



GRANT AGREEMENT

STATE OF WESTERN AUSTRALIA

-and-

**SHIRE OF WYNDHAM EAST KIMBERLEY
AS NAMED IN ITEM 1(a) OF THE SCHEDULE**

**KUNUNURRA TOWN REVITALISATION – DEVELOPMENT STRATEGY AND
BUSINESS CASE**

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BETWEEN:

THE STATE OF WESTERN AUSTRALIA via the Department of Primary Industries, acting through the Kimberley Development Commission (ABN 49 196 559 019) established under Part 2 of the Regional Development Commissions Act 1993 (as described in the Schedule)

("State")

-and-

Shire of Wyndham East Kimberley (ABN 35 647 145 756) of 20 Coolibah Dr, Kununurra, WA, 6743 (the entity named in item 1(a) of the Schedule)

(Grantee)

RECITALS

- A. The State is making and the Grantee is accepting a grant of money for the latter to stimulate economic growth and development in regional Western Australia.
- B. The Grant is made subject to terms, conditions and warranties set out in this Agreement.

OPERATIVE PART

The Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Agreement means this agreement, including its recitals and the Schedule.

Acquittal Report means the final report provided by the Grantee to acquit the Project as required under clause 3.6 and as described in the Schedule.

Acquittal Reporting Date means the date set out in item 3.3 of the Schedule or, if no date is specified, the date that is twelve (12) weeks after the Date for Project Completion.

Approved Budget means the budget approved by the State and set out in item 3.4 of the Schedule.

Approved Purpose means the purposes of carrying out the Project and achieving the Project objectives set out at item 3.2 of the Schedule.

Auditor means the Auditor General or a person who is independent of, and not related in any way to, the Grantee 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 of Western Australia appointed under section 6(2) of the *Auditor General Act 2006* (WA)

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia.

Commencement Date means the date on which the last Party to execute this Agreement executes this Agreement or such later date as expressly agreed by the State in writing.

Date for Project Completion means the date by which the Grantee must complete the Project as set out in item 3.3 of the Schedule.

Dispose includes transfer, agree to transfer, lease, agree to lease or otherwise part with possession.

End Date means the date on which this Agreement expires in accordance with clause 9.4(a) or, if this Agreement is terminated prior to that date, the date this Agreement is terminated.

Event of Default means an event of default described in clause 9.1.

Grant means the grant described in item 2 of the Schedule.

Grantee means the person or entity listed in item 1(a) of the Schedule.

Grantee's Contact Person means the person listed as such in item 1 of the Schedule or as notified in writing from time to time by the Grantee.

Insolvency Event means, in relation to the Grantee, the happening of any of the following 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 judgement 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
- (ii) is or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may 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
- (iii) 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
- (iv) 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 that event;
- (i) a person dies, ceases to be of full legal capacity or otherwise become 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.

Laws means all applicable present and future laws including:

- (a) any statute, regulation or subordinate legislation of the State of Western Australia or the Commonwealth of Australia or local government in force in the State of Western Australia;
- (b) lawful requirements of any government or government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public body or authority (including a statutory authority), a self-regulatory authority established under statute or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law;
- (c) rules and principles of the common law and equity.

Leveraged Funding means the leveraged funding (if any) described in item 5.1 of the Schedule.

Milestone means a milestone specified in item 3.3 of the Schedule.

Milestone Date, for a Milestone, means the date specified in item 3.3 of the Schedule by which the Grantee must perform the Milestone, or such later date as agreed with the State in writing.

Obligation means an obligation under this Agreement.

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

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

Property means any real or personal property purchased with the Grant. Such property may, or may not, be described in the Schedule.

KDC means the Kimberley Development Commission named in item 1(b) of the Schedule, being a body established under Part 2 of the *Regional Development Commissions Act 1993* (WA).

Report means each of the reports required under this Agreement to be submitted by the Grantee to the State in respect of the Project and the Grant, including the Acquittal Report.

Schedule means the schedule to this Agreement.

Special Conditions means the conditions, if any, specified in item 5 of the Schedule.

