

## Appendix B:

### PHCC COMMUNITY ENVIRONMENT GRANTS: TERMS & CONDITIONS

#### 1. Glossary of Terms

In this Agreement, unless the context otherwise requires:

**Activity** means the undertaking by the Recipient in regard to achieving the negotiated deliverable outcomes and milestones which are specified in this Agreement and Schedules.

**Activity Material** means documents and any other material, in any form, created or a copy thereof or in any other way brought into existence as part of, or in the performance of, the activity, and includes: new, enhanced or derived data; documents; equipment; software; goods; information and publications produced as a result of the Activity and stored by any means.

**Agreement** means this Agreement (Contract) between the PHCC and the Recipient, including its recitals and any schedules or attachments, for services supplied by the Recipient.

**Approved Project** or **Project** means the Project or Approved Purpose as per the approved funding application and as set out in the Schedules.

**Asset/Capital Equipment** is any item of tangible property, including software, purchased or leased either wholly or in part with the use of the Funds with a value at the time of acquisition of \$5,000 or more, excluding GST.

**Auditor** means an accountant who is a member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants and who is independent from the Applicant.

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

**Catchment** means the hydrological catchment of the Peel-Harvey.

**Confidential Information** includes but is not limited to, any information relating to business affairs and processes of the Parties, obtained by virtue of this Agreement, 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 the 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 their employees and agents.

**Contract Funds** or **Contract Amount** means the amount or amounts specified in clause 5.

**Contractor** means the recipient, organisation, association, agency, landholder or Recipient receiving funds.

**Financial records** means invoices, receipts, bank statements, copies of cheques, and reconciliations of bank balance, receipts and expenditure.

**PHCC** means the Peel-Harvey Catchment Council Inc.

**PHCC's Representative** means the Chief Executive Officer, or Legal representative of PHCC, or any other Officer authorised by the Board.

**PHCC Officer** means the PHCC's staff member who is managing the project that is providing the funds.

**Parties** mean the PHCC and the Recipient to this Agreement.

**Project** means the undertaking by the Recipient in regard to achieving the negotiated Activities and Milestones which are specified in this Agreement and associated Schedules.

**Project Site** means any land on which a Project is carried out on.

**Recipient** means the organisation, association, agency, landholder or Recipient receiving funds.

**Sub-recipient or sub-contractor** is another party engaged by the Recipient to deliver or assist in the delivery of any components of the Project.

**Termination Date** means the day on which the Applicant receives a termination notice in accordance with the relevant clause.

**Works** means those items of the Project referred to in the attached schedules and/or attachments.

## 2. Payment of Contract Funds

1. Subject to the terms and conditions of this Agreement, the PHCC will pay to the Recipient the Contract Funds in the amounts set out in Schedule 1 upon:
  - I. The Recipient completing the relevant milestones identified in Schedule 1, to the satisfaction of the PHCC and providing that the PHCC Officer has approved that works have been completed satisfactorily for each milestone and/or other reporting evidence provided.
  - II. Provision of the appropriate Tax Invoices and in accordance with clause 19.
  - III. Payment will be made by PHCC within thirty (30) days of receipt of the Recipient's invoice.

## 3. Variation

This Agreement is made in accordance with the approved Funding Application for the agreed amount of funds based on sound project planning. Best project outcomes are obtained under an adaptive management approach to delivery. Should a situation arise where adjustments need to be made to the agreed project details, then:

1. The Recipient will contact the PHCC Officer and discuss the potential need for a Variation.
2. If there is scope to consider a Variation to this Agreement then the Recipient must submit a Request for Variation. It should be noted that funding guidelines and timeframes, along with commitments to the Australian Government for the funds mean that it is not always possible to consider a Variation to an Approved Project.
3. The PHCC will consider the request for Variation. If approved, a revised Milestone Schedule will be issued which outlines the agreed variation to the works.

## 4. Undertakings & Obligations of the PHCC

The PHCC agrees to:

1. Promptly inform the Recipient of any occurrence which might adversely affect the Recipient's ability to duly perform and observe their obligations under this Agreement in a material way.
2. Undertake their responsibilities related to this Agreement with integrity, good faith and probity in accordance with good corporate governance practices.
3. Comply with all State and Commonwealth laws, rules, regulations and bylaws.
4. Cooperate fully with the Recipient in the administration of this Agreement.

## 5. Undertakings & Obligations of the Recipient

### 5.1 The Works

1. The Recipient will commence Works to achieve the objectives of the Project once this agreement is signed by both parties and in accordance with the time frames specified.
2. The Recipient shall complete the works by the dates nominated in Schedule 1 in accordance with the Activity Description and Approved Project Budget (Schedule 2).
3. The Recipient shall use their best endeavors to maintain the Project works and project site for a minimum of 10 years to ensure long-term environmental protection and achievement of project objectives.

