



Department of
Primary Industries and
Regional Development

GOVERNMENT OF
WESTERN AUSTRALIA

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Our reference: R00859-18, A7091918
Enquiries: Obby McDonald (08) 6552 2016

Mr Mark Hook
Chief Executive Officer
Shire of Wickepin
PO Box 19
WICKEPIN WA 6370

Dear Mr Hook

**FINANCIAL ASSISTANCE AGREEMENT BETWEEN DEPARTMENT OF
PRIMARY INDUSTRIES AND REGIONAL DEVELOPMENT AND THE SHIRE OF
WICKEPIN – WHEATBELT SOUTH AGED HOUSING ALLIANCE: AGED
HOUSING PROJECT**

Approval for Variation to Financial Assistance Agreement (FAA)

On 8 September 2019, the Minister for Regional Development, Agriculture and Food approved a \$2.8 million allocation to the Wheatbelt South Aged Housing Alliance: Aged Housing Project to deliver 14 Independent Living Units.

DPIRD agrees to the following amendments to the FAA for the Wheatbelt South Aged Housing Alliance: Aged Housing Project:

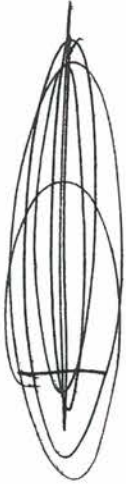
- To replace Schedule 4 in its entirety, with **Attachment 1**

The above varies the FAA in accordance with its (i.e. this letter's) terms. Otherwise, the FAA applies in accordance with its terms as they are varied above. Words and phrases used in this letter and defined in the Agreement shall have the same meaning ascribed to them by this agreement.

To confirm your acceptance of the variation above, please attach the original of this letter to the Shire of Wickepin's FAA. Please also sign this duplicate letter and return it to Obby McDonald, Project Officer, Department of Primary Industries and Regional Development.

Should you have any further enquiries, please contact Obby McDonald, Project Officer on (08) 6552 2016 or by email at Obby.McDonald@dpird.wa.gov.au.

Yours sincerely



Brett Sabien
A/Director
Investment Management

17 December 2019

I acknowledge and accept the Contract Variation to the FAA for the Wheatbelt South Aged Housing Alliance: Aged Housing Project



Mark Hook
Chief Executive Officer
Shire of Wickkepin

3 / 1 / 2019

SCHEDULE 4 – ROYALTIES FOR REGIONS PROJECT DETAILS

1. Use of Funding by the Recipient

Without limiting clause 8(b) or clause 11.3 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 Agreement and for no other purpose.

2. Funding Amount

Funding of up to \$2,820,000 (excluding GST) will be provided by the State to the Recipient in the manner and within the timeframes outlined in item 3.2 of this Schedule 4 and in Schedule 6.

Disbursal of Funding will be subject to availability of funds through the State budget and mid-year review of the State budget each financial year.

3. Detailed Description of Project

3.1. Project Description

In August 2018 the Recipient secured \$20,000 to develop a Business Case for the Wheatbelt South Aged Housing Alliance: Aged Housing Project.

In September 2019, the Minister for Regional Development approved an additional \$2.8 million in funding for the delivery of the Project.

The Project will deliver 14 Independent Living Units (ILUs) in the Wheatbelt South. The units will be constructed in-situ in a cluster format on land areas between 500m² and 750m². Sites will be fenced and landscaped with each unit having solar hot water systems and connected services. The distribution of ILUs is as follows:

- 2 ILUs will be constructed in the Shire of Corrigin at 5 Goyder Street, Corrigin.
- 4 ILUs will be constructed in the Shire of Cuballing 74 Austral Street, Cuballing.
- 2 ILUs will be constructed in the Shire of Kondinin at 8 West Court, Kondinin
- 2 ILUs will be constructed in the Shire of Kondinin at Lot 330 Clayton Street, Hyden
- 4 ILUs will be constructed in the Shire of Wickepin at 23 Johnston Street, Wickepin.

Individual developments will be delivered by respective Local Governments. The Recipient as the Project lead will hold Project funds and retain responsibility for Project planning and Project reporting obligations. The Recipient will sign agreements with each Local Government to establish governance frameworks for the delivery of the ILUs under this Project. The governance frameworks plan are required to cover the arrangements for the build as well as ongoing management of the units. The

monitoring and evaluation plan is required to outline what the ongoing outcomes of the total project will be and how and when they will be measured.

3.2. Recipient's Deliverables and Payment of Royalties for Regions Funding

Deliverables	Performance Measures	Performance method Measure	Milestone	Payment details and timing	Payment Amount \$
Funding Agreement Executed	Execution of Funding Agreement	Funding Agreement signed by both Parties	31 August 2018	Payment will be authorised within 20 business days upon acceptance that the deliverable has been met.	20,000 (PAID)
Revised Application	Revised application for RAAP funding, inclusive of a more robust options assessment for the project.	Revised application for RAAP funding and submitted to the Department by the 15 December 2018	15 December 2018		
Executed FAA Variation	FAA Variation executed	FAA Variation signed by both parties	31 December 2019	Payment will be authorised within 20 business days upon acceptance that the deliverable has been met.	750,000
Signed Agreements for Project delivery	Agreements signed with implementing Local Governments outlining the governance frameworks and specific responsibilities for Project delivery	Evidence to the satisfaction of the Department that Agreements with each implementing Local Government are signed	30 June 2020		
Monitoring and Evaluation (M&E) Plan	M&E Plan developed and implemented	M&E plan developed and implemented	30 June 2020		
Means testing/ allocation model	Means testing/ allocation model developed and agreed to by all Local Governments	Means testing/ allocation model approved by the Department.	30 June 2020		
Engagement of an Environmental Design Consultant	Engagement of an appropriate third party to review design and construction plans to optimise ageing in place outcomes	Evidence to the satisfaction of the Department that design and construction plans have been reviewed by an appropriate third party	30 June 2020		
Finalised design and construction plans	Design and construction plans completed for the 14 ILUs	Evidence to the satisfaction of the Department that design and construction plans have been finalised	30 June 2020	Payment will be authorised within 20 business days upon acceptance that this and the above deliverables have been met	750,000

