



Government of **Western Australia**
Department of **Transport**

FUNDING DEED

between

**THE MINISTER FOR TRANSPORT
FOR AND ON BEHALF OF THE CROWN IN RIGHT
OF THE STATE OF WESTERN AUSTRALIA**

and

Shire of Wyndham East Kimberley

under

the Regional Airports Development Scheme (RADS) 2019-21

to

Upgrade RPT Apron Lighting

at

East Kimberley Regional Airport (Kununurra Airport)

TABLE OF CONTENTS

1 **DEFINITIONS AND INTERPRETATION 4**

2 **PURPOSE AND ADMINISTRATION OF THIS DEED 8**

3 **TERM 8**

4 **FAILURE TO USE GRANT MONIES BY CERTAIN DATE 8**

5 **VARIATIONS 8**

6 **RELATIONSHIP BETWEEN THE PARTIES 8**

7 **GOODS AND SERVICES TAX (GST) 9**

8 **GRANT VALUE AND USE OF GRANT 9**

9 **PAYMENT OF GRANT..... 10**

10 **REPORTING 12**

11 **NOTICES 12**

12 **MONITORING OF WORKS 13**

13 **AUDITS 13**

14 **CONSTRUCTION OF PROJECT, MAINTENANCE AND COMPLIANCE 13**

15 **COMPLETION OF PROJECT 15**

16 **ACQUITTING THE PROJECT..... 15**

17 **CONFIDENTIALITY 16**

18 **PUBLIC ACCESS 17**

19 **PUBLIC ACKNOWLEDGEMENT OF FUNDING..... 17**

20 **DEALINGS WITH THE AIRPORT SITE / PROJECT SITE 18**

21 **LIMITATION OF LIABILITY 19**

22 **INSURANCE AND INDEMNITY 19**

23 **INTERVENTION AND DEFAULT 20**

24 **CONSEQUENCES OF EVENT OF DEFAULT 22**

25 **MINISTER’S DISCRETION 23**

26 **INSOLVENCY EVENT 23**

27 **WAIVER 24**

28 **ENTIRE DEED 24**

29 **GOVERNING LAW..... 24**

30 **COSTS 24**

**SCHEDULE 1 APPROVED PROJECT PLAN – EAST KIMBERLEY REGIONAL
 AIRPORT (KUNUNURRA AIRPORT) 26**

THIS FUNDING DEED (“DEED”) IS MADE

BETWEEN:

THE MINISTER FOR TRANSPORT FOR AND ON BEHALF OF THE CROWN IN RIGHT OF THE STATE OF WESTERN AUSTRALIA (“MINISTER”)

AND

Shire of Wyndham East Kimberley

on _____ day of _____ 2019

this is the Execution Date which is the date when the last Party (duly authorised delegate of the Minister) executes this Deed.

RECITALS

- A. The State of Western Australia has established a scheme (Regional Airports Development Scheme) to provide funding assistance to airport owners or airport lease holders for the purpose of improving regional air services and safety for aviation infrastructure.
- B. The Organisation is an airport owner or airport lease holder and has requested that the Minister provide it with funding pursuant to the Regional Airports Development Scheme as a contribution to the costs of the Project.
- C. The Minister has agreed to contribute funding towards the Project subject to the terms and conditions set out in this Deed.

THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context otherwise requires, the following definitions apply:

Definition	Interpretation
Acquittal Date	means the date the Minister deems the Project and all associated administrative requirements have been completed and finalised to his or her satisfaction.
Administrative Costs	means costs and expenses incurred for the general administration (e.g. financing, accounting, contracting, marketing, advertising, production operations, industrial relations, insurance) of the Organisation as a whole and not expenses specifically related to the Project.
Deed / Funding Deed	means this Funding Deed, including any Schedules.
Airport Site / Project Site	means the airport or the premises where the Project works are to be undertaken in accordance with this Deed.
Approved Project Plan	means a documented plan to complete the Project works as described in Schedule 1.
Auditor / Accountant	means an accountant who is a current member of the Institute of Chartered Accountants in Australia, CPA Australia (Certified Practising Accountants) or the Institute of Public Accountants, and who is independent of the Organisation.
Auditor General	means the Auditor General for the State of Western Australia.
Audited Financial Statement of Income and Expenditure	means a full financial report of the Organisation's utilisation of the Grant, in accordance with the Project Budget, for the implementation and delivery of the Project, which has been examined and certified by an Auditor.

