the completion of the Project or conclusion of this Agreement (whichever occurs first), the State will retain any unpaid part of the Grant the Recipient has not committed or will not use in accordance with this agreement.

#### **15. LIMITATION OF LIABILITY**

The State shall not have any responsibility or liability for the success or otherwise of the Project. The State shall not be liable for any losses suffered by the Recipient in undertaking the Project. If the Funding is insufficient for the Recipient to properly meet all of its obligations, then the Recipient is solely responsible for funding any shortfall.

#### **16. NOTICES**

##### **16.1 Notices**

A notice or other communication that may or must be given under or in connection with this Agreement, to be valid and effective, must:

- (a) be in writing;
- (b) be given by an Authorised Officer of either Party; and
- (c) be:
  - (i) sent by prepaid ordinary post to, or left at the address of, the addressee at the address set out at the end of this clause 16; or
  - (ii) sent by email to the email address of the addressee set out at the end of this clause 16.

## **16.2 Receipt of Notices**

A notice or other communication takes effect from the time it is received, unless a later time is specified in the notice or communication. For the purposes of this clause 16, a letter or email is taken to be received:

- (d) in the case of a letter sent by post, on the third Business Day after posting; and
- (e) in the case of an email, on production of a printed copy of the sent email which shows that the entire email, including all attachments, was sent to the email address of the addressee set out at clause 16.4.

## **16.3 Receipt of Notices**

A notice or other communication which is received after 5.00 pm on a day is taken to be received on the next Business Day after that day.

## **16.4 Address for Service**

The Parties' addresses for service are as follows:

- (f) State's address for service:

Department of Jobs, Tourism, Science and Innovation  
Level 11, 1 William Street  
Perth WA 6000

- (g) Recipient's address for service:

15 Adam Street, Nannup WA 6275

## **17. WAIVER**

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by each Party.
- (b) A waiver by either Party pursuant to clause 17(a) will not prejudice that Party's rights in respect of any subsequent breach of this Agreement by the other Party.
- (c) Subject to clause 17(a), any failure by either Party to enforce any clause 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 rights under this Agreement.

## **18. PARTIES' RIGHTS**

A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single

or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or an exercise of any other right, power or remedy. Failure by a Party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

**19. REMEDIES**

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Agreement.

**20. ENTIRE AGREEMENT**

This Agreement constitutes the full and complete understanding between the Parties in relation to its subject matter and supersedes all prior negotiations, understandings and agreements with respect thereto.

**21. GOVERNING LAW AND JURISDICTION**

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

**22. FORCE MAJEURE**

If any Party is prevented from or delayed in performing an obligation by any event or occurrences beyond its reasonable control, such as weather or oceanic conditions or related issues indirectly or directly affected by weather or oceanic events, and promptly acts to mitigate the event or occurrence, the obligation is suspended during the period the event or occurrence continues and any further period which is reasonable in the circumstance. However, if the event or occurrence extends for more than 90 days, then either Party can lawfully terminate the Agreement without any further obligations accruing to any Party.

**23. SCHEDULES**

Each expressed or implied provision of any Schedule hereto is a provision of this Agreement and must be complied with in accordance with its terms.

**24. CONFIDENTIALITY**

- (a) Each Party must treat as confidential the Confidential Information and must ensure that its Personnel keep confidential the Confidential Information.
- (b) Each Party must not, and must ensure that its Personnel do not, at any time, directly or indirectly record, disclose to any person (who is not a Party), use, copy, transmit or exploit the

Confidential Information for any purpose, without the prior written consent of the other Party.