Construction Tenders awarded	Construction Tenders awarded for the construction of 14 ILUs	Evidence to the satisfaction of the Department that tenders for the construction of 14 ILUs have been awarded.	30 September 2020	Payment will be authorised within 20 business days upon acceptance that the deliverable has been met.	880,000
50% completion	Construction of units 50% complete	Evidence provided to the satisfaction of the Department that construction is 50% complete	30 June 2021	Payment will be authorised within 20 business days upon acceptance that the deliverable has been met	420,000
Practical Completion	Completion 14 landscaped ILUs with access to Solar hot water systems and connected services: <ul style="list-style-type: none"> • 2 in Corrigin • 4 in Cuballing • 4 in Kondinin • 4 in Wickepin 	Certificates of Practical Completion	31 December 2021		
Completion of the Project including all of the Recipient's Obligations				Total Payment Amount	2,820,000

3.3. Project Budget

Item of Expenditure	Budget (\$)	Source of Funds
Business Case Development	20,000	Royalties for Regions
Project Management	90,500	Shire of Corrigin - \$22,625 Shire of Cuballing - \$22,625 Shire of Kondinin - \$22,625 Shire of Wickepin - \$22,625
Land value (in Kind)	350,000	Respective Local Governments
Land Assembly, preconstruction and site costs	231,000	Shire of Corrigin - \$33,000 Shire of Cuballing - \$66,000 Shire of Kondinin - \$66,000 Shire of Wickepin - \$66,000
Building Costs	3,472,000	Royalties for Regions - \$2.8 million Shire of Corrigin - \$96,000 Shire of Cuballing - \$192,000 Shire of Kondinin - \$192,000 Shire of Wickepin - \$192,000
Driveway and landscaping	217,000	Shire of Corrigin - \$31,000

Item of Expenditure	Budget (\$)	Source of Funds
		Shire of Cuballing - \$62,000 Shire of Kondinin - \$62,000 Shire of Wickepin - \$62,000
Contingency	737,800	Shire of Corrigin - \$105,400 Shire of Cuballing - \$210,800 Shire of Kondinin - \$210,800 Shire of Wickepin - \$210,800
Total Budget	5,118,300	

4. Special Conditions

4.1. Leveraged Funding

(a) The Recipient must obtain the funding from the sources set out in the table immediately below (**Leveraged Funding**), which the Recipient must use to carry out the Project in accordance with this Agreement and for no other purpose:

Source of Leveraged Funding	Amount (\$)
Shire of Corrigin	Cash - \$231,794 In kind - \$99,000
Shire of Cuballing	Cash - \$473,338 In Kind - \$182,000
Shire of Kondinin	Cash - \$473,338 In Kind - \$182,000
Shire of Wickepin	Cash - \$474,830, In Kind \$182,000

(b) Despite anything express or implied to the contrary in this Agreement, before the Recipient is entitled to any payment under this Agreement, it has to provide evidence to the Department which proves to the satisfaction of the State, in its absolute discretion, that the Recipient has obtained the Leveraged Funding. If the Recipient does not obtain any part of the Leveraged Funding (that part being the **Shortfall**), the State may reduce the amount it is to pay the Recipient under this Agreement by the amount of the Shortfall.

4.2. Insurance

4.2.1 Policies of insurance

4.2.1.1 Effecting, maintaining and keeping in force policies of insurance

Subject to sub-item 4.2.1.3 below, the Recipient must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, from the Commencement Date until it receives the Notification (or for a longer period where it is required to keep any insurance current for a longer period as set out in this subitem below) adequate insurance cover in its name for its rights and interests in relation to the Project:

- (a) with a reputable and solvent insurer (with a Standard and Poor's rating of not less than A minus) which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company; or
- (b) only for insurance policies which the Recipient effects, maintains and keeps in force, with LGISWA instead of an insurer of the type set out in subitem 4.2.1.1(a) immediately above,

including effecting, maintaining and keeping in force, or causing to be effected, maintained and kept in force, the following policies of insurance for the Project:

- (c) a public liability policy for an amount of indemnity of not less than 100 MILLION DOLLARS (\$100,000,000) (or any higher sum as is determined by the State from time to time (acting reasonably)) for any one occurrence and unlimited as to the number of occurrences which must:
 - (i) be effected, maintained and kept in force from the Commencement Date until the later of one year from the date the Recipient receives the Notification and the end of any Defects Liability Period;
 - (ii) must contain or be endorsed to contain an indemnity extension in favour of the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the negligent acts or omissions of the Recipient, its employees, contractors or agents in their performance or non-performance of the Project;
 - (iii) cover liability resulting from loss of or damage to property and the death or illness of, or injury to, any person (other than liability which is required by Law to be insured under a workers compensation policy of insurance) arising out of or in connection with the Project, this Agreement or both;
 - (iv) be endorsed to cover;
 - (A) the use of unregistered motor vehicles, plant and equipment; and
 - (B) sudden and accidental pollution.
- (d) where the Recipient has obligations in this Agreement to Construct any Structure, a policy of insurance in relation to all work required for and incidental to the Construction of that Structure and rectifying Defects (**Works**) which must:

- (i) be in the joint names of the Recipient and all agents and contractors employed from time to time in relation to the Works and:
 - (A) note the State as a person to whom the benefit of the insurance cover provided by that insurance policy extends; and
 - (B) expressly provide that to the extent (if any) that noting the State in the manner set out in subitem 4.2.1.1(d)(i)(A) above does not have the effect that the State's interests and rights, and liabilities of, and owed to, the State (howsoever these interests, rights and liabilities arise, including if they arise under clause 8(c) of this Agreement) are noted on that insurance policy, that insurance policy also notes those interests, rights and liabilities;
- (ii) cover against any and all physical loss or damage to the Works including covering the:
 - (A) full replacement value of that Structure, including any extension of or addition to that Structure;
 - (B) the cost of removal of materials and debris from the Site;
 - (C) any loss or damage to any equipment used in relation to the Works;
- (iii) covering the cost of making good resultant damage arising in connection with faulty design;
- (iv) provide that any breach of the conditions of this policy of insurance by an insured under the policy will not in any way prejudice or diminish any rights which any other person has under the policy;
- (v) provide that the insurance provided under this policy is primary with respect to the interest of the State and any other insurance or self insurance arrangements maintained by the State is excess to and not contributory with this policy; and
- (vi) be effected, maintained and kept in force from the Commencement Date until the end of any Defects Liability Period, or if there is no Defects Liability Period, then until one year from the date the Recipient receives the Notification;
- (e) where the Recipient has obligations in this Agreement to Construct any Structure, a vehicle and equipment policy of insurance for the Recipient's vehicles, registered plant and equipment brought on to the Site or used in connection with the Project whether owned, hired or leased (**Recipient's Vehicles**) in addition to any compulsory motor vehicle third party insurance required to be taken out by the Recipient under any Law. This vehicle and equipment insurance policy must;
 - (i) cover third party liability for personal injury or death (other than compulsory third party motor vehicle insurance) and property loss or damage involving the Recipient's Vehicles;

