
GRANT FUNDING AGREEMENT

**WATER SOURCES FOR RURAL FIRE FIGHTING SERVICES AND RURAL
UNSEALED ROADS MAINTENANCE WORKS**

DEPARTMENT OF WATER & ENVIRONMENTAL REGULATION

AND

CITY OF GREATER GERALDTON

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THIS Agreement is made on the day of

BETWEEN:

DEPARTMENT OF WATER & ENVIRONMENTAL REGULATION, 8 Davidson Terrace, Joondalup Western Australia 6027 (Department).

AND

CITY OF GREATER GERALDTON 63 Cathedral Ave, GERALDTON WA (Recipient).

RECITALS

- (a) The Department is responsible for delivery of Community Water Supply Project funding.
- (b) The Recipient is a Local Government that manages the districts affairs to the extent permitted by the Local Government Act 1995.
- (c) The Recipient has applied to the Department of Water and Environmental Regulation for grant funding under the Community Water Supply Program to implement the project.
- (d) The Department has agreed to provide the Funding to the Recipient
- (e) This Agreement sets out the Project to be delivered and the terms and conditions on which the Department agrees to provide Funding to the Recipient.
- (f) The Department and the Recipient are entering into this Agreement to govern the terms and conditions in relation to the delivery of the Project.

OPERATIVE PART

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Defined terms for use in this Agreement, in addition to those set out in this clause 1.1, may appear in the Schedules.

In this Agreement, unless the context otherwise requires:

Agreement means this Grant Funding Agreement, including its recitals, Schedules and annexures, and the information provided to the Recipient's Application.

Application means the Recipients submission for Funding including application form, project plan, attachments and any supporting information provided to the Department by the Recipient.

Associates means any officer, employee, agent, consultant, contractor, nominee, licensee or adviser of the State, including any governmental, semi-governmental or local government authority, minister, department, statutory corporation, instrumentality or government owned corporation.

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

Authorisation means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, waiver, approval, authority or exemption from, by or within a Government Agency required under any Laws, and includes any renewal of, or variation to, any of them.

Business Day means a day which is not a Saturday, Sunday or public holiday in the State of Western Australia.

Claim means any claim, proceeding, cause of action, action, demand or suit (including by way of a claim for contribution or an indemnity).

Commencement Date means the date of this Agreement – or, if this Agreement is undated, the date on which the last party to execute this Agreement does so.

Date for Project Completion means the date by which the Recipient must complete the Project set out in item 2.2 of Schedule 2.

Event of Default has the meaning given in clause 6.2.

Funding means \$100 000 (excluding GST) which will be provided by the State to the Recipient in the manner and within the timeframes outlined in Schedule 2.

Intellectual Property includes:

- (a) all copyright (including rights in relation to all documents, reports, charts, drawings, data bases, software, source codes, models, systems, slides, tapes and specifications);
- (b) all copyright and all rights in relation to inventions (including registered and registrable patents), registered and unregistered trademarks, registered and unregistered designs, circuit layouts, and know-how; and
- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Law means all applicable present and future laws including:

- (a) all acts, ordinances, regulations by-laws, orders, awards and proclamations of the State of Western Australia or the Commonwealth of Australia;
- (b) Authorisations;
- (c) principles of law or equity;
- (d) standards, codes, policies and guidelines; and
- (e) the Australian Securities Exchange listing rules.

Liability means any debt, obligation, cost (including legal costs), expense, Loss, damage, compensation, charge or liability of any kind (whether arising in negligence or otherwise), including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

Loss includes any loss, cost, expense, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual, prospective or contingent or any fine or penalty.

Milestones means the milestones set out in item 2.2 of Schedule 2, with each milestone in relation to an Obligation of the Recipient being the date by which that Obligation must be completed, and includes the Date for Project Completion.

Obligation means an obligation in this Agreement.

Party means each of the Department or the Recipient as the context requires, and **Parties** means both of them.

Pre-Existing Intellectual Property means the Intellectual Property of a Party which was either created before the Commencement Date, or independently of this Agreement, and all improvements to such Intellectual Property by the Party.

Project means the initiative or activities described in schedule 2.

Project Intellectual Property means all Intellectual Property (excluding Pre-Existing Intellectual Property) developed, created, discovered, brought into existence or otherwise acquired (other than from the Department) by or for or

on behalf of the Recipient in the course of undertaking the Project or otherwise under or in connection with this Agreement. For the avoidance of doubt, Project Intellectual Property includes Intellectual Property developed, created, discovered, brought into existence or otherwise acquired by any person under or pursuant to a Third Party Agreement.