### 5.2 Heritage

We draw the Recipient's attention to their requirement to comply with the *Aboriginal Heritage Act 1972* and the *Heritage of Western Australia Act 1990*.

### 5.3 Approvals/Permits

1. Where applicable, the Recipient shall obtain the relevant approvals or permits to commence Works, and/or ensure approvals have been obtained, prior to commencing works.
2. The Recipient shall comply with any relevant legislation and we draw the Recipient's attention to their requirement to comply with environmental legislation.

### 5.4 Publicity and Publications

The Recipient:

1. Is encouraged to actively promote the project via traditional and social media.
2. Shall ensure that all media articles pertaining to the Project acknowledge the funding partners and the PHCC. The Acknowledgement must include; *"This project is supported by the Peel-Harvey Catchment Council, through funding from the Australian Government as per the Australian Government Funding Recognition Guidelines. All Projects related to the Black Cockatoo project must include acknowledgement of the Environmental Restoration Fund (contact your project officer for more information).*
3. Shall provide drafts of media releases, publications and signage relating to the Contract to the PHCC for comment and approval prior to final production or publication. Copies of the final product, other than signage, shall be provided to the PHCC.
4. Note that the PHCC may promote the Project through Social media and traditional media.

### 5.5 Use of Contract Funds and Presentation of Receipts

1. The Recipient shall only use the Contract Funds in order to achieve the objectives of the Approved Project and works as defined in this Agreement and the Schedules, and that all reasonable efforts are made to ensure that goods and services are obtained as per quotes provided in the Grant Application, or as close to as possible.
2. On completion of the Project the Recipient will complete a Final Report and Acquittal Statement, and must provide copies of receipts for at least 80% of expenditure of the grant provided.
3. Where the Recipient has successfully carried out the Approved Project works in accordance with PHCC's Minimum Standards, provided relevant receipts and acquittal statement, and PHCC acknowledges and approves underspent grant funds, the landholder agrees to spend these funds on the maintenance of the project.
4. If the project is not conducted in accordance with Agreement and does not meet the PHCC's Minimum Standards a Variation will need to be entered into between the PHCC and recipient to document how remaining funds will be spent to further project objectives. Should an Agreement not be reached, then grant funds will be retained by the PHCC.

## 5.6 Endorsement by the PHCC

The Recipient acknowledges that nothing in this Agreement constitutes an endorsement by PHCC of any goods or services provided by the Recipient.

## 5.7 Requests for Information

The Recipient shall provide the PHCC with any documents or information relating to this Agreement or the Approved Project within ten business days of receiving such a request from the PHCC.

## 5.8 General Undertaking of Recipient

The Recipient shall:

1. At all times duly perform and observe their obligations under this Agreement and promptly inform the PHCC of any occurrence which might adversely affect their ability to do so in a material way.
2. Undertake their responsibilities under this Agreement with integrity, good faith and probity in accordance with good corporate governance practices.
3. Not, nor attempt to, sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of their rights, entitlements and powers or obligations under this Agreement.
4. Comply with all State and Commonwealth laws, rules, regulations and bylaws.
5. Cooperate fully with the PHCC in the administration of this Agreement.
6. Upon reasonable notice, provide the PHCC or its agents with access at any reasonable time to the Recipient's records, documents, equipment and other property for the purpose of audit and inspection by the PHCC in order to verify compliance by the Recipient with this Agreement.
7. Obtain all relevant project approvals and ensure that occupational health and safety standards are met.

## 5.9 Reports and monitoring

1. As a minimum monitoring requirement, the Recipient shall take photos of the Project Site from at least two different locations on the Project Site, before the commencement of the project ('before' photos), and on the completion of the Project ('after' photos). See Attachment E for guidance to establish photo monitoring points.
2. The Recipient shall provide a Final Report and Acquittal Statement as part of the project completion process using the template provided. The Final Report shall include a selection of 'before' and 'after' photos.
3. All reports are to be signed off by the Recipient's authorised representative.
4. Reports which are of inadequate quality, or do not contain the required information and associated evidence, will not be accepted by PHCC and payments dependent upon completion of the report will be withheld until the required information has been provided and approved.

## 6. Appointment of subcontractors

1. Where the Recipient engages another party to deliver or assist in the delivery of any components of the Project, the Recipient must enter into a contract with that party and that contract must be consistent with the terms of this Agreement, including with regard to clause 10 (Occupational Health and Safety).
2. The Recipient is responsible for the performance of the Recipient's responsibilities under this Agreement regardless of whether the Recipient has sub-contracted any of its obligations.
3. The Recipient must not enter into a sub-contract under this Agreement with a sub-contractor that is not compliant with the Workplace Gender Equality Act 2012 (Cth).
4. If requested, the Recipient must promptly provide to the PHCC a copy of any contract relating to the Project and/or any Material relating to the engagement of the sub-contractor.

