

**Schedule 5 – Template Project Agreement**

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**[2020]**

**STATE OF WESTERN AUSTRALIA**

**and**

**[REGIONAL CORPORATION]**

**and**

**[TRUSTEE OF THE CHARITABLE TRUST]**

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**TEMPLATE PROJECT AGREEMENT**

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Perth WA 6000  
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Ref: SSO 3131-19

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**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_

**BETWEEN**

**The State of Western Australia** acting through [Insert State party] ("**State**")

**AND**

**[Yamatji Southern Regional Corporation]** ("**YSRC**")

**AND**

**[Trustee of the Charitable Trust]** ("**Trustee**")

**RECITALS**

- A. This Agreement is entered into pursuant to the ILUA.
- B. As part of the settlement set out in the ILUA, the State agrees to provide funds towards the Approved Purpose.
- C. The State and the [YSRC and Trustee] have entered into this Agreement which sets out the terms and conditions on which the State agrees to provide the Funds for the Approved Purpose.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless the context otherwise requires:

**Agreement** means this project agreement, including its recitals and any schedules or annexures.

**Approved Purpose** means the purposes of the project as developed jointly by the Parties and set out in clause 5.1.

**Auditor General** means the Auditor General for the State of Western Australia.

**Business Day** means any day except a Saturday, Sunday or a public holiday in Perth, Western Australia.

**Charitable Trust** means the Yamatji Nation Trust established by the Trust Deed.

**Commencement Date** means the date on which this Agreement has been executed by all the parties.

**Department** means the Department of [insert].

**Funds** means the amount or amounts specified in item 1 of Schedule 1.

**Government Partnership Committee** means the Government Partnership Committee established under the ILUA.

**GST** has the same meaning as in the *GST Act*.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and, where the context permits, includes the Commissioner of Taxation's goods and services tax rulings and determinations and any other written law dealing with GST applying for the time being in the State of Western Australia.

**ILUA** means the Yamatji Nation ILUA executed on [insert Commencement Date] and registered on [insert date of Conclusive Registration]. .

**Implementation Committee** means the Implementation Committee defined by the Government Partnership Committee's terms of reference under the ILUA.

**Project** has the meaning set out in clause 5.

**Public Authority** has the same meaning as in the *State Supply Commission Act 1991*.

**Trust Deed** means [insert].

**Trustee** means [insert].

**YSRC** means Yamatji Southern Regional Corporation Ltd (ACN XXX).

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;

- (f) an agreement, representation or warranty on the part of, or in favour of, 2 or more persons binds, or is for the benefit of, them jointly and severally;
- (g) a reference to this Agreement or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the State or the [YSRC/Trustee];
- (h) a reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment or appendix to, this Agreement;
- (i) all the provisions in any schedule, attachment or appendix to this Agreement are incorporated in, and form part of, this Agreement and bind the State and the [YSRC/Trustee];
- (j) headings are included for convenience and do not affect the interpretation of this Agreement;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) no rule of interpretation is to be applied to disadvantage the State or the [YSRC/Trustee] on the basis that it was responsible for preparing this Agreement;
- (m) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (n) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (o) a reference to writing includes all means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (p) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (r) 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;
- (s) where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the *reference date*) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month;
- (t) a reference to a monetary amount means that amount in Australian currency; and

- (u) an indemnity which is expressed to be in favour of a person who is not a party to this Agreement is held by the State on trust for the benefit of that person.

## **2. DEPARTMENT**

- (a) The Department acts for and on behalf of the State and may at any time perform any of the State's obligations and exercise the State's rights and powers in and under this Agreement, including taking any actions, making any requests and giving or withholding any consents or approvals which the State has the right or obligation to take, make, give or withhold under this Agreement or at Law.
- (b) The [YSRC/Trustee] agrees to treat any notices or other communications (including any requests) from the Department as being from and on behalf of the State.