Provision means any term, condition, undertaking, promise, obligation or warranty of, made or given by the Recipient, or otherwise applicable to the Recipient, under this Agreement.

Related Body Corporate has the meaning given to it in the *Corporations Act 2001* (Cth).

Schedule means any schedule to, and forming part of, this Agreement.

Third Party Agreement has the meaning given to it in Clause 7.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to a person include an individual, the estate of an individual and any type of entity or body of persons, including a corporation, an incorporated or unincorporated association or parties in a joint venture, a partnership or a trust and the legal personal representatives, successors and assigns of that person;
- (d) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (e) references to this Agreement or any other instrument include this Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the Parties;
- (f) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail and facsimile transmission;
- (g) an Obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (h) if a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) references to this Agreement include its recitals, Schedules and annexures;

- (j) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (k) references to time are local time in Perth, Western Australia;
- (l) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (m) references to currency are to Australian currency unless otherwise stated;
- (n) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Agreement or any part thereof;
- (o) a reference to any thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (p) when the day or last day for doing an act is not a Business Day, then the day or last day for doing the act will be the directly preceding Business Day;
- (q) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (r) the phrases "described in", "set out" and "specified in" shall all read as if the words "expressly or impliedly" appeared immediately before them; and
- (s) reference to a contractor or sub-contractor means a contractor or sub-contractor at any tier.

2. OBLIGATIONS OF RECIPIENT

2.1 Use of Funding

- (a) The Recipient must use the Funding (and any interest which accrues on the Funding) for the carrying out of the Project in accordance with this Agreement. All of this expenditure must be effected in a commercially prudent, sensible and reasonable manner.
- (b) In carrying out the Project, the Recipient must comply with and meet all Milestones including completing the Project by the Date for Project Completion.

2.2 Acknowledgement of the Department

- (a) Any communications in relation to one or more of the Project and this Agreement including presentations, publications, signage, articles, newsletters, or other literary works relating to the Project must:
 - (i) equally represent the Parties when Project logos are displayed, including containing the Department's and

Recipient's logos and names in an equally prominent position; and

- (ii) be consistent with the policies for marketing, communications and acknowledgements which the Department notifies to the Recipient from time to time.
- (b) The respective roles of the Department and the Recipient must be acknowledged at relevant fora, conferences, and project launches where the Project is promoted.

2.3 General Undertakings of the Recipient

The Recipient must:

- (a) at all times duly perform and observe its Obligations and must promptly inform the Department of any occurrence that might adversely affect its ability to do so in a material way;
- (b) without limiting clause 2.3(a), at all times (including if any part of its Obligations are sub-contracted) ensure that its Obligations are carried out by people with appropriate skills and expertise;
- (c) undertake its Obligations with integrity, good faith and probity in accordance with good corporate governance practices;
- (d) not, nor attempt to, sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights, entitlements and powers or Obligations under this Agreement;
- (e) comply with all Laws; and
- (f) cooperate fully with the Department in the administration of this Agreement.

2.4 Negation of Employment, Partnership and Agency

- (a) The Recipient 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 Department or as otherwise able to bind or represent the State or Department.
- (b) The Recipient will not, by virtue of this Agreement, be or for any purpose be deemed to be, an employee, partner, or agent of the State or the Department, or have any power or authority to bind or represent the State or the Department.

3. LIMITATION OF LIABILITY

- (a) The Department is not responsible or liable in any way for the success or otherwise of the Project or for any losses suffered by the Recipient in undertaking the Project. The Recipient releases the Department from all Liability in relation to the Project, this Agreement and any related matter and agrees that neither it nor any Related

Body Corporate will make a Claim against the State or any of the State's Associates arising directly or indirectly in relation to one or more of the Project, this Agreement and any related matter. This clause 8 may be pleaded by the State or its Associates as a bar to any proceedings commenced by the Recipient against the State or its Associates in relation to one or more of the Project, this Agreement and any related matter.

- (b) If the Funding (and any interest which accrues on the Funding) is insufficient for the Recipient to properly fulfil all of its Obligations, then the Recipient must still fulfil its Obligations at its own cost.
- (c) The Recipient must indemnify the State and must keep it indemnified and hold it and its officers, employees and agents harmless from and against all Claims or Liability, suffered or incurred by or brought against the State or any of its respective officers, employees and agents whether before or after the date of this Agreement caused by, arising out of or relating directly or indirectly to any:
 - (i) breach of any Provision by the Recipient;
 - (ii) act or omission of the Recipient or its employees, contractors, officers or agents; or
 - (iii) breach of a Law by the Recipient or any of its employees, contractors, officers or agents.
- (d) This clause survives the termination of this Agreement.