State's Contact Person means the person listed as such in item 1(c) of the Schedule or as notified in writing from time to time by the State.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) any gender includes the other genders;
- (c) 'includes' and 'including' and are not words of limitation;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) headings are included for convenience and do not affect the interpretation of this Agreement;
- (f) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (g) an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally;
- (h) the Obligations of the Grantee, if more than one person, are joint and several and each person constituting the Grantee acknowledges and agrees that it will be causally responsible for the acts and omissions, including any breaches of this Agreement, of the other as if those acts or omissions were its own;
- (i) a reference to:
 - (i) any Law, legislation or legislative provision includes any statutory modification, amendment, re-enactment, consolidation and replacement of it and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (ii) a person includes an entity recognised by Law, including a body politic, partnership, and incorporated and unincorporated bodies;
 - (iii) a person includes that person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;

- (j) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day.

2. GRANT

- (a) The State shall pay the Grant to the Grantee to deliver the Project in accordance with this Agreement.
- (b) The State will pay the Grant in the manner and at the times specified in item 3.3 and item 4 of the Schedule.

3. OBLIGATIONS OF GRANTEE

3.1 Use of Grant Payment and Delivery of the Project

- (a) The Grantee will use the Grant solely for the Approved Purpose in accordance with the Approved Budget and must expend such funds by the Date for Project Completion.
- (b) The Grantee will deliver the Project in accordance with this Agreement to the reasonable satisfaction of the State and will at all times:
 - (i) undertake the Project in a proper, timely and efficient manner using the standard of care, skill, diligence and foresight that would reasonably be expected from an expert and experienced provider of the Project, and in compliance with all Laws;
 - (ii) complete each Milestone by the relevant Milestone Date and complete the Project by the Date for Project Completion;
 - (iii) inform the State about all matters the State should reasonably be made aware of and provide information about the delivery of the Project that may reasonably be required or requested by the State;
 - (ii) obtain and maintain any accreditation or registration required for the delivery of all or part of the Project or as may be requested in writing by the State.
- (c) The Grantee agrees any interest earned on the Grant must only be used for the purposes of the Project or returned to the State.
- (d) If the Grantee purchases equipment with the Grant, such equipment must not be disposed of within three (3) years of the End Date without the prior written consent of the State.
- (d) The Grantee must keep the Property in good, clean, tidy and secure order, state, repair and condition.
- (e) The Grantee and the State agree that payment of all or part of the Grant is not an admission by the State that the Grantee has met its Obligations to the reasonable satisfaction of the State.
- (f) The Grantee must notify the State if it considers that it will be unable to properly use all or part of the Grant in accordance with this Agreement.

3.2 No Changes

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

3.3 No Endorsement

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

3.4 Acknowledgement of the State

- (a) The Grantee will provide the State with public recognition on all literature and promotional material for the Project, in the format approved by the State.
- (b) Use of the State Government of Western Australia logo must first be authorised by the State.
- (c) The Grantee will liaise with the State in advance of any promotional event relating to the Project (e.g. official opening or similar) to ensure adequate time for appropriate representation to be arranged. Similarly, any request for a representative of the State to formally participate in the event must be approved by the State in a timely manner prior to the event.

3.5 Access to Information

- (a) If the State requires from the Grantee information or documentation relating in any way to this Agreement, the Grant, or the Property, the Grantee must promptly oblige. All information and documentation so provided hereunder must be accurate, complete, up-to-date and in no way misleading or deceptive.
- (b) In this clause 3.5 "information" includes explanation or clarification.
- (c) This clause survives the termination or expiration of this Agreement.

3.6 Accounts and Reporting

- (a) The Grantee must keep accurate, complete and up-to-date written records of all expenditure made, income received (including other grants) and liabilities incurred (including loans incurred) in respect of this Agreement and the Property. Such records must be made available to the State upon request.
- (b) If the Grant (excluding GST) exceeds \$50,000:
 - (i) within twelve (12) weeks of the Date for Project Completion the Grantee must provide to the State a financial statement of income (including any Leveraged Funding) and expenditure for the Project, signed by the Chief Executive Officer of the Grantee or equivalent and certified by an Auditor, which must include details of how the Grant was expended and completed to Australian Auditing Standards; and
 - (ii) the Grantee must provide the State an Acquittal Report signed by the Chief Executive Officer (or equivalent) of the Grantee by the Acquittal Reporting Date;
 - (iii) the Acquittal Report must show how and to what extent the Grant and any Leveraged Funding was spent and the extent to which Project outcomes were achieved and must be in the format and contain such other matters as is specified in item 3.3 of the Schedule.
- (c) If the Grant (excluding GST) is \$50,000 or less:

- (i) the Grantee must provide the State an Acquittal Report signed by the Chief Executive Officer (or equivalent) of the Grantee by the Acquittal Reporting Date;
- (ii) the Acquittal Report must show how and to what extent the Grant and any Leveraged Funding was spent and the extent to which Project outcomes were achieved and must be in the format and contain such other matters as is specified in item 3.3 of the Schedule; and
- (iii) The State reserves the right to request an audited financial statement for the Project to be certified by an Auditor appointed by the State, with costs to be borne by the Grantee.
- (d) The Grantee must, from time to time, promptly provide such information or Reports to the State regarding the progress and results of the Project as the State may reasonably require.
- (e) The Grantee acknowledges that submitting a Report to the State does not mean the State has accepted that Report.
- (f) The State, acting reasonably, may determine whether or not to accept any Report provided by the Grantee under this Agreement and the Grantee must, if notified by the State to do so, resubmit any such Report not so accepted by the State.
- (g) If the State accepts a Report, the State must give the Grantee notice that it accepts the Report as soon as practicable.
- (h) This clause survives the termination or expiration of this Agreement.

3.7 Special Conditions of Grant

The Grantee agrees to be bound by and comply with the Special Conditions.

3.8 Warranties

- (a) The Grantee warrants that there is no legal or other impediment preventing it from entering into or performing this Agreement. Without limitation to the previous sentence, the Grantee warrants that its constituent documents allow it to enter into and perform this Agreement.
- (b) The Grantee warrants that every statement or representation made or given by or on behalf of it (in connection with this Agreement, the Grant or the Property) is true and correct in all material respects.
- (c) Every express or implied warranty made under or by virtue of this Agreement is repeated continuously during the term of this Agreement.

3.9 Negation of Employment, Partnership and Agency

- (a) The Grantee 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 KDC or as otherwise able to bind or represent the State or the KDC.
- (b) The Grantee 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 KDC, or have any power or authority to bind or represent the State or the KDC.

4. REPAYMENT OF GRANT FUNDS

- (a) If, in the reasonable opinion of the State, the Grantee:
 - (i) does not deliver all or part of the Project to the State's reasonable satisfaction;
 - (ii) has used, spent or committed all or part of the Grant other than in accordance with this Agreement; or
 - (iii) is or will be unable to properly use the Grant in accordance with this Agreement,

the State may in its absolute discretion give written notice to the Grantee requiring the Grantee to repay that part of the Grant and any GST paid to the Grantee which, in the State's reasonable opinion, has not been applied in accordance with this Agreement or that remains unspent as at the date of receiving the notice, and the Grantee will repay that amount to the State within forty (40) Business Days, or such other time period as agreed, of receiving the written notice from the State.

- (b) The clause survives expiration or termination of this Agreement.

5. LIMITATION OF LIABILITY

- (a) The State does not accept any responsibility or liability for the success or otherwise of the Project and is not liable for any losses which may be suffered by the Grantee in undertaking the Project.
- (b) If the Grant (and any interest which accrues on the Grant) is insufficient for the Grantee to properly fulfil all of its Obligations, then the Grantee must still fulfil its Obligations at its own cost.

6. INSURANCE AND INDEMNITY

- (a) The Grantee shall take out and maintain throughout the term of the Agreement adequate insurance to provide cover for the Project undertaken by the Grantee, including Public Liability and Workers' Compensation insurances.

If requested by the State, the Grantee must provide any of the following:

- (i) a written statement of the applicable insurance cover held by the Grantee; or
- (ii) a copy of any policy of insurance, a Certificate of Currency, and receipts for premiums in connection with any policy of insurance.

The State reserves the right to have any insurable risk assessed and to obtain expert advice in relation to adequacy of the Grantee's insurance cover by an insurance advisor of the State's choice. The Grantee must provide any information requested by the State's insurance advisor for the purpose of the assessment and must comply with any recommendation and advice received by the State in respect to the assessment.

- (b) The Grantee shall at all times indemnify, hold harmless and defend the State, its Ministers, officers, employees and agents from and against any loss, including legal costs and expenses or liability incurred against the State, its Minister, officers, employees and agents arising from any claim, suit, demand, action or proceeding by any person or body against

the State, its Minister, officers, employees and agents arising from or in connection with:

- (i) any breach by the Grantee of an obligation under this Agreement;
 - (ii) any act or omission of the Grantee or its employees, contractors (at any tier), officers or agents in connection with this Agreement or a matter contemplated by it;
 - (iii) any breach of a State or Commonwealth law relevant to the Agreement by the Grantee or its employees, contractors (at any tier), officers or agents; or
 - (iv) the Project.
- (c) The indemnity in this clause survives expiration or termination of this Agreement.