Definition**Interpretation**

Authorisation	includes a consent, permit, licence, approval, Deed, certificate, authority or exemption from, by or with a State or Commonwealth jurisdiction or required under any law or statute and all conditions attached to an Authorisation, and includes Australian Standards applicable to a Project.
Business Day	means a day other than a Saturday, Sunday or public holiday in Western Australia.
Commonwealth	means the Crown in right of the Commonwealth of Australia.
Confidential Information	includes, but is not limited to, any information relating to business affairs and processes of the Parties, obtained by virtue of this Deed, which would not otherwise be available to the general public and all information marked as confidential as well as information which by its nature is confidential, is known to be confidential or which Party receiving the information from the other Party ought to have known was confidential and includes all such information that may be in the possession of the Party's employees, agents and contractors.
Eligible Project Costs	means the costs incurred by the Organisation in undertaking and completing the Project as verified by the provision of financial records and invoices.
Event of Default	means any event mentioned in Clause 23 and Clause 26.
Execution Date	means the date when the last Party executes this Deed by authorised signatories and witnesses.
Grant	means the lesser of: <ul style="list-style-type: none">(a) \$65,749 (ex GST); or(b) 50 per cent of the total Eligible Project Costs of the Project excluding all costs set out in Clause 9.8 and Other Contributions including any in-kind contributions made by the Organisation, provided that the Organisation in carrying out the Project is obliged to use products of a high standard that meet Australian Standards and provided that if after entering into this Deed, the Organisation receives further grants or funds from other State or Commonwealth Government agencies for the purposes of the Project, the Grant may be reduced at the discretion of the Minister.

Definition	Interpretation
Insolvency Event	means any event leading to the insolvency of the Organisation as set out in Clause 26.
Maintain	means to repair, alter and replace.
Maintenance	means the act of maintaining or the work of keeping something in proper condition by repairing, altering and replacing.
Maintenance Expenses	means the costs and expenses relating to the operation and maintenance of the Project Site, administration expenses, insurance premiums and other necessary and incidental expenses relating to the implementation of this Deed.
Markup	means the difference between the cost of a good or service and its selling price, whether expressed as a percentage or a fixed amount.
Milestone	means a significant event in the Project proposed in the Approved Project Plan described in Schedule 1 (if any) and identified as the completion of a major deliverable which may be eligible for payment as agreed by the Minister.
Minister	means the Minister for Transport for and on behalf of the Crown in right of the State of Western Australia, for the time being having responsibility for the <i>Transport Co-ordination Act 1966</i> , and includes successors in title including any ministerial titular changes, and where the context permits includes the Minister's officers or employees, including officers of the department or authority for the time having responsibility to the Minister for Transport, and any person acting with or under the authority of the Minister, or the department whether expressed or implied.
Organisation	means Shire Wyndham East Kimberley for the time being having responsibility for the care, control and management of the Project and includes its officers, employees, agents, volunteers, subcontractors, and successors.
Other Contributions	means financial or in-kind resources, which can include matters such as the provision of labour (with in-kind resources valued at market rates) for the Project, other than the Grant.
Overheads	means operating expenses incurred by the Organisation and costs not directly relating to the Project (including, but not limited to, costs of rent, insurance, and taxes).

Definition	Interpretation
Party	means the Organisation or the Minister as the context requires.
Parties	means both the Organisation and the Minister.
Plant or Equipment	means Plant or Equipment that has been used by the Organisation to carry out the Project.
Project	means to upgrade RPT Apron Lighting at the Airport Site.
Project Budget Estimate	means the budget set out at Schedule 1, prepared by the Organisation which itemises the costs of undertaking the Project.
Project Completion Date	means the date the Project has been completed, which must be no later than 11 / 05 / 2020.
Project Documentation	means the documents set out in clause 9.4.
Project Management Costs	means costs incurred for the administration of the works incidental to the Project, which costs, subject to clause 9.8(i) do not form part of the Grant.
RADS	means Regional Airports Development Scheme.
Schedule	means the Schedule to and forming part of this Deed.
State	means the Crown in right of the State of Western Australia.
Term	means the duration of this Deed as set out in Clause 3.
Termination Date	means the date the Organisation advises the Minister of the termination of the Project or the date this Deed is terminated in the events set out in Clauses 24, 25 and 26.

1.2 In this Deed, unless inconsistent with the context or subject matter:

- (a) headings are used for convenience and do not affect the interpretation of this Deed;
- (b) a reference to a clause is a reference to a clause in this Deed;

- (c) words importing the singular include the plural (and vice versa), words denoting a given gender include all other genders, and words denoting individuals include corporations (and vice versa);
- (d) references to currency are references to Australian currency unless otherwise specifically provided; and
- (e) a reference to a statute or other law includes regulations under it and amendments, consolidations, re-enactments and replacements of any of them.

2 PURPOSE AND ADMINISTRATION OF THIS DEED

- 2.1 The purpose of the Funding Deed is to set out the terms and conditions under which the Minister will provide the Grant, including agreed Project outcomes and payment schedules to cover some of the costs of a Project.
- 2.2 The powers and duties of the Minister under this Deed may be administered, exercised and performed on the Minister's behalf by the Director General of the Department of Transport or as sub-delegated.

3 TERM

- 3.1 The Term of this Deed is from the Execution Date to the Acquittal Date.
- 3.2 All common law rights and obligations of the Parties will continue after the expiration or earlier termination of this Deed.

4 FAILURE TO USE GRANT MONIES BY CERTAIN DATE

If the Organisation does not expend the Grant for the purpose of the Project by the date(s) set out in Schedule 1, Item 3, the Minister may, at his or her absolute discretion, withdraw the Grant in part or in its entirety.

5 VARIATIONS

- 5.1 Any variation to this Deed must be made in writing duly executed by both Parties.
- 5.2 Any requests for variations to Schedule 1 including Project activities and costs must be submitted at least sixty (60) days before the Project Completion Date unless otherwise approved by the Minister.