## 7. Occupational Health and Safety

1. The Recipient must, in carrying out its obligations under this Agreement, comply, and use reasonable endeavours to ensure that it and its sub-Recipients comply with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, or local authority including those arising under a Workplace Health and Safety (WHS) or Occupational Safety and Health (OSH) Law in respect of occupational health and safety.
2. The Recipient must, in carrying out its obligations under this Agreement, comply, and use reasonable endeavours to ensure that it and its sub-Recipients comply with any of PHCC's work, health and safety policies as notified, referred to, or made available, by the PHCC to the Recipient in writing.
3. If the Recipient is required by a WHS or OHS law to report to a Regulator an incident arising out of the Project, as soon as is possible in the circumstances, the Recipient must give notice of such incident, and a copy of any written notice provided to a Regulator, to the PHCC.
4. The Recipient shall use any materials, including chemicals, required to undertake the Project in accordance with manufacturer's specifications.

## 8. Risk Management

The Recipient must ensure that appropriate risk management techniques are applied to ensure the Activity is delivered as agreed and in accordance with agreed timelines.

1. A Project Risk Management Plan must be completed for the project. A Risk assessment was included as per the grant application.

## 9. Insurance and Indemnity

### 9.1

The Recipient must at all times indemnify, hold harmless and defend the Australian Government, the PHCC, their officers, employees and agents from and against any loss including legal costs and expenses or liability reasonably incurred by the Australian Government, the PHCC, their officers, employees and agents arising from any claim, suit, demand, action or proceeding against the Australian Government, the PHCC, their officers, employees and agents where such loss or liability was caused by the negligent or unlawful act or omission of the Recipient arising out of or in connection with conducting activities funded in part or in full through this Agreement. This obligation remains in force after the PHCC has discharged its funding liability under the Agreement and after the Activity is completed.

### 9.2

The Recipient must maintain sufficient insurances to cover its liability in conducting activities funded in part or in full through the Contract and its obligation to indemnify the Australian Government, the PHCC, their officers, employees and agents. Insurances would include but not be limited to public liability insurance, workers compensation insurance [where employment of others is involved] and, personal accident insurance for volunteers, if applicable. Where workers' compensation insurance is not applicable, proof of alternative insurance (personal accident and/or income protection) may be required.

### 9.3

The Recipient shall provide, upon request by the PHCC, proof of the existence and currency of the insurance required by this clause.

## 10. Skills to Carry Out the Project

1. The Recipient warrants that their employees, agents and sub-recipients are competent and have all the necessary skill, training and qualifications to carry out the Project.

2. The Recipient shall 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.
3. The Recipient shall ensure and warrant that all persons involved in the Project shall strictly comply with all ethical codes and standards imposed by the appropriate professional bodies.
4. The Recipient shall pay all costs of, and have responsibility for, all facilities, employees, sub-recipients and consultants engaged or utilised by the Recipient in respect of the Project.

## 11. Access to any Project Site

The Recipient shall permit the PHCC to enter a Project Site to:

- a. Inspect work being carried out on or in connection with the Project
- b. Inspect items of plant and machinery used on or in connection with the Project
- c. When requested, the Recipient will provide a representative to accompany a PHCC site inspection
- d. Notwithstanding subclause 11a, the PHCC accepts no supervisory role in the Project and takes no responsibility for the overall safety, compliance or any other obligations regarding the Project
- e. Inspect the project post completion for the purpose of monitoring and evaluating long-term environmental change.

## 12. Limitation of Liability

The PHCC does not accept any responsibility or liability for the success or otherwise of the Project and is not liable for any losses which may be suffered by the Recipient in undertaking the Project.

## 13. Agency

This Agreement does not establish an agency, employment or partnership relationship and the Recipient shall not hold itself out as an agent or representative of the PHCC, or the Australian Government.

## 14. Asset/Capital Equipment

Project Funding shall not be used for the purchase of capital equipment unless expressly authorised by the PHCC in writing.

## 15. Event of Default

If an Event of Default occurs, is considered by the Recipient as likely to occur or would be considered by a reasonable person as likely to occur, then the Recipient shall immediately notify the PHCC of the occurrence or likely occurrence and shall then consult with the PHCC with respect to this Agreement or its possible termination.

## 16. Dispute Resolution

Before resorting to external dispute resolution mechanisms, the Parties shall in good faith attempt to settle by negotiation any dispute in relation to this Agreement, and where practical, each Party shall refer the matter to personnel who have authority to intervene and facilitate some form of resolution.