4. FREEDOM OF INFORMATION ACT 1992, FINANCIAL MANAGEMENT ACT 2006 AND AUDITOR GENERAL ACT 2006

- (a) This Agreement and information regarding it is subject to the *Freedom of Information Act 1992*. The Department may publicly disclose information in relation to this Agreement, including its terms and the details of the Recipient.
- (b) Despite any express or implied provision of this Agreement to the contrary, nothing in this Agreement in any way alters, limits or affects the operation of the *Auditor General Act 2006*, the *Financial Management Act 2006* or the Recipient's obligations (if any) in relation to these Acts. To the extent permitted by law, the Recipient must allow the Auditor General, or an authorised representative, to have access to and audit (or otherwise review, examine or evaluate) the Recipient's records and information concerning either or both of this Agreement and the Project.

5. NOTICES

In order for any notice or other communication (including any request, approval or the like) that may or must be given under this Agreement to be effective, that notice or other communication:

- (a) must be in writing;

- (b) must be given by a staff member appointed as a contact officer in relation to the Project and this Agreement (**Contact Officer**) of the Party giving notice or by another authorised officer of that Party if the Contact Officer is unable to give a notice or communication in a particular instance.

6. DEFAULT AND TERMINATION

6.1 Event of Default by the Recipient

An Event of Default occurs if:

- (a) the Recipient breaches any Provision, which breach (if remediable) continues without remedy for five (5) Business Days after notice in writing has been served on the Recipient by the Department. This subclause does not limit any other part of this clause 6.1 in any way; or
- (b) the Recipient breaches any Provision and such breach cannot be remedied. This subclause does not limit any other part of this clause 6.1 in any way; or
- (c) the Recipient fails to comply with or meet a Milestone, an Additional/New Milestone or any other milestone set by the Department in accordance with this Agreement; or
- (d) the Recipient suffers, or is or becomes subject to, an insolvency event; or
- (e) the Department believes, in its absolute discretion, that the Recipient is unwilling or unable to comply with any one or more of the Provisions; or
- (f) the Recipient repudiates the Agreement; or
- (g) a material warranty given by or representation made by the Recipient is or becomes untrue; or
- (h) the Recipient persistently, regularly, consistently or continually breaches the Provisions. This subclause does not limit any other part of this clause 6.1 in any way; or
- (i) where this Agreement provides for or contemplates the Parties reaching further agreement in relation to anything the subject of, or related to, either or both of this Agreement and the Project, this further agreement is not reached and recorded in writing within a reasonable time.

6.2 Effect of Event of Default

- (a) If an Event of Default occurs, the Department may terminate the Agreement by providing notice in writing to the Recipient and the Agreement is then terminated from the date specified in that notice.

- (b) Without limiting the Department's rights under clause 11.2(a), if the Recipient is in breach of this Agreement, the Department may suspend the performance of its Obligations until such time as it is satisfied in its absolute discretion that the Recipient has remedied that breach.
- (c) The Department may terminate the Agreement by providing notice in writing to the Recipient if, in the opinion of the Department exercisable in its absolute discretion, the Project is no longer necessary for any reason and the Agreement is then terminated from the date specified in that notice.

6.3 No Further Funding and Recovery of Funding

If the Agreement is terminated under clause 6.2, or terminated unlawfully by the Recipient:

- (a) the Department has no further obligation to pay the Recipient any part of the Funding which has not yet been paid to the Recipient; and
- (b) the Recipient must remit to the Department within twenty (20) Business Days from the termination date specified by the Department all Funding paid to the Recipient under the Agreement that has not been spent or committed in accordance with this Agreement by the termination date specified by the Department and any interest which has accrued on that Funding.

7. AGREEMENT BETWEEN THE RECIPIENT AND A THIRD PARTY

If the Recipient enters into an agreement with any other party relating in any way to either or both of this Agreement and the Funding (**Third Party Agreement**), including a Third Party Agreement with a party to deliver or fulfil any of the Recipient's Obligations or to provide services to the Recipient to assist or enable it to fulfil its Obligations, the Recipient must ensure that the other party has obligations in the Third Party Agreement which, if properly fulfilled, will ensure that the Recipient properly fulfils its corresponding Obligations and to the extent necessary to ensure that the other party has these obligations, the Recipient must ensure that the Third Party Agreement mirrors the terms of this Agreement.

8. WAIVER

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by the Party to be bound by or subject to the waiver.
- (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 any part of this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party, will not be construed as a waiver of any rights under this Agreement or under any Law.