6 RELATIONSHIP BETWEEN THE PARTIES

The Parties agree that nothing in this Deed is intended or should be construed as creating a contract of employment, an agency, a partnership, a joint venture or a fiduciary relationship between the Parties.

7 GOODS AND SERVICES TAX (GST)

7.1 For the purposes of this clause:

- (a) **Additional amount, recipient** and **supplier** have the meanings given in Clause 7.3;
- (b) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and includes all associated legislation and regulations;
- (c) Any terms used in Clause 7 that are defined in the GST Act have the same meanings as in the GST Act.

7.2 All prices or other amounts fixed or determined under, or referred to in, this Deed are exclusive of GST, except where expressly provided to the contrary in a particular provision of this Deed.

7.3 Subject to Clause 7.4, if GST is or becomes payable by a Party (**supplier**) in relation to any supply that it makes under, in connection with or resulting from this Deed, the Parties agree that, in addition to any consideration provided by a Party (**recipient**) for that supply, the recipient must pay to the supplier the amount of any GST for which the supplier is liable in relation to that supply (**additional amount**) at the same time as the relevant consideration or any part of it is provided.

7.4 The obligation to pay the additional amount only arises once the supplier has issued a tax invoice (and any adjustment note) to the recipient in respect of the additional amount.

7.5 If, under this Deed, one Party is required to pay an amount to reimburse or compensate the other Party for any cost or liability incurred by that other Party, the amount to be reimbursed or compensated excludes any GST component of that cost or liability for which that other Party is entitled to claim an input tax credit.

8 GRANT VALUE AND USE OF GRANT

8.1 The value of the Grant is exclusive of GST.

8.2 The Organisation will use the Grant solely for the purpose of undertaking and completing the Project and for no other purpose.

8.3 The Organisation may use the Grant to hire equipment, machinery and labour to complete the Project.

8.4 The Organisation will not use the Grant to purchase, acquire or create any asset (such as purchases of equipment or machinery), apart from those detailed in Schedule 1 if any, without the Minister's prior written approval.

8.5 Any approved purchases of assets with the Grant must be for the exclusive purposes of the Project and for the duration of the Deed. The Organisation will establish and

comply with its own procedures and arrangements for purchasing, installing, recording, maintaining and insuring all items of equipment purchased with the Grant. The ownership of any asset purchased wholly or partly with the Grant will be vested in the Organisation, located on its site.

8.6 The Organisation will not use the Grant for any costs set out in Clause 9.8.

9 PAYMENT OF GRANT

9.1 Payments pursuant to the Grant will only be made to the Organisation, not to an individual.

9.1A Before payment of the Grant the Organisation will be obliged to provide the information in the special conditions of the Grant as set out in Item 4 of Schedule 1, if relevant.

9.2 Payment of the Grant may be made in one, or several separate instalments (Milestones) in accordance with Schedule 1 or in accordance with any variations issued by the Minister from time to time.

9.3 At the end of each Milestone, or a single Milestone, if there is only one Milestone, the Organisation is to provide an itemised statement of costs to date certified by the Chief Executive Officer of the Organisation together with relevant evidence as set out in Clause 9.4.

9.4 No Milestone payment will be made unless the Organisation notifies the Minister of the completion of the Project in accordance with clause 15.3, and the Organisation provides the following Project Documentation demonstrating, to the satisfaction of the Minister, that the Project works have been completed:

- (a) letter of standards assurance written on the Organisation's letterhead and signed by the Organisation's Chief Executive Officer or Director. The letter of standards assurance must outline the Project commencement date, Project Completion Date, the total Eligible Project Cost, the cost being claimed from RADS, the installation of the RADS sign, and if applicable, the funds received by the Organisation from other sources;
- (b) photographic evidence of the completed Project works and full final copies of studies undertaken as part of the Project;
- (c) photographic evidence of the installed RADS sign, as provided by the Minister pursuant to clause 19;
- (d) financial records showing the total Eligible Project Cost expended for the Project including copies of invoice(s), the signed authority to pay the invoice(s) and payment receipts relating to any Project works;

- (e) employment records including wages or salaries and payments relating to any person employed, contracted or retained in relation to the Project;
- (f) records of any variations to the Project or this Deed;
- (g) any report or other documentation relating to the Project or any works (if applicable); and
- (h) other Contributions, including contributions or in-kind contributions to the Project by the Organisation itself or received from third parties.

9.5 Unless otherwise agreed to in writing between the Parties, all Project Documentation pursuant to Clause 9.4 must be provided by the Organisation by no later than one week after the Project Completion Date and addressed to:

Aviation Branch
Department of Transport
PO Box C102
Perth WA 6839

9.6 The Minister will advise the Organisation in writing of any variation to the payment and the grounds for the variation.

9.7 Notwithstanding any variations to payment, the total amount of the Grant paid or payable to the Organisation under the Deed will not exceed the amount of the Grant.