## 17. Non-Performance, Suspension or Termination

### 17.1

The PHCC, its officers, employees and agents may review an Activity in whole, or in part, according to the provisions provided in this clause where the Recipient:

1. Is considered to have failed to comply with the Agreement.

2. Is considered to have failed to comply with a direction given by the PHCC that is consistent with the purpose of the Funding and in accordance with the Agreement.
3. Is considered to have ceased providing the service or supply.
4. Is being wound up or dissolved, or proceedings are being taken against the Recipient to have it wound up or dissolved.

## 17.2

Where the Recipient is considered to have not fulfilled, or is considered not capable of fulfilling the conditions of the Agreement, the PHCC will provide notice in writing to the Recipient to suspend or cease work on the Activity, nominating an appropriate course of action to rectify the situation. This may include, but is not limited to, termination of this Agreement.

## 17.3

Upon receipt of such notice the Recipient must immediately implement the action(s) specified in the notice.

## 17.4

Where, due to the Recipient failing to deliver the goods or supply the services in conformity with the Agreement, PHCC terminates the Contract (as provided for in subclause 17.2), PHCC may refuse to accept delivery of any remaining goods or services and obtain replacement goods and services from a third party. PHCC may claim from the Recipient damages arising from the Recipient's failure to comply with the terms and conditions of the Agreement, including indirect and consequential loss.

## 17.5

Within 14 days of the Agreement being terminated, the Recipient must:

1. Reimburse the PHCC for any Funding that was not used exclusively for the Activity
2. Pass the right, title and interest in Activity Material, Intellectual Property and assets acquired using funding provided for the Activity to the PHCC. For the purpose of this clause:
  - I. The Recipient must take steps to protect Activity Material (including Intellectual Property) and assets and minimise any loss resulting from the suspension or termination of the Activity
  - II. The Recipient must provide the PHCC and/or their agent with access to the Activity Material (including Intellectual Property)
  - III. The PHCC will determine the relocation or disposal of such Activity Material (including Intellectual Property).

## 17.6

If an Activity is terminated wholly or in part, the PHCC will be liable only for:

1. Payments under the payment provisions of the Agreement for work undertaken before the effective date of termination which has commercial value to PHCC
2. Payments proportional to the extent of work undertaken and contractually committed to, before the effective date of termination, where such work provides a commercially usable or valuable product for the PHCC.

## 18. Force Majeure events

### 18.1 Occurrence of force majeure event

A party (Affected Party) is excused from performing its obligations under this Agreement to the extent it is prevented by circumstances beyond its reasonable control (other than a lack of Recipient's contributions or other contributions for any reason or any strike, lockout or labour disputes in respect of the Recipient only), including but not limited to force majeure events such as acts of nature, natural disasters, acts of war, riots and strikes outside that party's organisation.

## 18.2 Notice of force majeure event

When the circumstances described in subclause 18.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on its performance of this Agreement.

## 19. Taxes, Duties and Government Charges

1. The amounts specified in or calculated under this Agreement, including without limitation the Funding, are exclusive of GST that is payable in relation to any service/supply made under this Agreement.
2. The PHCC will pay the Recipient the amount of GST that the Recipient pays or is liable to pay in relation to the Agreement at the same time and in the same manner as paying the Invoice.
3. The Recipient (if registered for GST) must provide the PHCC with a Tax Invoice in respect of each Supply made by the Recipient in relation to the Agreement. The Tax Invoice must be provided prior to payment of the Funding and include any additional amount payable under this clause and the Recipient's ABN (if applicable).
  - I. The PHCC will make payment against the invoice within 30 days.
4. Where the Recipient is not registered for GST, payment will be made on provision of an invoice for the amount payable and quoting the ABN of the Recipient.
5. Where the Recipient is not registered for GST or does not have an ABN, the Recipient must provide the PHCC with a Statement by a Supplier form (available online or from the Australian Taxation Office) with the return of the Funding Agreement. Failure to provide this form will prevent signing of an Agreement by the PHCC.
6. Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by the Recipient.

## 20. Confidentiality

The Parties shall treat as confidential any Confidential Information and will not disclose this information to any person other than its employees, officers, agents and legal and financial advisers who legitimately and reasonably require such Confidential Information in order to properly discharge the duties:

1. They were employed or engaged to discharge
2. Which they would ordinarily and reasonably be expected to discharge on account of such employment or engagement; unless:
  - a) Required to do so under or pursuant to a provision of a statute, regulation, by-law or ordinance in operation in Australia from time to time
  - b) 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.

The Recipient agrees that they will ensure that their officers, employees, agents and legal and financial advisers comply with the obligations of confidentiality specified in this clause.

## 21. Jurisdiction

This Agreement is a legal instrument enforceable in any court of competent jurisdiction in Western Australia.

## 22. Special conditions

If any Special Conditions are inserted as a Schedule they will form part of this Agreement, and to the extent that they are consistent with any clause hereto contained, the Special Conditions will prevail.