



FUNDING AGREEMENT

Between

The Shire of Mingenew

And

?????????

**Community Assistance Scheme 2020/2021
Round 1**

Project Name

This funding agreement is made on _____ between The Shire of Mingenew ABN: 41 454 990 790 of 21 Victoria Road Mingenew, herein known as *the Grantee*, and _____, herein known as *the Grantor*.

The Grantee has applied to the Grantor for financial assistance to undertake the Project and the Grantor agrees to provide Grant Funds subject to the terms and conditions of this Agreement.

1 DEFINITIONS:

Acquittal Due Date is the date by which the Grantee must submit the final report to the Grantor.

Agreement means this Funding Agreement, including its recitals and any schedules or annexures.

Agreement Term means the period commencing on the date this Agreement is executed by all Parties and concluding upon the date the Grantor issues written acceptance of the Final Report.

Application Form means the application for funding lodged by the Grantee to the Grantor.

Commencement Date means the date for commencement of the Project.

Completion Date means the earlier of the date the Project is actually completed by the Grantee or the date for completion of the Project.

Confidential Information means information in respect of this Agreement that:

- (a) Is by its nature confidential; or
- (b) Is specified by the Grantor or the Grantee to be confidential; or
- (c) The Grantor or the Grantee knows or should reasonably know is confidential.

Determining Authority means any Commonwealth, State or Local Government entity whose approval is required in order to enable a Project task to be carried out.

Grant Funds means the amount or amounts specified.

Grantee means the legal entity having, for the time being, responsibility for the care, control and management of the Project and includes its officers, employees, agents, volunteers, subcontractors and successors.

GST, Tax Invoice, Recipient Created Tax Invoice and Taxable Supply have the same meaning as in A New Tax System (Goods and Services Tax) Act 1999. Further, for the purposes of this Agreement 'taxable supply' means the obligations of the Recipient under the terms of this Agreement.

Loss means any loss, damage, liability, cost or expense (including legal expenses on a full indemnity basis) of any kind suffered or incurred or agreed to be paid by way of settlement or compromise.

Participating Organisation means any other Company or other incorporated entity working with the Recipient on the Project.

2 INTERPRETATION:

- (a) A reference to any thing is a reference to the whole or any part of that thing and a reference to a group of things or persons is a reference to any one or more of them.
- (b) If the Grantee consists of a partnership or joint venture, then:
 - (i) An obligation imposed on the Grantee under this Agreement binds each person who comprises the Grantee jointly and severally.
 - (ii) Each person who comprises the Grantee is deemed to agree to do all things necessary to enable the obligations imposed on the Grantee under this Agreement to be undertaken.
 - (iii) The act of one person who comprises the Grantee binds the other persons who comprise the grantee and
 - (iv) An Event of Default by one person who comprises the Grantee constitutes an Event of Default by the Grantee.
- (c) 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 Grantor or the Grantee.
- (d) A reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment, annexure or appendix to, this Agreement.
- (e) A reference to a statute, ordinance, code or other law includes regulations and other instruments under viand consolidations, amendments, re-enactments or replacements of any of them.
- (f) No rule of interpretation is to be applied to disadvantage the Grantor or the Grantee on the basis that it was responsible for preparing this Agreement.
- (g) If the word 'including' or 'includes' is used, the words 'without limitation' are taken to immediately follow.
- (h) A reference to writing includes all means of representing or reproducing words in visible form including by electronic means such as facsimile transmission.
- (i) A reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind.
- (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.

3 PAYMENT AND USE OF GRANT FUNDS

- (a) The Grantor will, pay to the Grantee the approved Grant Funds
- (b) Payment of the Grant Funds will be made directly to the Grantee upon receipt of an invoice and will only be made if funds are used in accordance with this Agreement unless there has been written agreement otherwise between the Parties.
- (c) Payment will only be made once a valid claim has been received.
- (d) At completion of the Project any unpaid portion of Grant Funds will remain the property of the Grantor.
- (e) Payment will only be issued for tasks undertaken within the Agreement Term specified.
- (f) The Grantee will use the Grant Funds solely for the approved Project.

4 OBLIGATIONS OF GRANTEE

- (a) The Grantee will not make any changes to the Project without the prior written consent of the Grantor. If vesting changes, a property or project is sold during the grant term, the Funding Agreement terminates. Where there is a change in company structure or death of a signatory, the Grantee must formally notify the Grantor.
- (b) The Grantee is to provide the Grantor with any documents or information relating to this Agreement or the Project within 10 business days of receiving a request from the Grantor.
- (c) The Grantee is required to acknowledge the contribution of the Grantor in project-related media.

5 OBLIGATIONS OF GRANTOR

The Grantor is required to make payments to the Grantee within 10 business days of receipt of written request, supported by evidence of eligible project expenditure.

6 INTELLECTUAL PROPERTY RIGHTS

The Grantee indemnifies and will keep indemnified the Grantor, and all their respective officers, employees and agents from and against all costs, losses, expenses, actions, suits, demands, claims, damages and other liabilities resulting from the Grantee's failure to comply with including any breach of warranty, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights or the Moral Rights of any third party by the Grantee.

7 CONFIDENTIALITY

The Parties must keep Confidential Information confidential. The Parties must not use or disclose to any person Confidential Information except:

- (a) where necessary for the purpose of performing the Project; or
- (b) as authorised in writing; or
- (c) to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by the disclosing Party); or
- (d) as required by any law, judicial or parliamentary body or governmental agency; or
- (e) when required, and only to the extent required, to the disclosing Party's professional advisers, and Party must ensure that such professional advisers are bound by the confidentiality obligations imposed on the disclosing Party.

8 PRIVACY

- (a) The Grantee agrees to comply with its obligations (if any) under or arising pursuant to the *Privacy Act 1988 (Commonwealth)* to the extent relevant to this Agreement.
- (b) The Grantee also agrees to comply with:
 - (i) such other Commonwealth, State or Territory legislation related to privacy, which is relevant to this Agreement.
 - (ii) any directions made by a Privacy Commissioner relevant to this Agreement; and
 - (iii) any other reasonable direction relating to privacy, which is given by the Grantor.

9 DEFAULT

An Event of Default occurs if:

- (a) 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 Grantor.
- (b) The Grantor has reasonable grounds to believe that the Grantee is unwilling or unable to comply with its obligations under this Agreement.
- (c) The Grantee ceases to carry on business in Western Australia; or
- (d) An Insolvency Event occurs in respect of the Grantee.

10 TERMINATION OR EXTENSION

- (a) Unless earlier terminated, this Agreement will terminate immediately following the release of the final payment.
- (b) Any extension or request for an early claim of grant funds must be sought in writing and approved by the Grantor.

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 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.

13 RIGHTS AND REMEDIES

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

EXECUTION

Executed by the Parties hereto:

For and on behalf of
The Shire of Mingenew

For and on behalf of the Grantee
???????

CEO Shire of Mingenew

?????

Date

Date

SCHEDULE 1: APPROVED PROJECT DETAILS

Project Name: _____

Project Description: _____

Commencement Date: _____

Completion Date: _____

Acquittal Due Date: _____

Grant Funds: Cash Value _____

Grant Funds: In Kind Value _____

SAMPLE