- (ii) be for not less than \$20 million third party liability insurance for any one occurrence and unlimited as to the number of occurrences;
- (iii) to the extent available at the times of placement and each renewal, be endorsed to cover the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the use of the Recipient's vehicles; and
- (iv) be effected, maintained and kept in force from the Commencement Date until the later of one year from the date the Recipient receives the Notification and the end of any Defects Liability Period;
- (f) where the Recipient has obligations in this Agreement to Construct any Structure, in addition to the insurance cover set out in subitems 4.2.1.1(d) and 4.2.1.1(e) of this Schedule 4, it must take out, or cause to be taken out, any other policies of insurance consistent with Best Industry Practice for the engineering, design, procurement, supply, Construction, testing and commissioning of the Project, which must be effected, maintained and kept in force from the Commencement Date until the end of any Defects Liability Period, or if there is no Defects Liability Period, then until one year from the date the Recipient receives the Notification;
- (g) where the Recipient is in the business of providing professional services, has Obligations to provide professional services, or both, a professional indemnity policy of insurance, which must:
 - (i) to the extent available at the times of placement and each renewal, be endorsed to contain an indemnity extension in favour of the State if the Recipient has Obligations to provide professional services;
 - (ii) include one full automatic reinstatement of the limit of liability;
 - (iii) cover liability arising from any negligent act or omission in connection with or arising out of the professional activities and duties under this Agreement;
 - (iv) cover claims in respect of this Agreement or otherwise under the *Competition and Consumer Act 2010 (Cth)*, *Fair Trading Act 2010 (WA)*, *Fair Trading Act 1987 (WA)*, and any similar legislation in any other state or territory insofar as they relate to the provision of professional advice; and
 - (v) be effected, maintained and kept in force from the Commencement Date until seven (7) years from the date the Recipient receives the Notification for not less than \$2 million for each and every claim and in the aggregate annually; and
- (h) a policy of insurance which:
 - (i) insures against liability under any applicable statute relating to workers or accident compensation for death of, or illness or injury to, natural persons employed or engaged by the Recipient which are required to be insured under the *Workers' Compensation and Injury Management*

Act 1981 (WA) or equivalent legislation in other Australian jurisdictions in work under this Agreement including liability by statute and, where available, at common law; and

- (ii) which must be effected, maintained and kept in force from the Commencement Date until the date the Recipient receives the Notification. Where common law claims are not fully covered under this policy of insurance, the Recipient must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, from the Commencement Date until the date the Recipient receives the Notification a policy of insurance which insures against employer's liability at common law for not less than fifty million dollars (\$50,000,000.00) for any one event.

4.2.1.2 *Noting the State*

In accordance with subitem 4.2.1.1(d), where the Recipient has obligations in this Agreement to Construct any Structure, it must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, a policy of insurance in relation to the Works in the terms set out in that subitem, including noting the State in the manner set out in subitem 4.2.1.1(d)(i). Each other policy of insurance which the Recipient effects, maintains and keeps in force (or causes to be effected, maintained and kept in force) in relation to the Project, must note the interests of the State.

4.2.1.3 *State may extend time by which Recipient has to procure certain policies of insurance*

The Recipient must comply in full with subitem 4.2.1.1 of this Schedule 4 except that, with respect to the policies of insurance required to be effected, maintained and kept in force (or caused to be effected, maintained and kept in force) set out in subitems 4.2.1.1(d), 4.2.1.1(e) and 4.2.1.1(f), if the State has provided written notice to the Recipient prior to the Commencement Date (which notice, notwithstanding that this Agreement had not been executed at the time the notice was given, must comply with clause 10 of this Agreement as if both parties were bound by clause 10 at the time the notice was given) which:

- (a) provides that the Recipient may effect (or cause to be effected) one or more of those policies of insurance from a later date than the Commencement Date; and
- (b) specifies the date from which the Recipient must effect, maintain and keep in force (or cause to be effected, maintained and kept in force) that policy of insurance or those policies of insurance (as the case may be), then the Recipient may effect (or cause to be effected) that policy of insurance or those policies of insurance (as the case may be) from the date specified in that written notice. For the avoidance of doubt, if the State provides written notice of the type outlined in this subitem 4.2.1.3:

- (c) the policy of insurance or policies of insurance (as the case may be) to be effected, maintained and kept in force by the Recipient (or which it causes to be effected maintained and kept in force) specified in that written notice must comply in all other respects with the relevant Provisions in subitem 4.2.1.1 (and comply with subitem 4.2.1.2) and only the time by which the Recipient must effect that policy of insurance or those policies of insurance (as the case may be) is altered; and
- (d) if that notice only alters the time by which one or some of the policies of insurance set out in subitems 4.2.1.1(d), 4.2.1.1(e) and 4.2.1.1(f) must be effected, the Recipient must still effect the other policy of insurance or policies of insurance (as the case may be) by the Commencement Date.

4.2.2 *Proof of insurance*

- (a) Within ten (10) Business Days from:
 - (i) the Commencement Date;
 - (ii) the date the Recipient receives the Notification (except in relation to insurance cover which is only required under this Agreement to be maintained until receipt by the Recipient of the Notification);
 - (iii) the date any insurance policy is renewed or varied; and
 - (iv) any other request by the State,the Recipient must provide the Department with the following information in relation to all insurance cover for the Project (regardless of whether the Recipient or another party effected the policies or whether one or more of the policies are in the joint names of the Recipient and one or more other parties):
 - (v) certificates of currency from the insurer which provided the insurance. These certificates of currency must be accurate as at the time of issue, must not contain a general disclaimer to the effect that they can not be relied upon and must contain sufficient information to enable the Recipient to demonstrate to the satisfaction of the State in its absolute discretion that the Recipient has complied with its Obligations under item 4.2 of Schedule 4. Where, in the opinion of the State in its absolute discretion, these certificates of currency do not provide this information, then the Recipient must provide such further information as the State may require to demonstrate compliance with the Recipient's Obligations under item 4.2 of Schedule 4. The Recipient is entitled to redact commercially sensitive information in any insurance policies which relates to other projects; and
 - (vi) receipts for premiums paid for each policy of insurance.
- (b) If, after being requested in writing by the State to do so, the Recipient fails to produce evidence (to the satisfaction of the State in its absolute discretion) of compliance with its Obligations under Item 4.2 of Schedule 4, the State may do one or more of the following:

- (i) effect and maintain the required insurance and pay the premiums. The amount paid by the State in effecting and maintaining the required insurance is a debt due and payable on demand from the Recipient to the State;
- (ii) exercise its rights under clause 11 of this Agreement; or
- (iii) suspend one or both of the performance of the Recipient's Obligations and the provision of Funding to the Recipient until evidence that the Recipient has complied with its Obligations under item 5.2 of Schedule 4 is provided to the Department and is satisfactory to the State in its absolute discretion.