9.8 Unless otherwise approved by the Minister, the Grant will not be paid to the Organisation for the following:

- (a) 'landside' infrastructure such as car parks, access roads, landscaping or power/water connection, works or fuel storage facilities, hangars and commercial developments;
- (b) the purchase or repair of motor vehicles, heavy plant and equipment;
- (c) ongoing aerodrome operating or running costs;
- (d) depreciation costs;
- (e) Administrative Costs;
- (f) audit costs;
- (g) Markups on salaries or goods, where the works are undertaken by the Organisation;
- (h) contingency costs;
- (i) Project Management Costs unless satisfactory proof is provided that a professional consultant was engaged directly on the Project;
- (j) Overheads;

- (k) replacement of capital spending plans for developments that would occur in any event unless otherwise directed by the Minister;
- (l) costs associated with the removal of vandalism activities;
- (m) retrospective costs for Project works commenced, undertaken and/or completed by the Organisation prior to the Execution Date; and
- (n) costs not directly related to the Project unless otherwise approved by the Minister.

9.9 Except as otherwise provided in this Deed and subject to the Grant being applied by the Organisation in accordance with this Deed, the Organisation is not liable to repay the Grant or a proportion of the Grant to the Minister unless the Organisation receives further grants or funds from other sources for the purposes of the Project and the Minister, in the Minister's absolute discretion, determines that the Grant may be reduced by the amount of such other grant or funds received by the Organisation.

10 REPORTING

10.1 The Organisation must:

- (a) keep and maintain proper, accurate, complete and up-to-date records to the satisfaction of the Minister of all work undertaken and monies expended in the course of and in connection with the Project;
- (b) ensure its financial documents and records enable all income and expenditure related to the Grant to be identified in the accounts of the Organisation;
- (c) keep and maintain accurate and complete up-to-date records of communications and events that affect, relate to or impact on the management or delivery of the Project; and
- (d) ensure that all records are available for inspection at all times upon request by the Minister.

11 NOTICES

11.1 Any notice or other communication that may or must be given under this Deed:

- (a) must be in writing;
- (b) may be given by an authorised officer of the Party giving notice; and
- (c) must be hand delivered, sent by prepaid post, facsimile or email to the Party receiving the notice as set out in Item 5 of Schedule 1.

12 MONITORING OF WORKS

- 12.1 The Organisation agrees that all work undertaken to complete the Project may be subject to monitoring and inspection on site by the Minister or the Minister's authorised delegates at any time.
- 12.2 The Organisation will permit the Minister or the Minister's authorised delegates reasonable access to the Airport Site or Project Site, where:
- (a) the actual Project works are undertaken;
 - (b) employment records including wages or salaries and payments relating to the Grant and/or Project are housed, stored or in active use, including hard-copy and electronic records;
 - (c) financial records regarding the Project are housed, stored or in active use, including hard-copy or electronic records; and
 - (d) records of invoice(s) and the signed authority to pay the invoice(s) are located.

13 AUDITS

- 13.1 The Organisation agrees that:
- (a) the Minister may conduct audits of this Deed or any matter done or to be done under or in relation to it by appointing an Auditor in relation to the matters specified by the Minister, the costs of which will be borne by the Organisation;
 - (b) the Auditor General may conduct audits of this Deed or any matter done or to be done under or in relation to it or the Project (as provided for in the *Financial Management Act 2006* and the *Auditor General Act 2006*); and
 - (c) the Organisation will provide all reasonable access to any Airport Site or Project Site or other place and all reasonable assistance to locate and provide access to financial records and other documents and records necessary to carry out any such audit under Clause 13 and in order to verify compliance by the Organisation with this Deed.

14 CONSTRUCTION OF PROJECT, MAINTENANCE AND COMPLIANCE

- 14.1 The Organisation is responsible for the Project including ensuring that the Project is undertaken in compliance with all Authorisations.
- 14.2 The Organisation will Maintain the Airport Site or Project Site and will be responsible for ensuring that the Airport Site or Project Site is kept free of obstructions by such reasonable and usual methods as the Organisation may determine.

- 14.3 The Organisation is responsible for all Maintenance Expenses.
- 14.4 The Organisation must at all times undertake the Project works in compliance with all State and Commonwealth Government legislation, and comply with any directions given by any appropriately authorised State or Commonwealth jurisdiction relating to the Maintenance of the Airport Site or Project Site.
- 14.5 The Organisation warrants that its employees, agents and contractors are competent and have all the necessary skills, training and qualifications to carry out the Project and will comply with this Deed.
- 14.6 The Organisation will at all times ensure the Project is performed and carried out in a conscientious, expeditious and professional manner by all persons involved in the Project.
- 14.7 The Organisation will pay all costs of, and has sole responsibility for, all facilities, employees, contractors and consultants engaged or utilised by the Organisation in respect of the Project.
- 14.8 The Organisation must:
- (a) at all times duly perform and observe its obligations under this Deed and promptly inform the Minister of any occurrence, which might adversely affect its ability to do so in a material way;
 - (b) undertake its responsibilities under this Deed with integrity, good faith and probity in accordance with good corporate governance practices;
 - (c) at all times comply with all State and Commonwealth statutes, laws and local laws, including but not limited to the *Civil Aviation Act 1988* (Cth) and the *Civil Aviation (Carriers Liability Act) 1961* (WA);
 - (d) not damage the Project infrastructure or suffer the Project infrastructure to be damaged;
 - (e) co-operate fully with the Minister in the administration of this Deed;
 - (f) upon reasonable notice, provide the Minister with access at any reasonable time and from time to time to the Organisation's premises, financial records, other documents, equipment and other property for the purpose of audit and inspection by the Minister in order to verify compliance by the Organisation with this Deed; and
 - (g) promptly inform the Minister if it receives further grants or funds from other sources or third parties for the purposes of the Project.