7. FREEDOM OF INFORMATION ACT 1992 AND FINANCIAL MANAGEMENT ACT 2006

- (a) The Grantee acknowledges and agrees that this Agreement and information regarding it is subject to the *Freedom of Information Act 1992* and that the State may publicly disclose information in relation to this Agreement, including its terms and the details of the Grantee. This could result in requests for more detail to be released publicly.
- (b) The parties acknowledge and agree that, despite any provision of this Agreement to the contrary, the powers and responsibilities of the Auditor General under the *Financial Management Act 2006* are not limited or affected by this Agreement.
- (c) The Grantee must allow the Auditor General, or an authorised representative, to have access to and examine the Grantee's records, documents and information concerning this Agreement.
- (d) This clause survives the termination or expiration of this Agreement.

8. NOTICES

- (a) Any notice, approval, consent from one Party to another must be in writing and be signed by an officer who is authorised to sign and legally bind that Party must be in writing;
- (b) Any notice, approval, consent must be addressed to the State's Contact Person or the Grantee's Contact Person and will only be properly given or served by a Party if that Party:
 - (i) hand delivers it or posts it by prepaid post to the address of the Party receiving the notice listed in item 1(c) of the Schedule; or
 - (ii) transmits it electronically to the email address of the Party receiving the notice listed in item 1(c) of the Schedule.
- (c) Subject to paragraph (d), a notice 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 third Business Day after posting; and
 - (iv) in the case of email, at the time of transmission unless a notice of non-delivery is received by the sender's information system.

- (d) If a notice is received after 5.00 pm or on a day other than a Business Day, it is taken to be received on the next Business Day.

9. DEFAULT AND TERMINATION

9.1 Event of Default by the Grantee

An Event of Default occurs if:

- (a) an Insolvency Event occurs in respect of the Grantee or a person is appointed under legislation to investigate or manage any part of the affairs of the Grantee (except to the extent the right to terminate is stayed by sections 415D, 434J or 451E of the Corporations Act (Cth);
- (b) the Grantee ceases to carry on business in Western Australia;
- (c) the Grantee repudiates this Agreement
- (d) the Grantee breaches any of its obligations under this Agreement which continues without remedy for ten (10) business days after notice in writing has been served on the Grantee by the State;
- (e) the Grantee fails to submit an Acquittal Report by the Acquittal Reporting Date; or
- (f) the State is of the opinion that the Grantee is unwilling or will be unable to comply with its obligations under this Agreement.

9.2 Effect of Event of Default

If an Event of Default occurs, the State may do one, some or all of the following:

- (a) terminate the Agreement by providing a further ten (10) Business Days notice in writing to the Grantee of the Event of Default; or
- (b) suspend payment of the Grant until the Event of Default is remedied; and
- (c) request that the Grantee reimburse the State within forty (40) Business Days for any part of the Grant (and any GST paid to the Grantee) that was not used exclusively for the Project in accordance with this Agreement, in which case the Grantee must immediately comply.

9.3 Recommencement of Grant Funds Payment

The State may, in its absolute discretion, recommence payment of the Grant Funds if and when the Grantee has rectified the Event of Default.

9.4 Acquittal

- (a) unless earlier terminated, this Agreement will terminate upon submission and acceptance of the Acquittal Report.
- (b) should the Grantee be unable to properly use the Grant in accordance with this Agreement, the Grantee will advise the State as soon as it becomes aware of this and the State may require that any unused portion of Grant be returned within forty (40) Business Days. The Grantee must then comply with any such requirement.