The rights given to the State by this subitem 4.2.2(b) of Schedule 4 are in addition to any other rights the State may have.

4.2.3 *Recipient's Obligations and Recipient's further obligations*

- (a) Unless the Recipient first obtains the State's prior written consent, which consent can be given or withheld by the State in its absolute discretion, the Recipient must not:
 - (i) do, allow to be done by another person (except the State), or suffer the doing of, anything which adversely affects any insurance cover taken out by, or on behalf of, the Recipient or the State in relation to the Project or this Agreement or both, or which may increase the premium on that insurance;
 - (ii) store or use inflammable, volatile or explosive substances on the site or premises on which the Project is being carried out except those normally used in the Recipient's business; or
 - (iii) settle or compromise, or allow any other person (except an insurer who is legally entitled to, and does, take over conduct of the matter) to settle or compromise, any claim under any policy of insurance relating to the Project or this Agreement, or both.
- (b) The Recipient must give notice to the Department immediately if:
 - (i) an event occurs which may give rise to a claim under any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project) and must keep the Department informed of subsequent developments concerning the claim. This requirement does not apply to those occurrences that may give rise to a motor vehicle or worker's compensation claim;
 - (ii) an event occurs which could adversely affect any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project); or
 - (iii) any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project) are cancelled.

- (c) The Recipient must pay (or procure the payment of) all premiums and all deductibles applicable to the policies of insurance effected by it, or which it causes to be effected, in relation to the Project and promptly reinstate any of these policies which lapse or under which cover is exhausted.
- (d) Each policy of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project must:
- (i) provide that where the number of persons (in each case, an "insured") who are either:
- (1) named on that policy of insurance; or
 - (2) otherwise entitled to insurance cover under that policy of insurance, exceeds one person, that policy of insurance must include a cross liability clause in which the insurer agrees to waive all express and implied rights of subrogation against any insured under that policy and agrees that the term "insured" applies to each insured under that policy as if a separate policy of insurance has been issued to each of them in the same terms as that policy of insurance but not so as to increase the limit of liability or sum insured under that policy;
- (ii) state that they are governed by the laws of Western Australia and that each insurer irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia; and
- (iii) provide that the excess in any of these policies must not exceed 1% of the insurance amount.
- (e) The Recipient must not do or omit to do, and must ensure that the Recipient's personnel (including its agents and contractors) not do or omit to do, any act or thing that would be grounds for an insurer to refuse to pay the whole of or any part of a claim made under any of the insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project.
- (f) The Recipient must give the Department prior notice of at least one (1) month of the cancellation, non-renewal, or a material alteration to the detriment of cover of any of the insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project or in accordance with the *Insurance Contracts Act 1984 (Cth)*.

4.2.4 *Insurance policies primary*

- (a) Each policy of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project is primary and not secondary to the indemnity given by the Recipient to the State in clause 8(c) of this Agreement. However, the State is not obliged to make a claim or institute proceedings against any insurer under any of these insurance policies before enforcing any of its rights or remedies under the indemnity given by the Recipient to the State in clause 8(c) of this Agreement, or generally. In addition,

the parties acknowledge that if a claim is made under any of these insurance policies by the State, it is their intention that the insurer cannot require the State to exhaust the indemnity given by the Recipient to the State in clause 8(c) of this Agreement before the insurer considers or meets the relevant claim.

- (b) The Recipient acknowledges that regardless of whether any of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project respond or not, and regardless of the reason why any of these insurance policies respond or fail to respond, the Recipient is not released (in whole or in part), from any of its obligations under the indemnity given by the Recipient to the State in clause 8(c) of this Agreement, or any of its Obligations generally.

4.2.5 *Settlement of claims*

Upon settlement of a claim under any of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project, to the extent that the work to be reinstated or services to be repeated have been the subject of a payment of Funding by the State to the Recipient, the State may determine in its absolute discretion whether the Recipient must repay that Funding (and any interest accrued on that Funding) to the State out of the proceeds of insurance or use the proceeds of insurance to reinstate the work or repeat the services for which the Funding was provided. If the State requests that the Recipient repay that Funding (and any interest accrued on that Funding), or any part of that Funding (and any interest accrued on that Funding), to the State, the Recipient must do so:

- (a) within ten (10) Business Days of the date of the State's request (if the Recipient has already received the proceeds of insurance); and
- (b) within ten (10) Business Days of receipt of the proceeds of insurance (if the Recipient has not received the proceeds of insurance by the date of the State's request).

In order to ensure that the Recipient can fulfil its obligations under this subitem 4.2.5, the Recipient must ensure that any other party (except the State) named as an insured or otherwise noted or covered under any of the policies of insurance effected by the Recipient in relation to the Project, or which the Recipient causes to be effected in relation to the Project, has a contractual obligation to the Recipient to, if it receives proceeds of insurance under any of those policies, pay on request:

- (a) the Recipient; or
 - (b) the State if directed by the Recipient to do so,
- within a sufficient timeframe a sufficient part of those proceeds of insurance, to enable the Recipient to fulfil its obligation to the State in this subitem 4.2.5.

4.2.6 *Insurance review*

- (a) The State may, from time to time, review the adequacy and appropriateness of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project. As part of this review, the State may ascertain whether, in the State's reasonable opinion, any additional insurance policies are required, or whether any insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project and maintained at the time of the review are still required or require amendment.
- (b) To allow the State to perform this function, it may make a request for the documents set out in subitem 4.2.2 of this Schedule 4 which the Recipient must comply with.
- (c) The Recipient must commence negotiations to obtain insurances or amend the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project within ten (10) Business Days of receiving notice from the State to do so, and must, as soon as practicable thereafter at the Recipient's own cost, obtain insurances or amend the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project to reflect the recommendations made by the State following its review.
- (d) The Recipient must promptly notify the Department if it is unable to, or it becomes apparent that it will be unable to, comply with the recommendations arising in connection with the State's review. The parties must determine what action, if any, is to be taken following receipt of this notice.