15 COMPLETION OF PROJECT

- 15.1 The Project must be completed by the Project Completion Date. If the Project is not completed by the Project Completion Date, and the Minister has not provided an extension in accordance with clause 15.2 below, the Deed will be terminated in accordance with clause 24.3.
- 15.2 The Organisation may provide the Minister with a written request to extend the Project Completion Date. Such a request must state why the extension is required, and provide an amended timetable for the Project works, including a revised expected Project Completion Date. The Minister has absolute discretion to accept or decline the request and to determine the period and conditions of the extension. The Minister will provide a decision in writing to the Organisation.
- 15.3 The Organisation will notify the Minister in writing of the completion of the Project and will provide all Project Documentation for the Eligible Project Costs incurred by the Organisation in carrying out the Project.
- 15.4 The Minister may, as soon as practicable after receiving notice pursuant to Clause 15.3, inspect the works to determine whether the Project has been completed to the satisfaction of the Minister.
- 15.5 If the Minister determines pursuant to Clause 15.4 that the Project has not been completed to the satisfaction of the Minister, the Minister may direct the Organisation in writing to attend to those aspects of the Project which do not satisfy the Minister, and the Organisation must immediately take all necessary steps to ensure those aspects of the Project are addressed to the satisfaction of the Minister.

16 ACQUITTING THE PROJECT

- 16.1 The Organisation will, at its expense, provide the Minister within sixty (60) days of the receipt of the final Milestone payment, an independently Audited Financial Statement of Income and Expenditure for the Project. The Audited Financial Statement of Income and Expenditure must:
- (a) set out the Project revenue and expenses in accordance with the Project budget, including, where the Minister deems appropriate, all invoices and receipts of payment;
 - (b) confirm the Project's financial accounts as true and accurate;
 - (c) confirm that the entire Grant was spent by the Organisation and applied to the approved Project purpose in accordance with this Deed;
 - (d) when the grant exceeds \$10,000 be certified by an Auditor or Accountant who is independent of the Organisation; and
 - (e) be certified by the president or CEO of the Organisation.

- 16.2 The Project will be acquitted on the date the Minister notifies the Organisation that he or she is satisfied with the information as provided in Clause 16.1 (the Acquittal Date).
- 16.3 In the event that the Minister reasonably considers that the Audited Financial Statement of Income and Expenditure may be incomplete or inaccurate in any material respect the Minister may arrange for an audit to be carried out in accordance with Clause 13.
- 16.4 In the event the Minister makes an overpayment the Organisation must
- (a) notify the Minister in writing of the overpayment immediately after it becomes aware of the overpayment; and
 - (b) repay to the Minister the full amount of the overpayment
- within 10 Business Days after it becomes aware of the overpayment.
- 16.5 If the Minister discovers an overpayment to the Organisation, the Minister may notify the Organisation and the Organisation must repay the full amount of the overpayment within 10 Business Days after receipt of the Minister's notice.
- 16.6 The Organisation may apply to the Minister for an extension of time to provide the Audited Financial Statement of Income and Expenditure which extension is at the Minister's discretion. Any such extension granted will be confirmed in writing.
- 16.7 At any time up to seven years after the Project Completion Date, the Organisation may be required to provide:
- (a) original invoices, receipts or other documents which account for the expenditure of the Grant; and/or
 - (b) a statutory declaration made in accordance with the *Oaths, Affidavits and Statutory Declarations Act 2005* accounting for the expenditure of the Grant.

17 CONFIDENTIALITY

- 17.1 The Organisation must make no written or oral announcements or representations to anyone including the media regarding the amount of the Grant provided by the Minister without the written authorisation of the Minister.
- 17.2 The Parties must treat as confidential any Confidential Information or other information that comes into their possession in relation to each other as a result of this Deed and will not disclose this information to any person other than those of its employees, officers, agents and legal and financial advisers who legitimately and reasonably require such Confidential Information in order to properly discharge the duties:
- (a) which they were employed or engaged to discharge; and

- (b) which they would ordinarily and reasonably be expected to discharge on account of such employment or engagement; unless:
 - (i) required to do so under or pursuant to a provision of a statute, law, regulation, local law or ordinance in operation in Australia from time to time; or
 - (ii) required to do so by virtue of an order or direction given to it by or on the part of the Parliament of the State or by Court or Tribunal of the relevant jurisdiction.

17.3 The Parties agree that they will use their best endeavours to ensure that their officers, employees, agents, contractors and legal and financial advisers comply with the obligations of confidentiality specified in Clause 17.2.

18 PUBLIC ACCESS

18.1 The Organisation will allow unrestricted public access to and public use of the airport facilities in the Airport Site for a period of two years from the Project Completion Date and will not do or suffer to be done anything which may interfere with such public access and use.

18.2 The Organisation warrants that there is nothing that would prevent it providing public access as required by Clause 18.1, and acknowledges that a failure to provide public access is a breach of this Deed.