- (c) Each Party must:
  - (i) only access and use the Confidential Information for the Purposes;
  - (ii) only create, or cause or permit to be created, a document that reproduces, is based on, utilises or relates to Confidential Information if that creation is solely for, and is necessary for, the Purposes; and
  - (iii) only disclose Confidential Information:
    - (A) to a Specified Person solely for the Purposes and where such disclosure is necessary for the Purposes; or
    - (B) with the prior written consent of the Discloser.
- (d) The obligations of a Party under clauses 25(a), (b) and (c) will not be taken to have been breached where the Confidential Information:
  - (i) is or becomes generally available other than by breach of this Agreement by that Party or any breach of any legal or equitable obligation by anyone else;
  - (ii) is required to be disclosed by a Party by any written law or valid court order; or
  - (iii) is required to be disclosed under a provision of a statute in operation in the Commonwealth of Australia or the State, by law or by the rules of any stock exchange or listing authority; or
  - (iv) in the case of the State, the Department or the Minister, it is required to disclose any such information by virtue of an order, request or direction given to it by or on the part of the government of the State or the Parliament of the State or a committee of it; or
  - (v) the Parties agree in writing to disclose the information.
- (e) If the Recipient must make a disclosure as described in clause 25(c)(ii) or (iii), it must:
  - (i) disclose only the minimum of that Confidential Information that is required to comply with the applicable law;
  - (ii) disclose the information to the person that the Recipient must disclose it to, and no one else; and

- (iii) use its reasonable endeavours to provide the State with prior written notice of the disclosure, and the extent of the proposed disclosure.
- (f) Any minister of the government of the State may be required to disclose any Confidential Information in response to a Parliamentary request, question or direction.
- (g) A Party must immediately notify the other Party of any unauthorised record, disclosure, use, copying, transmission or exploitation of the Confidential Information of which a Party becomes aware, and must take all reasonable steps which the other Party may reasonably require in relation to such unauthorised record, disclosure, use, copying, transmission or exploitation.

## 25. TRUST

If the Recipient enters into this Agreement as trustee of a trust:

- (a) the Recipient does so both for itself and as trustee of the trust, and in this Agreement, each reference to the Recipient has effect as a reference in each capacity.
- (b) the Recipient warrants to the State that:
  - (i) the Recipient is the only trustee of the trust;
  - (ii) no action has been taken or proposed to remove the Recipient as trustee of the trust;
  - (iii) the copy of the trust deed and other documents relating to the trust (which the Recipient must produce to the State prior to the commencement date of this Agreement) disclose all the terms of the trust;
  - (iv) the Recipient has power under the trust deed to enter into this Agreement and the Recipient has entered into this Agreement for the benefit of the beneficiaries of the trust;
  - (v) the Recipient has a right to be fully indemnified out of the assets of the trust in respect of obligations incurred under this Agreement;
  - (vi) the assets of the trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Recipient has a right to be indemnified out of those assets;
  - (vii) the Recipient is not in default under the trust deed;
  - (viii) no action has been taken or is proposed to terminate the trust;

- (ix) the Recipient has complied with the Recipient's obligations in connection with the trust; and
  - (x) the State's rights under this Agreement rank in priority to the interests of the beneficiaries of the trust.
- (c) the Recipient must:
  - (i) at the State's request, exercise the Recipient's right of indemnity from the assets of the trust and the beneficiaries of the trust in respect of obligations incurred by it under this Agreement;
  - (ii) comply with the Recipient's obligations as trustee of the trust;
  - (iii) not, without the consent of the State, do anything which:
    - (A) effects the retirement, removal or replacement of the Recipient as trustee of the trust;
    - (B) could restrict the Recipient's right of indemnity from the assets of the trust in respect of obligations incurred by the Recipient under this Agreement;
    - (C) could restrict the ability of the Recipient to comply with the Recipient's obligations under this Agreement; and
    - (D) effects a variation of the trust deed, the termination of the trust or the resettlement of the trust.

## **26. DISPOSAL OF ASSETS**

If the Recipient at any time within 24 months after the final Grant payment shall transfer, assign, sell or otherwise dispose of any material asset or Property pertaining to the Project, then the Recipient shall, repay the totality of the Grant to the State.

## SCHEDULE 1 – GRANT DETAILS

### 1.1 Project Title

Revitalizing Nannup's Early Years Precinct: A Community-Driven Approach.

### 1.2 Grant

The Grant is **\$99,733.00** exclusive of GST.

### 1.3 Term

The Term is 12 months from the Execution Date, subject to clause 11 (DEFAULT) and any other relevant provision of this Agreement.