4.3. Interest Earned

The Recipient must inform the State on a quarterly basis if any and how much interest has accrued on the Funding paid to the Recipient. The State will decide, in its sole discretion, whether any interest accrued on the Funding must either be used by the Recipient for the Project, or must be paid to the State. The Recipient must comply with any such decision. This item 4.3 applies despite any other expressed or implied provision of this Agreement to the contrary.

4.4. Local Products and Services

The Recipient agrees to comply with the State's Buy Local Policy and Building Local Industry Policy when purchasing goods or services or works for the Project.

4.5. Aboriginal Participation

In carrying out the Project, the Recipient must comply with any applicable State policies in relation to creating employment opportunities and engaging and developing relationships with Indigenous peoples.

4.6 Building and Construction Code of Conduct 2016

For all construction projects, the Recipient must comply with the Western Australian Building and Construction Industry Code of Conduct 2016

The Recipient and any Third Party engaged by the Recipient is subject to the Code, and must comply with each of the obligations described in the Code, for the term of this Agreement

SCHEDULE 4 – ROYALTIES FOR REGIONS PROJECT DETAILS

1. Use of Funding by the Recipient

Without limiting clause 8(b) or clause 11.3 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 Agreement and for no other purpose.

2. Funding Amount

Funding of up to \$2,820,000 (excluding GST) will be provided by the State to the Recipient in the manner and within the timeframes outlined in item 3.2 of this Schedule 4 and in Schedule 6.

Disbursal of Funding will be subject to availability of funds through the State budget and mid-year review of the State budget each financial year.

3. Detailed Description of Project

3.1. Project Description

In August 2018 the Recipient secured \$20,000 to develop a Business Case for the Wheatbelt South Aged Housing Alliance: Aged Housing Project.

In September 2019, the Minister for Regional Development approved an additional \$2.8 million in funding for the delivery of the Project.

The Project will deliver 14 Independent Living Units (ILUs) in the Wheatbelt South. The units will be constructed in-situ in a cluster format on land areas between 500m² and 750m². Sites will be fenced and landscaped with each unit having solar hot water systems and connected services. The distribution of ILUs is as follows:

- 2 ILUs will be constructed in the Shire of Corrigin at 5 Goyder Street, Corrigin.
- 4 ILUs will be constructed in the Shire of Cuballing 74 Austral Street, Cuballing.
- 2 ILUs will be constructed in the Shire of Kondinin at 8 West Court, Kondinin
- 2 ILUs will be constructed in the Shire of Kondinin at Lot 330 Clayton Street, Hyden
- 4 ILUs will be constructed in the Shire of Wickepin at 23 Johnston Street, Wickepin.

Individual developments will be delivered by respective Local Governments. The Recipient as the Project lead will hold Project funds and retain responsibility for Project planning and Project reporting obligations. The Recipient will sign agreements with each Local Government to establish governance frameworks for the delivery of the ILUs under this Project. The governance frameworks plan are required to cover the arrangements for the build as well as ongoing management of the units. The

monitoring and evaluation plan is required to outline what the ongoing outcomes of the total project will be and how and when they will be measured.

3.2. Recipient's Deliverables and Payment of Royalties for Regions Funding

Deliverables	Performance Measures	Performance method Measure	Milestone	Payment details and timing	Payment Amount \$
Funding Agreement Executed	Execution of Funding Agreement	Funding Agreement signed by both Parties	31 August 2018	Payment will be authorised within 20 business days upon acceptance that the deliverable has been met.	20,000 (PAID)
Revised Application	Revised application for RAAP funding, inclusive of a more robust options assessment for the project.	Revised application for RAAP funding and submitted to the Department by the 15 December 2018	15 December 2018		
Executed FAA Variation	FAA Variation executed	FAA Variation signed by both parties	31 December 2019	Payment will be authorised within 20 business days upon acceptance that the deliverable has been met.	750,000
Signed Agreements for Project delivery	Agreements signed with implementing Local Governments outlining the governance frameworks and specific responsibilities for Project delivery	Evidence to the satisfaction of the Department that Agreements with each implementing Local Government are signed	30 June 2020		
Monitoring and Evaluation (M&E) Plan	M&E Plan developed and implemented	M&E plan developed and implemented	30 June 2020		
Means testing/ allocation model	Means testing/ allocation model developed and agreed to by all Local Governments	Means testing/ allocation model approved by the Department.	30 June 2020		
Engagement of an Environmental Design Consultant	Engagement of an appropriate third party to review design and construction plans to optimise ageing in place outcomes	Evidence to the satisfaction of the Department that design and construction plans have been reviewed by an appropriate third party	30 June 2020		
Finalised design and construction plans	Design and construction plans completed for the 14 ILUs	Evidence to the satisfaction of the Department that design and construction plans have been finalised	30 June 2020	Payment will be authorised within 20 business days upon acceptance that this and the above deliverables have been met	750,000

Construction Tenders awarded	Construction Tenders awarded for the construction of 14 ILUs	Evidence to the satisfaction of the Department that tenders for the construction of 14 ILUs have been awarded.	30 September 2020	Payment will be authorised within 20 business days upon acceptance that the deliverable has been met.	880,000
50% completion	Construction of units 50% complete	Evidence provided to the satisfaction of the Department that construction is 50% complete	30 June 2021	Payment will be authorised within 20 business days upon acceptance that the deliverable has been met	420,000
Practical Completion	Completion 14 landscaped ILUs with access to Solar hot water systems and connected services: <ul style="list-style-type: none"> • 2 in Corrigin • 4 in Cuballing • 4 in Kondinin • 4 in Wickepin 	Certificates of Practical Completion	31 December 2021		
Completion of the Project including all of the Recipient's Obligations					
				Total Payment Amount	2,820,000

3.3. Project Budget

Item of Expenditure	Budget (\$)	Source of Funds
Business Case Development	20,000	Royalties for Regions
Project Management	90,500	Shire of Corrigin - \$22,625
		Shire of Cuballing - \$22,625
		Shire of Kondinin - \$22,625
		Shire of Wickepin - \$22,625
Land value (in Kind)	350,000	Respective Local Governments
Land Assembly, preconstruction and site costs	231,000	Shire of Corrigin - \$33,000
		Shire of Cuballing - \$66,000
		Shire of Kondinin - \$66,000
		Shire of Wickepin - \$66,000
Building Costs	3,472,000	Royalties for Regions - \$2.8 million
		Shire of Corrigin - \$96,000
		Shire of Cuballing - \$192,000
		Shire of Kondinin - \$192,000
Driveway and landscaping	217,000	Shire of Wickepin - \$192,000
		Shire of Corrigin - \$31,000