19 PUBLIC ACKNOWLEDGEMENT OF FUNDING

19.1 The Minister will make available, at the Minister's expense, signage acknowledging the RADS. The RADS sign will be sent to the Organisation at the Minister's expense and installed by the Organisation at its own expense. The RADS sign provided by the Minister must be displayed for a period of two years from the date the Project commences in a prominent public area at the relevant Airport Site or Project Site that must be two metres above the ground, and any additional signs provided by the Organisation must also refer to the contribution towards the Project made by the Regional Airports Development Scheme.

19.2 Photographic evidence of the RADS sign and confirmation in the letter of standards assurance must be supplied to the Minister.

19.3 Any RADS sign installed at the Airport Site or Project Site, that is in good condition but out of date or no longer suitable and/or applicable is to be disposed of in an environmentally friendly fashion by the Organisation and replaced with a new one at the Minister's expense.

- 19.4 Any RADS sign installed at the Airport Site or Project Site that is no longer suitable due to damage in any form must be disposed of in an environmentally friendly fashion by the Organisation and replaced with a new one at the Organisation's expense.
- 19.5 In the event the RADS sign was lost due to negligence by the Organisation a new sign will be provided by the Minister at the Organisation's expense.
- 19.6 At the end of the signage installation requirement the Organisation must dispose of all RADS signs in an environmentally friendly fashion.
- 19.7 The Organisation agrees that the name of the Airport Site or Project Site, the Grant and details of the Project works may be published on the Minister's and Department of Transport's websites.
- 19.8 The Organisation agrees to seek the Minister's permission prior to making any media announcement regarding its Grant.
- 19.9 The Organisation will not use any State Government logos, issue or participate in any media release or publicity in relation to the Project without the prior written approval of the Minister.
- 19.10 The Organisation will appropriately recognise the RADS in all publications, articles, signs, posters, promotional and advertising materials, and activities by it or on its behalf as well as in all public announcements at forums, conferences and openings.

20 DEALINGS WITH THE AIRPORT SITE / PROJECT SITE

- 20.1 The Organisation will not, subject to Clause 20.2, 20.3, and 20.4 within two years from the Project Completion Date, sell, transfer, lease, mortgage, or otherwise dispose of, encumber or part with possession of the Project Site, any part thereof or any interest the Organisation has in or in respect of the Project Site or any part thereof.
- 20.2 The Organisation hereby covenants and agrees that it will not, subject to Clause 20.3 within two years from the Project Completion Date, sell, transfer, mortgage or part with possession of its respective share of the Project Site or any interest therein respectively unless the Organisation first procures from the lessee, mortgagee or other person entitled to the possession thereof (but in the case of the mortgagee to become effective only in the event of entering into his possession under his mortgage or exercising his other powers and remedies thereunder) a Deed of Covenant with the Minister (in a form approved by it) to observe and perform the terms and conditions of this Deed.
- 20.3 The Organisation covenants and agrees to immediately notify the Minister of its intention to sell, transfer, lease, mortgage or otherwise dispose of or part possession with the Project Site, and of its need to obtain the Minister's approval to such

transaction, and the need for the Minister to sign the approved Deed of Covenant in Clause 20.2

- 20.4 Depending on the size of the committed Grant, the Organisation will not dispose of the property at the Airport Site or Project Site after the RADS Project Completion Date for a certain period of time as indicated below.

Grant Range	Number of Years
\$0 - \$200,000	2 years
\$200,001 - \$500,000	5 years
\$500,001 and above	8 years

21 LIMITATION OF LIABILITY

- 21.1 Neither the Minister nor any department, agency, instrumentality or emanation of the State (and any Minister, officer, or employee of any of them) shall be:
- (a) liable, in negligence or otherwise, for the success or otherwise of the Project;
 - (b) responsible for any losses or financial shortfalls encountered by the Organisation in connection with, or by undertaking, the Project; or
 - (c) liable for any losses or financial shortfalls sustained by the Organisation in the event that termination of this Deed results in or triggers the termination of other deeds or agreements the Organisation has with third parties.
 - (d) Neither the Minister, nor the Minister's authorised delegates will be liable to pay compensation when this Deed has been ended, in total or in part.

22 INSURANCE AND INDEMNITY

- 22.1 It is the onus and responsibility of the Organisation to ensure that during the continuance of this Deed and at all times thereafter it will maintain and keep current, public liability insurance appropriate that is proportionate to the maximum level of potential loss related to the operation of the Airport Site or Project Site, and the nature of the Project subject of this Deed. The Organisation is to ensure that such insurances will cover all claims and losses howsoever arising or caused, including but not limited to those in respect of any injury of, or illness to, or death of, any person, any loss, damage or destruction to any property, claims risks and events covered under the indemnities provided by the Organisation to the Minister under this clause.
- 22.2 The Organisation must not, and is not to permit any person to, do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the insurance policies.