9. ENTIRE AGREEMENT

This Agreement constitutes the entire, full and complete understanding and agreement between the Parties in relation to its subject matter and supersedes all prior communications, negotiations, arrangements and agreements between the Parties with respect to the subject matter of this Agreement.

10. ASSIGNMENT

- (a) This Agreement is personal to the Recipient and may not be assigned by the Recipient without the Department's consent, which may be withheld in the Department's absolute discretion. The Department may at any time, in its absolute discretion, assign or transfer its rights and Obligations under this Agreement as it sees fit.
- (b) For the purposes of this clause 10, the Recipient shall be deemed to have assigned this Agreement if any act, matter or thing is done or occurs, the effect of which is, in the opinion of the Department, to transfer, directly or indirectly, the management or control of the Recipient.

11. INTELLECTUAL PROPERTY

- (a) The Pre-Existing Intellectual Property of each Party remains the property of that Party.
- (b) As between the Department and the Recipient, the Department will own all Project Intellectual Property.
- (c) The Department grants and must ensure that any other owner of Project Intellectual Property grants, and the Recipient accepts, a non-exclusive, world-wide, everlasting, irrevocable, royalty-free licence to exercise all rights in relation to the Intellectual Property.

12. VARIATION

Any modification, amendment or other variation to this Agreement must be made in writing, and must, unless the Department in its absolute discretion directs in writing otherwise, be duly executed by both Parties.

13. RIGHTS, POWERS 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.

14. GOVERNING LAW

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

15. REPRESENTATIONS AND WARRANTIES

The Recipient represents and warrants, for the benefit of the Department that:

- (a) it has been properly established under the *Corporations Act* it has authorised to enter into this Agreement;
- (b) all conditions and things required by applicable Law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order to enable it lawfully to enter into, exercise its rights and perform its obligations under this Agreement have been fulfilled or done; and
- (c) it knows of no impediment to it performing its obligations under this Agreement.

16. SCHEDULES

Any express or implied Provision of any Schedule to this Agreement is hereby deemed to be a provision of this Agreement and therefore must be complied with (by the relevant Party) in accordance with its terms.

SCHEDULE 1 – CONTACT OFFICERS

1. Notice Addresses

1.1 Department

| | |
|------------------|---|
| Registered Mail: | Locked Bag 10, Joondalup DC, JOONDALUP WA 6919 |
| Facsimile: | (08) 6364 7001 |

1.2 Recipient

| | |
|------------------|-------------------------------------|
| Registered Mail: | 63 Cathedral Ave, GERALDTON WA 6530 |
| Facsimile: | (08) 9956 6674 |

2. Contact Officers

2.1 Department

| | |
|------------------------|--|
| Name: | Tracy Calvert |
| Job Title: | Manager Rural Water Program |
| Phone: | (08) 9841 0122 |
| Facsimile: | (08) 9842 1204 |
| Email: | Tracy.calvert@dwer.wa.gov.au |
| Postal Address: | PO Box 525, ALBANY WA 6331 |
| Street Address: | 5 Bevan Street, ALBANY WA 6330 |

2.2 Recipient

| | |
|------------------------|---|
| Name: | Geoffrey Burton |
| Job Title: | Snr Operations Technical Officer |
| Phone: | (08) 9956 6924 |
| Facsimile: | (08) 9956 6674 |
| Email: | mailto:projects@shirebt.wa.gov.au geoffb@cgg.wa.gov.au |
| Postal Address: | 63 Cathedral Ave, GERALDTON WA 6530 |
| Street Address: | 63 Cathedral Ave, GERALDTON WA 6530 |

SCHEDULE 2 – WATERING WA GRANT FUNDED PROJECT DETAILS

1. Manner in which Funding is to be Paid

1.1 Payment of Funding

The following conditions apply to payment of the Funding:

- (a) Without limiting clause 8(b) in any way, the Recipient must use the Funding (and any interest which accrues on that Funding) to carry out the Project in accordance with this Grant Funding Agreement and for no other purpose.
- (b) Funding of **\$100 000** (excluding GST) will be provided by the State to the Recipient in the manner and within the timeframes outlined in Item 2.2 SCHEDULE 2.
- (c) The Recipient may request early payment in exceptional circumstances. Early payment requests must be agreed and requested in writing.
- (d) The Recipient must contribute a minimum of 30% total project value to this project in-kind and cash. The recipient must provide evidence of co-contribution and if the contribution is less than 30% total project costs the Department may reduce the amount that is paid to the Recipient under this agreement.
- (e) At the close of the project the recipient must return any unspent funding to the Department within 20 days.
- (f) The final milestone payment on project close will not be greater than the amount of acquitted funding.
- (g) The Recipient must permit a financial audit of the project prior to final acquittal of funds. Financial audits will be funded by the Department.