## **3. TERM OF THIS AGREEMENT**

The term of this Agreement commences on the Commencement Date and shall operate until the earlier of:

- (a) the date that is [insert] years after the Commencement Date; or
- (b) the date by which the Funds have been completely expended in accordance with the terms of this Agreement.

## **4. RELATIONSHIP WITH YAMATJI NATION ILUA**

The terms of this Agreement are subject to the terms of the ILUA and, to the extent of any inconsistency, the terms of the ILUA prevail.

## **5. PURPOSES OF [RELEVANT PROJECT]**

### **5.1 General objectives of the [Project]**

- (a) [Insert general objectives of the Project]

### **5.2 Ongoing consultation**

- (a) The State and the YSRC will meet on a 6 monthly basis, or such other basis as agreed, during the term of this Agreement to discuss the implementation and objectives of the Project.

### **5.3 Support limits**

[If applicable, specify any limitations that may apply to the funding for the relevant Project]

## **6. PAYMENT OF FUNDS**

### **6.1 Method of Payment**

- (a) The [YSRC/Trustee] will:



- (i) provide the State with a tax invoice by no later than 10 Business Days after the Commencement Date; and
  - (ii) nominate an account for payment of the Funds.
- (b) The State will make payment of the Funds to the [YSRC/Trustee] by way of electronic funds transfer to the nominated account within 20 Business Days of receipt of a tax invoice from the [YSRC/Trustee].

## **7. OBLIGATIONS OF [YSRC/TRUSTEE] AND OF THE STATE**

### **7.1 Use of Funds**

The [YSRC/Trustee] will use the Funds solely for the Approved Purpose in accordance with this Agreement.

### **7.2 Holding Funds**

Until Funds are expended in accordance with this Agreement, the [YSRC/Trustee] will hold the Funds in the Charitable Trust.

### **7.3 No Changes**

The Approved Purpose will not be changed without the prior written agreement of the Parties.

### **7.4 Acknowledgment of YSRC/Trustee**

The [YSRC/Trustee] will ensure that there is acknowledgement of the financial assistance provided by the Western Australian Government in any promotional or marketing material produced by or for the [insert].

### **7.5 Accounts and Reporting**

- (a) The [YSRC/Trustee] is to provide the following reports:
- (i) Progress reports – to be provided annually during the term of this Agreement [within 20 Business Days of the end of each financial year], detailing the expenditure of the Funds and a summary of the operations of the [insert] with reference to its particular objectives and budget for the financial year just ended;
  - (ii) Final Report – to be provided within 90 days of the end of the term of this Agreement, detailing the expenditure over the full term of this Agreement and a summary of the fulfilment (or otherwise) of the particular objectives of the [insert].
  - (iii) Other Reports – as agreed between the Parties from time to time if necessary.

### **7.6 General Undertakings**

- (a) The [YSRC/Trustee] must:

- (i) at all times duly perform and observe its obligations under this Agreement and will promptly inform the State of any occurrence that might adversely affect its ability to do so in a material way;
  - (ii) undertake its responsibilities under this Agreement with integrity, good faith and probity in accordance with good corporate governance practices;
  - (iii) comply with all State and Commonwealth laws, rules, regulations and by-laws; and
  - (iv) work in partnership with the State in the administration of this Agreement.
- (b) The State must:
- (i) at all times duly perform and observe its obligations under this Agreement and will promptly inform the YSRC/Trustee of any occurrence that might adversely affect its ability to do so in a material way;
  - (ii) undertake its responsibilities under this Agreement with integrity, good faith and probity;
  - (iii) comply with all State and Commonwealth laws, rules, regulations and by-laws; and
  - (iv) work in partnership with the YSRC/Trustee in the administration of this Agreement.

## **8. IN-KIND CONTRIBUTION**

The State may provide in-kind contract management support to further support the operations of the [insert].