Item of Expenditure	Budget (\$)	Source of Funds
Contingency	737,800	Shire of Cuballing - \$62,000 Shire of Kondinin - \$62,000 Shire of Wickepin - \$62,000 Shire of Corrigin - \$105,400 Shire of Cuballing - \$210,800 Shire of Kondinin - \$210,800 Shire of Wickepin - \$210,800
Total Budget	5,118,300	

4. Special Conditions

4.1. Leveraged Funding

(a) The Recipient must obtain the funding from the sources set out in the table immediately below (**Leveraged Funding**), which the Recipient must use to carry out the Project in accordance with this Agreement and for no other purpose:

Source of Leveraged Funding	Amount (\$)
Shire of Corrigin	Cash - \$231,794 In kind - \$99,000
Shire of Cuballing	Cash - \$473,338 In Kind - \$182,000
Shire of Kondinin	Cash - \$473,338 In Kind - \$182,000
Shire of Wickepin	Cash - \$474,830, In Kind \$182,000

(b) Despite anything express or implied to the contrary in this Agreement, before the Recipient is entitled to any payment under this Agreement, it has to provide evidence to the Department which proves to the satisfaction of the State, in its absolute discretion, that the Recipient has obtained the Leveraged Funding. If the Recipient does not obtain any part of the Leveraged Funding (that part being the **Shortfall**), the State may reduce the amount it is to pay the Recipient under this Agreement by the amount of the Shortfall.

4.2. Insurance

4.2.1 Policies of insurance

4.2.1.1 Effecting, maintaining and keeping in force policies of insurance

Subject to sub-item 4.2.1.3 below, the Recipient must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, from the Commencement Date until it receives the Notification (or for a longer period where it is required to keep any insurance current for a longer period as set out in this subitem below) adequate insurance cover in its name for its rights and interests in relation to the Project:

- (a) with a reputable and solvent insurer (with a Standard and Poor's rating of not less than A minus) which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company; or
- (b) only for insurance policies which the Recipient effects, maintains and keeps in force, with LGISWA instead of an insurer of the type set out in subitem 4.2.1.1(a) immediately above,

including effecting, maintaining and keeping in force, or causing to be effected, maintained and kept in force, the following policies of insurance for the Project:

- (c) a public liability policy for an amount of indemnity of not less than 100 MILLION DOLLARS (\$100,000,000) (or any higher sum as is determined by the State from time to time (acting reasonably)) for any one occurrence and unlimited as to the number of occurrences which must:
 - (i) be effected, maintained and kept in force from the Commencement Date until the later of one year from the date the Recipient receives the Notification and the end of any Defects Liability Period;
 - (ii) must contain or be endorsed to contain an indemnity extension in favour of the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the negligent acts or omissions of the Recipient, its employees, contractors or agents in their performance or non-performance of the Project;
 - (iii) cover liability resulting from loss of or damage to property and the death or illness of, or injury to, any person (other than liability which is required by Law to be insured under a workers compensation policy of insurance) arising out of or in connection with the Project, this Agreement or both;
 - (iv) be endorsed to cover;
 - (A) the use of unregistered motor vehicles, plant and equipment; and
 - (B) sudden and accidental pollution.
- (d) where the Recipient has obligations in this Agreement to Construct any Structure, a policy of insurance in relation to all work required for and incidental to the Construction of that Structure and rectifying Defects (**Works**) which must:

- (i) be in the joint names of the Recipient and all agents and contractors employed from time to time in relation to the Works and:
 - (A) note the State as a person to whom the benefit of the insurance cover provided by that insurance policy extends; and
 - (B) expressly provide that to the extent (if any) that noting the State in the manner set out in subitem 4.2.1.1(d)(i)(A) above does not have the effect that the State's interests and rights, and liabilities of, and owed to, the State (howsoever these interests, rights and liabilities arise, including if they arise under clause 8(c) of this Agreement) are noted on that insurance policy, that insurance policy also notes those interests, rights and liabilities;
- (ii) cover against any and all physical loss or damage to the Works including covering the:
 - (A) full replacement value of that Structure, including any extension of or addition to that Structure;
 - (B) the cost of removal of materials and debris from the Site;
 - (C) any loss or damage to any equipment used in relation to the Works;
- (iii) covering the cost of making good resultant damage arising in connection with faulty design;
- (iv) provide that any breach of the conditions of this policy of insurance by an insured under the policy will not in any way prejudice or diminish any rights which any other person has under the policy;
- (v) provide that the insurance provided under this policy is primary with respect to the interest of the State and any other insurance or self insurance arrangements maintained by the State is excess to and not contributory with this policy; and
- (vi) be effected, maintained and kept in force from the Commencement Date until the end of any Defects Liability Period, or if there is no Defects Liability Period, then until one year from the date the Recipient receives the Notification;
- (e) where the Recipient has obligations in this Agreement to Construct any Structure, a vehicle and equipment policy of insurance for the Recipient's vehicles, registered plant and equipment brought on to the Site or used in connection with the Project whether owned, hired or leased (**Recipient's Vehicles**) in addition to any compulsory motor vehicle third party insurance required to be taken out by the Recipient under any Law. This vehicle and equipment insurance policy must:
 - (i) cover third party liability for personal injury or death (other than compulsory third party motor vehicle insurance) and property loss or damage involving the Recipient's Vehicles;