2. Detailed Description of Project

2.1 Project Description

The Department will work with the City of Greater Geraldton to fund the improvement of infrastructure at three strategic non-potable bores located in the Mullewa region. These will be used to provide fit for purpose water for firefighting and rural unsealed roadworks maintenance. At each bore site a 173 kilolitre tank will be installed and fitted with new fast flow solar submersible pumps to improve filling capability. The Mullewa region has been subject to severe water deficiencies in the period of 1 April 2017 and 30 June 2018.

The proposed project will provide a non-potable supply to ensure there is adequate water supplies for firefighting purposes within the district. It will also provide an emergency source for farmers within the district

during dry periods and provide an additional source of fit for purpose water for road maintenance crews to ensure regular maintenance of the rural road network can be undertaken and the network maintained efficiently. It is proposed that this will save the community \$31 200 per year.

Funding of \$100 000 is recommended for the cost of the tanks, preparation of truck access areas and pump infrastructure. The City of Greater Geraldton is contributing an additional \$75 603 to the project.

2.2 Recipient's Obligations and Payment of Community Water Supply Program funding

| Deliverable Obligations | Recipient's | Performance Measure | Performance Measure Method (Payments will be based on these measures) | Milestone | Payment Amount \$ |
|--|-------------|---|---|--------------------------------|-------------------|
| Signing of Deed of Agreement / Project Commencement Tanks ordered | | Execution of Agreement | Agreement signed by the Recipient and Department | November 2019 | \$0 |
| Three tank sites cleared and grubbing complete | | Reports containing sufficient detail to demonstrate milestone progression and expenditure incurred/committed are consistent with project delivery Photographic evidence Project costs updated. | Submission of milestone report to the satisfaction of the Department Photographic evidence demonstrating works completed to the satisfaction of the Department Updated project component costs submitted to the Department | 29 th February 2020 | \$40 000 |
| Sand pads & concrete ring beams constructed 3x 173 KL tanks installed Solar pumps installed at each site | | Reports containing sufficient detail to demonstrate milestone progression and expenditure incurred/committed are consistent with project delivery Photographic evidence Proof of payment for materials Onsite visit by the Department. | Submission of milestone report to the satisfaction of the Department Photographic evidence demonstrating works completed to the satisfaction of the Department Proof of payment to the satisfaction of the Department. Department site inspection completed and working system demonstrated. | 30 th April 2020 | \$45 000 |
| Project Close | | Work completed Acquittal of funds | Final report submitted and associated invoices provided to the satisfaction of the Department | 03 rd May 2020 | \$5 000 |

| | | | | |
|---|---------------------------|---|---------------------|------------------|
| | | Photographic evidence demonstrating works completed to the satisfaction of the Department Sufficient evidence provided to the Department demonstrating expenditure of grant funding. | | |
| Final report containing sufficient detail to demonstrate milestone progression and expenditure incurred/committed are consistent with project delivery. | | | | |
| | Project Completion | 03rd May 2020 | Total amount | \$100 000 |

2.3 Project Budget


| Work item number | Work description (including costs per hour or unit) | Unit Cost (\$) | No. of units | Applicant cash contribution (30%) | Community Water Supply Grant (70%) | Total Cost (excl. GST) |
|-------------------|--|----------------|--------------|-----------------------------------|------------------------------------|------------------------|
| 1 | Supply 3 x 173 KI steel water storage tanks | \$27,940 | 3 | \$48,038 | \$35,782 | \$83,820 |
| 2 | Clearing and grubbing of three tank sites, and construction of sand pads to tank supplier's specification. | \$8,470 | 3 | \$7,623 | \$17,787 | \$25,410 |
| 3 | Concrete Ring Beams for 3 tank base (to tank suppliers specification). | \$11,000 | 3 | \$9,900 | \$23,100 | \$33,000 |
| 4 | Solar powered submersible bore pumps for 3 boreholes. | \$11,158 | 3 | \$10,042 | \$23,331 | \$33,474 |
| Sub Totals | | | | \$75,603 | \$100, 000 | \$175,603 |

EXECUTED by the Parties as an Agreement.

For and on behalf of the Department:

For and on behalf of the Recipient:

(signature)



(signature)

(Print full name)

ROSS ROBERT MCKIM

(Print full name)

(Position)

CEO .

(Position)