10. GOODS AND SERVICES TAX (GST)

- (a) For the purposes of this Agreement:
 - (i) “**GST**” means the goods and services tax applicable to any taxable supplies as determined by the GST Act; and
 - (ii) “**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations;
 - (iii) the terms “**supply**”, “**registered**”, “**recipient-created tax invoice**”, “**tax invoice**”, “**taxable supply**” and “**value**” have the same meanings as in the GST Act.
- (b) If the supply of anything under this Agreement is a taxable supply under the GST Act, the Grant shall be exclusive of GST unless otherwise specified.
- (c) The obligation of the State to pay the GST on any supply by the Grantee under this Agreement is conditional upon the prior issue by the Grantee to the State of a tax invoice, which complies with the GST Act. This provision applies notwithstanding any law to the contrary.
- (d) The State through its internal process may raise a recipient-created tax invoice (**RCTI**) for the Grant amount identified in this Schedule. The terms of the RCTI are governed by the following:
 - (i) The Grantee warrants that it has an Australian Business Number.
 - (ii) The Grantee will immediately notify the State in writing of any change to the Grantee’s registration.
 - (iii) The State warrants that it is registered for GST.
 - (iv) If any supply is made by the Grantee after the date of this Agreement in connection with the Grant, the State may issue a RCTI in respect of the supply and the Grantee will not issue a tax invoice in respect of that supply.
 - (v) The Grantee and the State may agree that the provisions of the agreement to use recipient-created tax invoices will not apply in respect of a particular supply, in which case the Recipient will issue a tax invoice in respect of that supply.
 - (vi) The State or the Grantee may terminate agreement to use RCTIs at any time by giving written notice to the other Party.

11. 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 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.

12. NO ONGOING COMMITMENT

- (a) The State makes no commitment to funding the Project except to the extent specified in this Agreement.

- (b) The Grantee acknowledges that it will be responsible for any ongoing costs as a result of the Project and that the State will not be obliged to provide additional funds.

13. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.

14. ASSIGNMENT

- (a) This Agreement is personal to the Grantee and may not be assigned or novated by the Grantee without the State's consent, which may be withheld at the State's discretion. The State may assign or transfer its rights and obligations under this Agreement as it sees fit.
- (b) For the purposes of this clause 14, the Grantee shall be deemed to have assigned or transferred 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 Grantee.

15. VARIATION

- (a) Any modification, amendment or other variation to this Agreement must be made in writing and agreed to by both Parties.
- (b) Any extensions and/or variations are to be requested and approved in writing prior to the Date for Project Completion.

16. INTELLECTUAL PROPERTY

All Intellectual property resulting from the Project shall be the property of the Grantee. Unless otherwise specified in the Schedule and subject to any confidentiality obligations, the Grantee hereby grants the State a non-exclusive, unrestricted, royalty-free and perpetual licence to use, copy, distribute, reproduce and publish any reports (and/or variations of the reports) and any such reports in respect, or on account of the Project or this Agreement, in any medium, throughout the world.

17. GOVERNING LAW

This Agreement is governed by the laws of the State of Western Australia. The State and the Grantee irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.

18. 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 Grantee, the Grantee must obtain and have in place the written consent of the person owning, leasing or having management and control of that land to undertake the Project on that land.

19. AGREEMENT BETWEEN THE GRANTEE AND A THIRD PARTY

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

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

20. STATE MAY ACT

If the Grantee fails or refuses to perform an Obligation or otherwise breaches this Agreement, the State itself may do all that is necessary to ensure the fulfilment of that obligation, or the rectification of the breach (as the case may be), and the cost to the State in doing so shall be a debt payable to the State by the Grantee on demand.

21. TERM OF AGREEMENT

This Agreement has effect on and from the Commencement Date and, unless terminated earlier, will expire on the date that the State gives the Grantee notice in accordance with clause 3.6(g) that the State has accepted the Acquittal Report.

22. SCHEDULE

All provisions expressed or implied in the Schedule are provisions of this Agreement and must be complied with in accordance with their expressed and implied terms.

23. TRUSTS

If the Grantee is a trustee of a trust (**Trust**):

- (a) the Grantee enters into and is bound by this Agreement both in its personal capacity and in its capacity as trustee of the Trust; and
- (b) the Grantee represents and warrants to the State that, in respect of the Trust:
 - (i) it is the sole trustee of the Trust;
 - (ii) it is a validly appointed trustee of the trust and no action is proposed to remove it as trustee of the Trust;
 - (iii) there has not been any contravention of or non-compliance with any of the terms of the trust deed constituting the Trust;
 - (iv) it has a right of indemnity out of the assets of the Trust for all liabilities incurred by it under this Agreement and the assets of the Trust are sufficient to satisfy that right; and
 - (v) this Agreement does not conflict with the operation or terms of the Trust or the trust deed;

- (vi) it has full and valid power and authority under the Trust to enter into this Agreement and to carry out the transactions contemplated by this Agreement (including all proper authorisations and consents);
- (vii) it enters into this Agreement and the transactions evidenced by it for the proper administration of the Trust and for the benefit of all of the beneficiaries of the Trust; and
- (viii) it will not, without the State's consent (not to be unreasonably withheld or delayed), resign, allow the appointment of a substitute or additional trustee, terminate the trust or vary the terms of the Trust or resettle the Trust.