### 1.4 Payment of Grant

Payment of the Grant instalments will be by electronic funds transfer to the following Recipient bank account:

|                        |                                    |
|------------------------|------------------------------------|
| <b>Name of Bank:</b>   | <b>Commonwealth Bank Australia</b> |
| <b>Location:</b>       | <b>Busselton</b>                   |
| <b>BSB:</b>            | <b>066-508</b>                     |
| <b>Account Number:</b> | <b>10185718</b>                    |
| <b>Account Name:</b>   | <b>Municipal Account</b>           |

Subject to the other provisions of this Agreement, the Grant is payable to the Recipient in the following manner:

| Milestone Number | Milestone                                                                                                                                                                                                                                  | Date              | Grant Instalment                                                              |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-------------------------------------------------------------------------------|
| 1                | <ul style="list-style-type: none"><li>• Execution of FAA</li><li>• Project Baseline Report approved by the State</li><li>• Evidence of Insurance</li><li>• Evidence of commencement of project via quote acceptances or similar.</li></ul> | 30 September 2024 | \$20,000.00 upon written approval of the Project Baseline Report by the State |
| 2                | <ul style="list-style-type: none"><li>• Evidence of project completion to State's satisfaction (excluding Mural design)</li></ul>                                                                                                          | 31 August 2025    | \$79,733.00 upon written approval by the State                                |

## SCHEDULE 2 – PROJECT DESCRIPTION

### 2.1 Project Description

Provide nature play additions to the playground area including play equipment, seating, landscaping, and additional infrastructure for safe and suitable Toy Library storage.

## 2.2 Project Objectives

| Objectives                                    | Outcomes                                                                                               | Measures                               |
|-----------------------------------------------|--------------------------------------------------------------------------------------------------------|----------------------------------------|
| Enhance Toy Library and Playgroup facilities. | Increased session and membership numbers.<br><br>Greater attraction and amenity for community members. | Session numbers<br><br>Membership data |

## 2.3 Project Activities

| Activities           | Description                                                                                     | Date             |
|----------------------|-------------------------------------------------------------------------------------------------|------------------|
| Bench Seating        | Bench seating construction and installation                                                     | 31 December 2024 |
| Removal              | Removal of existing play equipment                                                              | 31 December 2024 |
| Order Play Equipment | Order play equipment as described in the Early Precinct Design                                  | 31 December 2024 |
| Site Works           | Site works commences for landscaping and hardscaping elements                                   | 31 January 2025  |
| Shed                 | Upgrade the Toy Library storage shed                                                            | 31 January 2025  |
| Playground Equipment | Install playground equipment                                                                    | 31 March 2025    |
| Landscaping          | Landscaping, hardscaping and reticulation installation                                          | 31 August 2025   |
| Mural                | Development of mural design with community and installation on exterior of the Toy Library shed | 30 November 2025 |

## 2.4 Detailed Breakdown of Planned Expenditure

| Item of Expenditure                                             | Funding Source(s)        | Cost (\$)   |
|-----------------------------------------------------------------|--------------------------|-------------|
| 1.1 - 1.3 Repairs to Old Kindy Building - incl. remove asbestos | Shire of Nannup reserves | \$29,925.00 |

|                                                                                                                                                   |                                                              |              |
|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|--------------|
| flooring, repair and replace flooring; patch and paint                                                                                            |                                                              |              |
| 1.4 - 1.6 Repairs to Old Kindy Building incl. roof, gutters, eaves (including asbestos removal), remedial brick repairs, underpinning             | Local Roads and Community Infrastructure Fund Phase 4 Part A | \$45,000.00  |
| 2. 1 Old Kindy Building to Early Years Precinct Family Hub - Kitchenette                                                                          | Local Roads and Community Infrastructure Fund Phase 4 Part A | \$4,000.00   |
| 2.2 Old Kindy Building to Early Years Precinct Family Hub - Climate resilience (e.g. floor insulation; thermal blinds) & minor safety improvement | Lotterywest Community Grassroots                             | \$5,548.00   |
| 2.3 Old Kindy Building to Early Years Precinct Family Hub - Bench seating                                                                         | Grant                                                        | \$725.00     |
| 3.1 Early Years Precinct: Enhanced Grounds, Safety - Parking, fencing and access safety improvements                                              | Local Roads and Community Infrastructure Fund Phase 4 Part A | \$15,350.00  |
| 3.3 Early Years Precinct: Enhanced Grounds - Design/Install of Early Years Nature Play Equipment; Kidsafe Audit                                   | Grant                                                        | \$52,859.00  |
| 3.4 Early Years Precinct: Enhanced Grounds - Landscaping/Hardscaping for Early Years Grounds                                                      | Grant                                                        | \$35,697.00  |
| 4.1 Upgrade to Toy Library Shed - From Community Shed to Toy Library Facility                                                                     | Grant                                                        | \$7,764.00   |
| 4.2 Upgrade to Toy Library Shed - Design and Execution of Mural by local artist                                                                   | Grant                                                        | \$2,688.00   |
| 5 Equipment (e.g. toys, musical instruments, storage) for Playgroup and Toy Library                                                               | Various                                                      | \$34,979.00  |
| Grant Total                                                                                                                                       |                                                              | \$99,733.00  |
| Other Contributions Total                                                                                                                         |                                                              | \$134,802.00 |
| Project Total                                                                                                                                     |                                                              | \$234,535.00 |