- (ii) be for not less than \$20 million third party liability insurance for any one occurrence and unlimited as to the number of occurrences;
- (iii) to the extent available at the times of placement and each renewal, be endorsed to cover the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the use of the Recipient's vehicles; and
- (iv) be effected, maintained and kept in force from the Commencement Date until the later of one year from the date the Recipient receives the Notification and the end of any Defects Liability Period;
- (f) where the Recipient has obligations in this Agreement to Construct any Structure, in addition to the insurance cover set out in subitems 4.2.1.1(d) and 4.2.1.1(e) of this Schedule 4, it must take out, or cause to be taken out, any other policies of insurance consistent with Best Industry Practice for the engineering, design, procurement, supply, Construction, testing and commissioning of the Project, which must be effected, maintained and kept in force from the Commencement Date until the end of any Defects Liability Period, or if there is no Defects Liability Period, then until one year from the date the Recipient receives the Notification;
- (g) where the Recipient is in the business of providing professional services, has Obligations to provide professional services, or both, a professional indemnity policy of insurance, which must:
 - (i) to the extent available at the times of placement and each renewal, be endorsed to contain an indemnity extension in favour of the State if the Recipient has Obligations to provide professional services;
 - (ii) include one full automatic reinstatement of the limit of liability;
 - (iii) cover liability arising from any negligent act or omission in connection with or arising out of the professional activities and duties under this Agreement;
 - (iv) cover claims in respect of this Agreement or otherwise under the *Competition and Consumer Act 2010 (Cth)*, *Fair Trading Act 2010 (WA)*, *Fair Trading Act 1987 (WA)*, and any similar legislation in any other state or territory insofar as they relate to the provision of professional advice; and
 - (v) be effected, maintained and kept in force from the Commencement Date until seven (7) years from the date the Recipient receives the Notification for not less than \$2 million for each and every claim and in the aggregate annually; and
- (h) a policy of insurance which:
 - (i) insures against liability under any applicable statute relating to workers or accident compensation for death of, or illness or injury to, natural persons employed or engaged by the Recipient which are required to be insured under the *Workers' Compensation and Injury Management*

Act 1981 (WA) or equivalent legislation in other Australian jurisdictions in work under this Agreement including liability by statute and, where available, at common law; and

- (ii) which must be effected, maintained and kept in force from the Commencement Date until the date the Recipient receives the Notification. Where common law claims are not fully covered under this policy of insurance, the Recipient must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, from the Commencement Date until the date the Recipient receives the Notification a policy of insurance which insures against employer's liability at common law for not less than fifty million dollars (\$50,000,000.00) for any one event.

4.2.1.2 *Noting the State*

In accordance with subitem 4.2.1.1(d), where the Recipient has obligations in this Agreement to Construct any Structure, it must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, a policy of insurance in relation to the Works in the terms set out in that subitem, including noting the State in the manner set out in subitem 4.2.1.1(d)(i). Each other policy of insurance which the Recipient effects, maintains and keeps in force (or causes to be effected, maintained and kept in force) in relation to the Project, must note the interests of the State.

4.2.1.3 *State may extend time by which Recipient has to procure certain policies of insurance*

The Recipient must comply in full with subitem 4.2.1.1 of this Schedule 4 except that, with respect to the policies of insurance required to be effected, maintained and kept in force (or caused to be effected, maintained and kept in force) set out in subitems 4.2.1.1(d), 4.2.1.1(e) and 4.2.1.1(f), if the State has provided written notice to the Recipient prior to the Commencement Date (which notice, notwithstanding that this Agreement had not been executed at the time the notice was given, must comply with clause 10 of this Agreement as if both parties were bound by clause 10 at the time the notice was given) which:

- (a) provides that the Recipient may effect (or cause to be effected) one or more of those policies of insurance from a later date than the Commencement Date; and
- (b) specifies the date from which the Recipient must effect, maintain and keep in force (or cause to be effected, maintained and kept in force) that policy of insurance or those policies of insurance (as the case may be), then the Recipient may effect (or cause to be effected) that policy of insurance or those policies of insurance (as the case may be) from the date specified in that written notice. For the avoidance of doubt, if the State provides written notice of the type outlined in this subitem 4.2.1.3:

- (c) the policy of insurance or policies of insurance (as the case may be) to be effected, maintained and kept in force by the Recipient (or which it causes to be effected maintained and kept in force) specified in that written notice must comply in all other respects with the relevant Provisions in subitem 4.2.1.1 (and comply with subitem 4.2.1.2) and only the time by which the Recipient must effect that policy of insurance or those policies of insurance (as the case may be) is altered; and
- (d) if that notice only alters the time by which one or some of the policies of insurance set out in subitems 4.2.1.1(d), 4.2.1.1(e) and 4.2.1.1(f) must be effected, the Recipient must still effect the other policy of insurance or policies of insurance (as the case may be) by the Commencement Date.

4.2.2 *Proof of insurance*

- (a) Within ten (10) Business Days from:
 - (i) the Commencement Date;
 - (ii) the date the Recipient receives the Notification (except in relation to insurance cover which is only required under this Agreement to be maintained until receipt by the Recipient of the Notification);
 - (iii) the date any insurance policy is renewed or varied; and
 - (iv) any other request by the State,the Recipient must provide the Department with the following information in relation to all insurance cover for the Project (regardless of whether the Recipient or another party effected the policies or whether one or more of the policies are in the joint names of the Recipient and one or more other parties):
 - (v) certificates of currency from the insurer which provided the insurance. These certificates of currency must be accurate as at the time of issue, must not contain a general disclaimer to the effect that they can not be relied upon and must contain sufficient information to enable the Recipient to demonstrate to the satisfaction of the State in its absolute discretion that the Recipient has complied with its Obligations under item 4.2 of Schedule 4. Where, in the opinion of the State in its absolute discretion, these certificates of currency do not provide this information, then the Recipient must provide such further information as the State may require to demonstrate compliance with the Recipient's Obligations under item 4.2 of Schedule 4. The Recipient is entitled to redact commercially sensitive information in any insurance policies which relates to other projects; and
 - (vi) receipts for premiums paid for each policy of insurance.
- (b) If, after being requested in writing by the State to do so, the Recipient fails to produce evidence (to the satisfaction of the State in its absolute discretion) of compliance with its Obligations under Item 4.2 of Schedule 4, the State may do one or more of the following:

- (i) effect and maintain the required insurance and pay the premiums. The amount paid by the State in effecting and maintaining the required insurance is a debt due and payable on demand from the Recipient to the State;
- (ii) exercise its rights under clause 11 of this Agreement; or
- (iii) suspend one or both of the performance of the Recipient's Obligations and the provision of Funding to the Recipient until evidence that the Recipient has complied with its Obligations under item 5.2 of Schedule 4 is provided to the Department and is satisfactory to the State in its absolute discretion.

The rights given to the State by this subitem 4.2.2(b) of Schedule 4 are in addition to any other rights the State may have.