- 22.3 The Organisation will notify the Minister immediately if an event occurs which does give rise or might give rise to a claim under the insurance policies or which could prejudice the insurance policies.
- 22.4 The Organisation will ensure that all premiums in respect of insurance policies and renewals of insurance policies are paid punctually.
- 22.5 If requested by the Minister, the Organisation will provide a copy of all policies, certificates of currency and receipts for premiums in connection with all insurance cover referred to above.
- 22.6 The Organisation will indemnify and keep indemnified the Minister from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be brought, maintained or made against the Minister in respect of any loss whatsoever, injury or damage of, or to, any kind of property or thing and any death of, or injury or illness sustained by, any person arising out of, or in connection with, whether directly or indirectly, this Deed, the Grant, the Project or any act, neglect, omission or default by the Organisation or any employee, agent or contractor of the Organisation
- 22.7 The provisions of clause 22.6 survive termination of this Deed.

23 INTERVENTION AND DEFAULT

- 23.1 The Minister has the right to intervene at any time in the practical operation of the Project to ensure that the objectives and expected outcomes of the Project are achieved.
- 23.2 An Event of Default occurs if:
- (a) the Minister is of the reasonably held view that all or any part of the Grant is not being used, or has not been, applied with competence, efficiency and diligence;
 - (b) the Minister is of the reasonably held view that the Organisation has spent or committed, or will spend or commit, all or part of the Grant:
 - (i) for a purpose or purposes inconsistent with or contrary to the Approved Project Plan or the Project;
 - (ii) imprudently or in an unreasonable fashion having regard to the purpose of this Deed; or
 - (iii) on goods, services or goods and services for which the Organisation has paid or will pay a price which is unreasonably high.
 - (c) for any reason whatsoever the Organisation is unable or unwilling to commence, continue or complete work on the Project;

- (d) in respect of the Organisation, a commissioner is appointed under the *Local Government Act 1995*, or the Local Government Council is removed from office as a result of maladministration in terms of the *Local Government Act 1995*, or if an Insolvency Event occurs in respect of the Organisation;
- (e) the Organisation breaches this Deed and does not fully and properly rectify the breach within 28 Business Days or a period otherwise agreed from receipt of a written notice from or on behalf of the Minister specifying the breach and calling upon the breach to be rectified;
- (f) the Organisation breaches or is likely to breach an agreement or Deed it has with a third party which will or is likely to result in the Project being jeopardised or adversely affected;
- (g) the Organisation does not promptly inform the Minister of any occurrence which may adversely affect the Project in a material way or the ability of the Organisation to deliver the Project;
- (h) the Organisation does not act with integrity, good faith and probity in accordance with good corporate governance practices;
- (i) the Organisation attempts to sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights, entitlements and powers under this Deed;
- (j) the Organisation does not comply with all State or Commonwealth statutes or other laws;
- (k) the Organisation does not reasonably co-operate with the Minister in the administration of this Deed;
- (l) the Organisation refuses upon reasonable notice to provide the Minister with access at any reasonable time and from time to time to the Organisation's premises, financial records, other documents, equipment and other property for the purpose of audit and inspection by the Minister in order to verify compliance by the Organisation with the Project and this Deed;
- (m) the Organisation proceeds with work without obtaining confirmation that the Minister has confirmed that the Approved Project Plan is acceptable;
- (n) the Organisation does not achieve the Milestone/s by the times and in accordance with any other stipulations set out in Schedule 1;
- (o) any portion of the Project has not been completed pursuant to the terms of this Deed;
- (p) the Project is not completed by the Project Completion Date;

- (q) the Organisation does not provide the Audited Financial Statement of Income and Expenditure within 60 days or such other time agreed to by the Minister; or
- (r) the Organisation fails to advise the Minister if the Organisation has received, or is expected to receive any private, or any other State or Commonwealth government grants for the Project.

24 CONSEQUENCES OF EVENT OF DEFAULT

24.1 If an Event of Default occurs, or it is considered by the Organisation as likely to occur or would be considered by a reasonable person as likely to occur, then the Organisation must immediately notify the Minister of the occurrence or likely occurrence and must thereafter consult with the Minister with respect to this Deed and its possible termination.

24.2 If an Event of Default occurs, the Minister may, in his absolute discretion, suspend payment of the Grant. The Minister may continue to suspend payment of the Grant until such time as the Minister is satisfied, in his absolute discretion, that the Organisation has rectified the Event of Default.

24.3 If an Event of Default occurs or the Minister is otherwise entitled to terminate this Deed, including for termination for convenience, then.

- (a) the Minister has no further obligation to pay the Organisation any part of the Grant which has not yet been paid to the Organisation; and
- (b) the Organisation must immediately take all action necessary to cease further expenditure of the Grant; and
- (c) upon demand by the Minister, the Organisation must immediately repay to the Minister the Grant less costs in respect of the Approved Project Plan:
 - (i) already properly incurred by the Organisation; and
 - (ii) not yet paid by the Organisation but which are due and payable, provided that in respect of such costs, the Organisation has provided to the Minister within 10 Business Days after the Minister's demand:
 - (A) documentary evidence that such costs were properly incurred in accordance with this Deed; and
 - (B) in respect of costs referred to in clause 24.2(c)(i) documentary evidence that the Organisation has paid such costs.

- 24.4 If an Event of Default involves expenditure of the Grant contrary to this Deed, then upon demand by the Minister, the Organisation must immediately repay to the State all amounts of the Grant improperly spent or committed.
- 24.5 If this Deed is terminated under any provision of this Deed the Minister will cease to have any obligation to the Organisation.