SCHEDULE

1. GRANTEE AND KDC DETAILS

(a) Grantee:

Shire of Wyndham East Kimberley (ABN 35 647 145 756) of 20 Coolibah Dr, Kununurra, WA, 6743

(b) RDC:

Kimberley Development Commission (KDC)

(c) Contact persons and addresses for notices:

The State

Contact person:	Michele Pucci
Job Title:	Director, Regional Development
Phone:	9148 2100
Email for notices:	michele.pucci@kdc.wa.gov.au
Postal address for notices:	PO Box 620, Kununurra, WA, 6743

The Grantee

Contact person:	Stuart Dyson
Job Title:	Contract Manager, Special Projects
Phone:	0428 554 803
Email for notices:	stuart.dyson@swek.wa.gov.au
Postal address for notices:	PO Box 614, Kununurra WA 6473

2. GRANT

\$327,500 (exclusive of GST)

3. DETAILED DESCRIPTION OF PROJECT

3.1 Approved Project Description:

The project is underpinned by the MoU (Appendix 1) entered into by the grantee on 3 September 2024, that is, to establish a collaborative approach between KDC, Shire of Wyndham East Kimberley, MG Corporation, and East Kimberley Chamber of Commerce and Industry in the ongoing development of the town of Kununurra.

This project will undertake community consultation and establish a development strategy and business case for the revitalisation of the Kununurra town centre precinct. Consultation activities will include targeted engagements with Traditional Owners and the precinct business community in addition to broader community consultation. Funding will be provided to undertake effective community consultation, project scoping, concept design, and cost benefit analysis of the revitalisation project.

3.2. Approved Project Outcomes/Outputs:

The project will result in the following outputs:

- Town centre revitalisation strategy, including:
 - the communities vision
 - precinct development
 - preliminary concepts
 - cost estimates for precincts
 - high level prioritisation and phasing
- Business Case, including:
 - Project Details
 - Stakeholder Engagement
 - Risk Management
 - Needs analysis
 - Strategic Alignment
 - Case Studies
 - List of Precinct Projects and Costs
 - Implementation/Next Steps

The project outcome will be a cohesive and community-led set of guiding principles for town centre revitalisation and a compelling business case for potential investment and implementation.

3.3. Project Timeframes and Milestones

	Main Activities / Milestone	Milestone Date	Milestone Payment (GST Excl)
a.	Execution of contract	4/10/2024	\$75,000
b.	Consultancy scope of works developed and agreed by the Steering Group	10/10/2024	\$75,000
c.	Appointment of consultant to undertake the approved project outcomes/outputs (3.1, 3.2)	20/12/2024	\$150,000
d.	Submission of outputs (3.2) to the KDC	30/08/2025	\$27,500
e.	Acquittal Reporting Date	30/11/2025	
	Total:		\$327,500 (GST Excl)

Payment of each Milestone Payment will be authorised within 20 Business Days upon acceptance that the Milestone has been met and the Grantee providing a valid tax invoice addressed to the Department of Primary Industries and Regional Development for that amount.

3.4. Approved Budget

Item of Expenditure	Budget (\$)	Source of Funds
Consultancy – Town centre revitalisation strategy	327,500	Leverage Fund
Consultancy – Town centre revitalisation strategy	50,000	Shire of Wyndham East Kimberley
Total Budget	377,500	

4. MANNER IN WHICH THE GRANT IS TO BE PAID

The State will allocate \$327,500 to a project cost centre reserved for expenditure in alignment with the grant agreement budget (Schedule 3.4). The grantee will provide invoices addressed to the Department of Primary Industries and Regional Development (via the Kimberley Development Commission) who will process the payment on the State's behalf.

5. SPECIAL CONDITIONS OF GRANT

- (a) The grantee commits to acting in accordance with The Kununurra Collaboration MoU (Appendix 1) in fulfilling their obligations of the grant agreement.