4.2.3 *Recipient's Obligations and Recipient's further obligations*

- (a) Unless the Recipient first obtains the State's prior written consent, which consent can be given or withheld by the State in its absolute discretion, the Recipient must not:
 - (i) do, allow to be done by another person (except the State), or suffer the doing of, anything which adversely affects any insurance cover taken out by, or on behalf of, the Recipient or the State in relation to the Project or this Agreement or both, or which may increase the premium on that insurance;
 - (ii) store or use inflammable, volatile or explosive substances on the site or premises on which the Project is being carried out except those normally used in the Recipient's business; or
 - (iii) settle or compromise, or allow any other person (except an insurer who is legally entitled to, and does, take over conduct of the matter) to settle or compromise, any claim under any policy of insurance relating to the Project or this Agreement, or both.
- (b) The Recipient must give notice to the Department immediately if:
 - (i) an event occurs which may give rise to a claim under any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project) and must keep the Department informed of subsequent developments concerning the claim. This requirement does not apply to those occurrences that may give rise to a motor vehicle or worker's compensation claim;
 - (ii) an event occurs which could adversely affect any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project); or
 - (iii) any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project) are cancelled.

- (c) The Recipient must pay (or procure the payment of) all premiums and all deductibles applicable to the policies of insurance effected by it, or which it causes to be effected, in relation to the Project and promptly reinstate any of these policies which lapse or under which cover is exhausted.
- (d) Each policy of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project must:
- (i) provide that where the number of persons (in each case, an "insured") who are either:
 - (1) named on that policy of insurance; or
 - (2) otherwise entitled to insurance cover under that policy of insurance, exceeds one person, that policy of insurance must include a cross liability clause in which the insurer agrees to waive all express and implied rights of subrogation against any insured under that policy and agrees that the term "insured" applies to each insured under that policy as if a separate policy of insurance has been issued to each of them in the same terms as that policy of insurance but not so as to increase the limit of liability or sum insured under that policy;
 - (ii) state that they are governed by the laws of Western Australia and that each insurer irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia; and
 - (iii) provide that the excess in any of these policies must not exceed 1% of the insurance amount.
- (e) The Recipient must not do or omit to do, and must ensure that the Recipient's personnel (including its agents and contractors) not do or omit to do, any act or thing that would be grounds for an insurer to refuse to pay the whole or or any part of a claim made under any of the insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project.
- (f) The Recipient must give the Department prior notice of at least one (1) month of the cancellation, non-renewal, or a material alteration to the detriment of cover of any of the insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project or in accordance with the *Insurance Contracts Act 1984 (Cth)*.

4.2.4 *Insurance policies primary*

- (a) Each policy of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project is primary and not secondary to the indemnity given by the Recipient to the State in clause 8(c) of this Agreement. However, the State is not obliged to make a claim or institute proceedings against any insurer under any of these insurance policies before enforcing any of its rights or remedies under the indemnity given by the Recipient to the State in clause 8(c) of this Agreement, or generally. In addition,

the parties acknowledge that if a claim is made under any of these insurance policies by the State, it is their intention that the insurer cannot require the State to exhaust the indemnity given by the Recipient to the State in clause 8(c) of this Agreement before the insurer considers or meets the relevant claim.

- (b) The Recipient acknowledges that regardless of whether any of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project respond or not, and regardless of the reason why any of these insurance policies respond or fail to respond, the Recipient is not released (in whole or in part), from any of its obligations under the indemnity given by the Recipient to the State in clause 8(c) of this Agreement, or any of its Obligations generally.

4.2.5 *Settlement of claims*

Upon settlement of a claim under any of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project, to the extent that the work to be reinstated or services to be repeated have been the subject of a payment of Funding by the State to the Recipient, the State may determine in its absolute discretion whether the Recipient must repay that Funding (and any interest accrued on that Funding) to the State out of the proceeds of insurance or use the proceeds of insurance to reinstate the work or repeat the services for which the Funding was provided. If the State requests that the Recipient repay that Funding (and any interest accrued on that Funding), or any part of that Funding (and any interest accrued on that Funding), to the State, the Recipient must do so:

- (a) within ten (10) Business Days of the date of the State's request (if the Recipient has already received the proceeds of insurance); and
- (b) within ten (10) Business Days of receipt of the proceeds of insurance (if the Recipient has not received the proceeds of insurance by the date of the State's request).

In order to ensure that the Recipient can fulfill its obligations under this subitem 4.2.5, the Recipient must ensure that any other party (except the State) named as an insured or otherwise noted or covered under any of the policies of insurance effected by the Recipient in relation to the Project, or which the Recipient causes to be effected in relation to the Project, has a contractual obligation to the Recipient to, if it receives proceeds of insurance under any of those policies, pay on request:

- (a) the Recipient; or
- (b) the State if directed by the Recipient to do so,

within a sufficient timeframe a sufficient part of those proceeds of insurance, to enable the Recipient to fulfill its obligation to the State in this subitem 4.2.5.

4.2.6 *Insurance review*

- (a) The State may, from time to time, review the adequacy and appropriateness of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project. As part of this review, the State may ascertain whether, in the State's reasonable opinion, any additional insurance policies are required, or whether any insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project and maintained at the time of the review are still required or require amendment.
- (b) To allow the State to perform this function, it may make a request for the documents set out in subitem 4.2.2 of this Schedule 4 which the Recipient must comply with.
- (c) The Recipient must commence negotiations to obtain insurances or amend the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project within ten (10) Business Days of receiving notice from the State to do so, and must, as soon as practicable thereafter at the Recipient's own cost, obtain insurances or amend the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project to reflect the recommendations made by the State following its review.
- (d) The Recipient must promptly notify the Department if it is unable to, or it becomes apparent that it will be unable to, comply with the recommendations arising in connection with the State's review. The parties must determine what action, if any, is to be taken following receipt of this notice.

4.3. Interest Earned

The Recipient must inform the State on a quarterly basis if any and how much interest has accrued on the Funding paid to the Recipient. The State will decide, in its sole discretion, whether any interest accrued on the Funding must either be used by the Recipient for the Project, or must be paid to the State. The Recipient must comply with any such decision. This item 4.3 applies despite any other expressed or implied provision of this Agreement to the contrary.

4.4. Local Products and Services

The Recipient agrees to comply with the State's Buy Local Policy and Building Local Industry Policy when purchasing goods or services or works for the Project.

4.5. Aboriginal Participation

In carrying out the Project, the Recipient must comply with any applicable State policies in relation to creating employment opportunities and engaging and developing relationships with Indigenous peoples.

4.6 Building and Construction Code of Conduct 2016

For all construction projects, the Recipient must comply with the Western Australian Building and Construction Industry Code of Conduct 2016

The Recipient and any Third Party engaged by the Recipient is subject to the Code, and must comply with each of the obligations described in the Code, for the term of this Agreement