## **9. NOTICE**

Each notice or other communication given under this Agreement:

- (a) must be in writing;
- (b) may be given by an authorised officer of the State or the [YSRC/Trustee] (as applicable);
- (c) must be:
  - (i) hand delivered or sent by prepaid post to the address of the recipient as set out in item 2 of Schedule 1; or
  - (ii) sent by email to the email address of the recipient as set out in item 2 of Schedule 1;

- (d) subject to paragraph 9(e), 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
  - (iii) in the case of email, when the sender receives an automated message confirming delivery or four (4) hours after the time it was sent.; and
- (e) if received after 4.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

## **10. DEFAULT AND TERMINATION**

### **10.1 Event of Default**

An **Event of Default** occurs if:

- (a) the [YSRC/Trustee] 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 [YSRC/Trustee] by the State;
  - (b) the [YSRC/Trustee] breaches any of its obligations under this Agreement which is incapable of being remedied; or
  - (c) the [YSRC/Trustee] becomes insolvent or is deemed to be insolvent under the *Corporations Act (Cth)*.
- (d) the State fails to make payment of the funds in accordance with clause 6.1(b).

### **10.2 Effect of Event of Default**

If an Event of Default occurs, the non-defaulting party may terminate the Agreement by providing a further ten (10) Business Days' notice in writing to the defaulting party setting out the Event of Default.

### **10.3 Termination of the Project**

The Project may be abandoned or cease by agreement between the Parties specifying an end date (such date not to be before the date of service of the notice), and this Agreement will terminate on the end date specified in the notice.

### **10.4 Rights preserved on termination**

The termination of this Agreement will not affect any rights of a Party against the other Party in respect of any act, omission, matter, or thing occurring under this Agreement prior to termination or as a result of any default by the other Party before the date of termination, nor will it affect the coming into force or the continuance in force of any provision of the Agreement which is expressly or by implication intended to come into, or continue in, force on or after termination.

**11. GOODS AND SERVICES TAX (GST)**

- (a) Terms used in the GST Act have the same meaning when used in this clause, unless expressly stated otherwise.
- (b) If the supply of anything under this Agreement is a taxable supply under the GST Act, the Project Funds shall be [exclusive] of GST
- (c) If GST is payable, the obligation of the State to pay the GST on any supply by the [YSRC/Trustee] under this Agreement is conditional upon the prior issue by the [YSRC/Trustee] to the State of a tax invoice, which complies with the GST Act. This provision applies notwithstanding any law to the contrary.
- (d) Each Party to the Agreement warrants that it has an Australian Business Number and is registered for GST.
- (e) Each Party will notify the other in writing of any change to that Party's GST registration.

**12. 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.

**13. ENTIRE AGREEMENT**

Subject to clause 4, 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. VARIATION**

Any modification, amendment or other variation to this Agreement must be made in writing duly executed by both Parties.

**15. DISPUTE RESOLUTION**

- (a) A Party claiming a dispute has arisen must give the other parties notice, in writing, setting out details of the dispute.
- (b) Before resorting to external dispute resolution mechanisms including court proceedings, the Parties will in good faith attempt to settle by negotiation any dispute in relation to this Agreement by referral to the:

- (i) Implementation Committee in the first instance, following receipt of the notice of the dispute; and
  - (ii) Government Partnership Committee if the dispute is not resolved by the Implementation Committee.
- (c) Where practical, each Party will refer the matter to personnel who have authority to intervene and facilitate some form of agreed resolution.

**16. GIVING EFFECT TO THIS AGREEMENT**

Each Party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other Party may reasonably require to give full effect to this Agreement.

**17. GOVERNING LAW**

This Agreement is governed by the laws in force in Western Australia and each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia.

**SCHEDULE**

**1. Project Funds**

[insert amount]

**2. Notice Addresses**

State:

[YSRC]:

[Trustee]:

**3. Special Conditions**

*[Note: Insert any additional conditions set out in the ILUA specific to Project and Approved Purpose]*

**EXECUTED** as an agreement.

The Common Seal of )  
[#] )  
was affixed in the presence of: )  
)

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Occupation of witness

**EXECUTED** by )  
[#] )  
(ACN [#]) )  
in the presence of : )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Full name of Director

\_\_\_\_\_  
Full name of Director/Secretary

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