25 MINISTER'S DISCRETION

The Minister may terminate this Deed by providing notice in writing to the Organisation if, in the opinion of the Minister exercisable in his or her absolute discretion, the Project is no longer necessary for any reason, including due to a change in State or Commonwealth government policy, and the Deed is then terminated from the date specified in that notice.

26 INSOLVENCY EVENT

- 26.1 This Deed may be terminated in writing by the Minister at any time if any of the following events occur (each an Event of Default):
- (a) an application is made to a court for an order that a corporation be wound up or an order is made that a corporation be wound up;
 - (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a corporation or one of them is appointed, whether or not under an order;
 - (c) an administrator is appointed in respect of a corporation or a receiver, or a receiver and manager, is appointed to any of the corporation's assets;
 - (d) a meeting is convened or a resolution is passed to appoint an administrator in respect of a corporation;
 - (e) a corporation enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
 - (f) a corporation resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so or is otherwise wound up or dissolved;
 - (g) a corporation is or states that it is unable to pay its debts when they fall due or is otherwise insolvent or deemed to be insolvent under the *Corporations Act 2001*;
 - (h) a corporation takes any steps to obtain protection or is granted protection from its creditors under any applicable legislation;

- (i) a corporation fails to comply with a statutory demand for payment of any debt within the time specified in any statute;
- (j) a person becomes an insolvent as defined in the *Corporations Act 2001* or action is taken which could result in that event;
- (k) dissolution or partial dissolution of a regional local government at the direction of the Minister (for the time being having responsibility for the *Local Government Act 1995*) or in accordance with the establishment Deed; or
- (l) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any Australian jurisdiction.

27 WAIVER

- 27.1 No right under this Deed will be deemed to be waived except by notice in writing signed by each Party.
- 27.2 A waiver by either Party pursuant to Clause 28.1 will not prejudice that Party's rights in respect of any subsequent breach of this Deed by the other Party.
- 27.3 Subject to Clause 27.1, any failure by either Party to enforce any clause of this Deed, 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 Deed.

28 ENTIRE DEED

This Deed (including Schedules) constitutes the entire Deed between the Parties and supersedes all prior communications, negotiations, arrangements and Deeds, whether oral or written, between the Parties with respect to the subject matter of this Deed.

29 GOVERNING LAW

This Deed is governed by and construed in accordance with the laws for the time being of Western Australia and the Parties hereby submit to the jurisdiction of the courts of Western Australia and all courts having jurisdiction to hear and determine appeals therefrom.

30 COSTS

- 30.1 The Organisation must bear and is responsible for all or any duty payable on or in respect of this Deed pursuant to the *Duties Act 2008*.
- 30.2 Each Party must pay its own legal and other costs relating to the preparation of this Deed.

Executed as a Deed by the Parties hereto:

For and on behalf of the Minister:

By the duly authorised delegate of the Minister.

Peter Ryan Director Aviation Department of Transport	----- <i>(Signature)</i>
Date in the presence of	----- <i>(Date)</i>
----- <i>(Name and Position Title)</i>	----- <i>(Signature)</i>

For and on behalf of the Organisation:

Signed for and on behalf of the

Shire of Wyndham East Kimberley <i>Signed by the Chief Executive Officer pursuant to section 9.49A of the Local Government Act 1995</i>	
----- <i>Chief Executive Officer</i>	----- <i>(Signature)</i>
Date in the presence of	----- <i>(Date)</i>
----- <i>(Name and Position Title)</i>	----- <i>(Signature)</i>

Approved Project Plan – East Kimberley Regional Airport (Kununurra)

1. **Approved Purpose of Grant / Project** – to upgrade RPT apron lighting

2. **Project Activity Plan**

Start Date: 1 September 2019 **Project Completion Date:** 11 May 2020

Project Activity Description Major activity components	\$ Organisation contribution ex GST	\$ Other contribution ex GST (eg RAUP)	\$ RADS Grant contribution ex GST	\$ Total contributions ex GST
Supply and install Pit and Duct System	8,868	0	8,868	17,736
Supply and install AFL Distribution Panel and Cabling	6,230	0	6,230	12,460
Supply and install Floodlight Poles and Fittings	49,051	0	49,051	98,102
Project documentation	1,600	0	1,600	3,200
Total (ex GST)	\$65,749	\$0	65,749	\$131,498

3. **Project Budget**

Payment Milestone(s) if applicable	Activity	Final date by which the Grant can be paid under clause 4	\$ Payment of RADS Grant ex GST
1	Upgrade RPT Apron Lighting	11 May 2020	65,749
Total			\$65,749

4. **Special conditions of Grant**

Pursuant to clause 9.1A the Organisation is to submit to the Minister at the Notice address in item 5 below:

- (a) A commitment to working with DoT to complete and maintain a Strategic Airport Asset and Financial Management Framework from 1 July 2019.

5. **Notice addresses**

Minister	Department of Transport Aviation Branch GPO Box C102 Perth WA 6839 Facsimile: (08) 6551 6949 Email: rads@transport.wa.gov.au
-----------------	---

Organisation	Shire of Wyndham East Kimberley PO Box 614 Kununurra WA 6743 Facsimile: (08) 9168 1798 Email: mail@swek.wa.gov.au
---------------------	---