## **SCHEDULE 3 – EVALUATING & REPORTING**

The State shall provide reporting templates to the Recipient to complete and return as outlined within this schedule. Evidence of identified expenditure shall be provided to the State as part of the report requirements.

The State will review the financial and non-financial performance set out in the reports, and if, in the reasonable opinion of the State, any reports are deemed inadequate, the Recipient must promptly provide such further information as the State may require.

For the avoidance of doubt the State will request the following reports:

- (i) Baseline Report
- (ii) Progress Reports
- (iii) Acquittal Report

### **1.1 Project Baseline Report**

The Recipient must submit a Baseline Report within ten (10) days of Execution date. The Recipient shall not undertake any project expenditure until the Baseline Report is approved in writing by the State.

The Baseline Report will provide a project baseline, and shall identify the following:

- Project objectives and activities.
- Detailed breakdown of planned expenditure.

### **1.2 Progress Report**

The Recipient is to provide to the Department financial reports on a half yearly basis (at 31 December and 30 June), or as determined from time to time by the State.

The reporting of progress will be consistent with the Project Baseline Report, and shall identify the following:

- Progress against project objectives and activities.
- Detailed breakdown of expenditure, including any variances from the Baseline Report.

For the avoidance of doubt the State may:

- (i) request progress reports at more regular intervals than one progress report every half year 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 (1.2) of this Schedule 3 in any one instance does not constitute a waiver of the State's right to receive the information prescribed in item (1.2) of this Schedule 3 in every other progress report.

### **1.3 Acquittal Report**

The Recipient must, within 60 Business Days after this Agreement expires or is terminated (as the case may be), whichever is the earlier, submit an Acquittal Report in respect of the purpose and expenditure of the Grant for the State's written approval (or otherwise).

The Acquittal Report will be consistent with the Project Baseline Report, and shall provide the following:

- An evaluation report against project objectives, activities, final outcomes
- A detailed breakdown of expenditure, including any variances from the Baseline Report which must be certified by the Chief Financial Officer or other accountable officer.
- Evidence of identified expenditure.

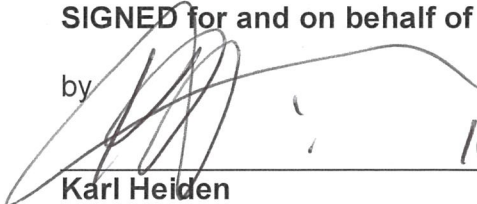
The Acquittal Report shall be on the template provided by the Department.

The State will review the performance set out in the Acquittal Report, and, if in the reasonable opinion of the State the Acquittal Report is deemed inadequate, the Recipient must promptly provide such further information that the State may require.

Executed by the parties hereto on the date first hereinbefore mentioned.

SIGNED for and on behalf of the STATE OF WESTERN AUSTRALIA

by

  
Karl Heiden

10 Sept '24  
Date

Executive Director, Industry Transition & Aboriginal Partnerships  
Department of Jobs, Tourism, Science and Innovation

in the presence of:

DECCAN SCHEMBRY  
Name of Witness

  
Signature of Witness

10/9/24  
Date

SIGNED for and on behalf of **RECIPIENT**

By

  
Signature

10/9/24  
Date

DAVID TAYLOR  
Name

CEO  
Position

in the presence of:

LISA ATKINSON  
Name of Witness

  
Signature of Witness

10/9/24  
Date