5.1. Leveraged Funding

- (a) The Grantee shall secure the Leveraged Funding as follows:

Source of Leveraged Funding	Amount (\$)
Shire of Wyndham East Kimberley	50,000

- (b) Despite anything expressed or implied to the contrary in this Agreement, before the Grantee is entitled to any payment under this Agreement, it has to prove to the State that it has secured the Leveraged Funding, which is to be applied to the Project. For any shortfall in that Leveraged Funding which the Grantee must secure, the State may reduce the amount it is to pay the Grantee under this Agreement by the amount of such shortfall.
- (c) The Grantee must apply the Leveraged Funding to the Project.

5.2. Disability Access and Inclusion Plan

If this Agreement involves the supply of services to the public, then the Grantee will:

- (a) to the extent practicable, implement the State 'Disability Access and Inclusion Plan' prepared under the Disability Services Act 1993; and
- (b) complete the questions relating to the Grantee's implementation of the State 'Disability Access and Inclusion Plan' in the planning or delivery of the program, project or event. These questions are set out below and need to be completed as part of your Acquittal Report.

DAIP OUTCOME:	ACTIVITIES
All people have the same opportunities to access services and events.	<input type="checkbox"/> Yes <input type="checkbox"/> No
All people have the same opportunities to access buildings and other facilities.	<input type="checkbox"/> Yes <input type="checkbox"/> No
All people receive information in a format that will enable them to access information readily.	<input type="checkbox"/> Yes <input type="checkbox"/> No
All people receive the same level and quality of service.	<input type="checkbox"/> Yes <input type="checkbox"/> No
All people have the same opportunities to make complaints.	<input type="checkbox"/> Yes <input type="checkbox"/> No
All people have the same opportunities to participate in any public consultation.	<input type="checkbox"/> Yes <input type="checkbox"/> No

5.3. Local Products and Services

The Grantee agrees to use products and services from the Kimberley region for the Project wherever reasonably practicable using an open and competitive process to the satisfaction of the State.

5.4. Purchase, construction or renovation of real property

Where the Grantee used the Grant to purchase land or to construct, repair or renovate improvements on land, the Grantee must not Dispose of or encumber that land for a period of 5 years after the End Date without the State's prior written consent, which may be withheld or given conditionally. Any condition if imposed by the State hereby becomes a term of this Agreement and consequently must be complied with.

5.5. Refund for rebates or headworks

- (a) If subsequent to the signing of this Agreement the Grantee under another agreement becomes entitled to receive a rebate or other financial assistance for headworks for which the Grant has been approved and paid, the Grantee agrees to refund to the State the amount of the rebate or the amount of financial assistance provided under that other agreement.

- (b) Following on from item 5.5 above, in the event that the Grant has not been paid prior to the Grantee becoming eligible to receive a rebate or other financial assistance, the Grantee agrees that the Grant will be reduced by the amount of the rebate or other financial assistance received, or to be received, by the Grantee.

EXECUTION OF THIS AGREEMENT

EXECUTED by the Parties as an Agreement.

SIGNED by the Chief Executive Officer of the **Kimberley Development Commission** in the presence of:)



Signature of CEO

Charles Berger

Full name of CEO (print)

Date: 09/10/2024



Signature of Witness

Michele Pucchi

Full name of Witness (print)

Date: 09/10/2024

SIGNED for and on behalf of the Shire of Wyndham East Kimberley in accordance with section 9.49A of the Local Government Act 1995 (WA) by its Authorised Officer in the presence of:



Signature of Authorised Officer

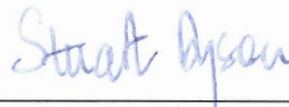
VERNON LAWRENCE

Full name of Authorised Officer

CEO

Title of Authorised Officer

Date:



Signature of Witness

STUART DYSON

Full name of Witness

Date:

07/10/2024

APPENDIX 1 – Kununurra Collaboration Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING THE KUNUNURRA COLLABORATION

1. THE PARTIES

Shire of Wyndham-East Kimberley (SWEK) of 20 Coolibah Drive, Kununurra WA 6743

Kimberley Development Commission (KDC) of 7 Ebony Street, Kununurra WA 6743

Yawoorroong Miriuwung Gajerrong Yirrgeb Noong Dawang MG Corporation (MGC)
of 19 Chestnut Ave., Kununurra WA 6743

East Kimberley Chamber of Commerce and Industry (EKCCI)
of 120 Konkerberry Drive, Kununurra WA 6743

2. OBJECTIVES

- 2.1. The Parties share a strong interest in the ongoing development of the town of Kununurra and its environs, with a shared vision of a thriving and successful area providing a highly liveable cultural, economic and social setting adapted to all the residents of our community, as well as a welcoming environment for the many visitors and investors to our region.
- 2.2. KDC, SWEK, MGC and EKCCI are determined to work closely and co-operatively to progressively achieve this vision over the coming 25 years.

3. PURPOSE

- 3.1 This Memorandum of Understanding (MOU) establishes The Kununurra Collaboration, which is a framework for the Parties to work together on a wide range of projects to improve the town and its environs in the coming decades.
- 3.2 This MOU will remain in force until terminated by mutual consent of the Parties.
- 3.3 The Parties will use their best endeavours to achieve the Objectives of the Collaboration. However, this MOU is not intended to create any legally binding or enforceable relationship.

4. SCOPE

The Parties intend to work together as a Collaboration on the following:

- 4.1. Any and all cross-community and cross-sector initiatives that will provide a measurable impact on achieving the Objectives.
- 4.2. Coordinated approaches to significant opportunities, challenges and other issues as they arise, including investment attraction, infrastructure, service delivery and strategic planning.

Any Party may propose a shared priority under section 4 at any time; acceptance of such additional Collaboration priorities will be as agreed by the Parties in writing.


5. INITIAL PROJECT PRIORITY.

- 5.1. Town Centre Revitalisation. Development of a vision, masterplan, and business(s) case for funding and/or investment to deliver revitalisation of Kununurra's town centre based upon initial resourcing as announced by the WA Government on 3 September 2024.


6. IMPLEMENTATION AND HOW WE WILL WORK


- 5.1. The Parties will agree the Terms of Reference and detailed project governance framework that will apply to each project initiated under this MOU. Such governance arrangements will be based upon principles of accountability, transparency and community engagement agreed by the Parties.
- 5.2. Funding for Collaboration priority projects will be held and managed under arrangements agreed by the Collaboration.
- 5.3. The Parties will maintain a close working relationship in a manner that is subservient to each Party's statutory and legal operating requirements and functions. For the avoidance of doubt:
- 5.3.1. The Kimberley Development Commission is a Statutory Authority established by the *Regional Development Commissions Act 1993 (WA)* with responsibility for promoting economic development across the Kimberley region;
- 5.3.2. The Shire of Wyndham East Kimberley is the Local Government body responsible for and advancing the interests of the entire community throughout the area of the Collaboration. Additionally, the Shire has formal planning and development powers and functions that will be in no way compromised by this MOU;
- 5.3.3. The Miriwung Gajerrong Corporation is established and recognised as the native title holder for the area covered by the Collaboration under the *Native Title Act 1993 (Cth)* and the body responsible for advancing and representing the interests of the Traditional Owners of that area, and
- 5.3.4. The East Kimberley Chamber of Commerce and Industry is a strong and effective voice representing the East Kimberley business community, and is committed to working collaboratively with industry partners, businesses of all sizes as well as levels of government: local, state and federal; to build capacity in the East Kimberley region.
- 5.4. The Parties will work together and will deal with each other in a manner that:
- Encourages open discussion and honest feedback to achieve common goals.
 - Respects the confidentiality needs of all the parties.
 - Responds to the respective decision-making processes of each party.
 - Encourages a consensus approach on how each party will address and action issues.
- 5.5. The Shire will provide administrative support for the Kununurra Town Centre Revitalisation Project as the initial project priority of the Collaboration. Any subsequent project priorities of the Collaboration will operate under administrative support arrangements agreed by the Parties.

5.6. Nothing in this Memorandum of Understanding or any associated circumstances shall give rise to any relationship of joint venture, fiduciary relationship, or partnership between the parties. No Party has the right to assume or create obligations of any kind, express or implied, in the name or on behalf of any other Party.

Signed  Date 03-09-2024
Vernon Lawrence
Chief Executive Officer, Shire of Wyndham-East Kimberley

Signed  Date 3/9/24
Chuck Berger
Chief Executive Officer, Kimberley Development Commission

Signed  Date 03/09/2024
~~Lawford Benning~~ Carol Wapke
~~Executive Chairman, MG Corporation~~
Director

Signed  Date 03/09/2024
Keda Bond
Chief Executive Officer, East Kimberley Chamber of Commerce and Industry