

## **CITY OF PALMERSTON**

**Notice of Special Council Meeting  
to be held in Council Chambers, Civic Plaza, Palmerston  
on Wednesday, 25 November 2015 at 5:00pm**

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### **AGENDA**

#### **Audio Disclaimer**

An audio recording of this meeting will be made for minute taking purposes as authorised by City of Palmerston Policy MEE3 Recording of Meetings, available on Council's Website.

#### **1. PRESENT**

#### **2. APOLOGIES**

Mayor Abbott – On Council Business  
Deputy Mayor McKinnon – Leave of Absence  
Alderman Shutt – Leave of Absence

#### **ACCEPTANCE OF APOLOGIES AND LEAVE OF ABSENCE**

#### **3. DEPUTATIONS / PRESENTATIONS**

#### **4. OFFICER REPORTS**

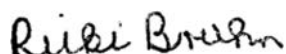
##### **4.1 Affixation of Common Seal – Capital Grant Funding Agreement**

**8/0780**

#### **5. CONFIDENTIAL REPORTS**

Nil

#### **6. CLOSURE**



**Ricki Bruhn  
Chief Executive Officer**

**Any member of Council who may have a conflict of interest, or a possible conflict of interest in regard to any item of business to be discussed at a Council meeting or a Committee meeting should declare that conflict of interest to enable Council to manage the conflict and resolve it in accordance with its obligations under the Local Government Act and its policies regarding the same.**

**ITEM NO.** 4.1                      **Affixation of Common Seal – Capital Grant Funding Agreement**

**FROM:**                                      **Director of Technical Services**

**REPORT NUMBER:**                      **8/0780**

**MEETING DATE:**                      **25 November 2015**

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**Municipal Plan:**

**2. Economic Development**

**2.3 City Planning**

We are committed to effective and responsible city planning which balances and meets both residential and commercial needs in our community

**Summary:**

The Northern Territory Government (NTG) through Department of Transport has requested Council sign and seal the Capital Grant Funding Agreement for the Boulevard stage 2.

This report recommends that Council sign and seal all funding agreement documentation.

**General:**

Elected Members will remember that their application for funding of The Boulevard reconstruction stage 2 under the Strategic Local Roads Fund grant scheme was successful back in June 2015. The NTG has submitted the grant agreement for Council's sign and seal. **Attachment A.**

**Financial Implications:**

The agreement stipulates that funding the grant will be paid as work progresses. The project is expected to be split into 2 stages and funding will be paid in the following stages:

Stage 1 Asphalt (30 <sup>th</sup> June 2016)	\$1,000,000
Stage 2 Asphalt (31 <sup>st</sup> August 2016)	\$1,000,000
Practical Completion (23 <sup>rd</sup> September 2016)	\$500,000
<b>Total (ex GST)</b>	<b>\$2,500,000</b>

At this time Council has not identified the source of the remaining funds required to undertake the project, approximately \$2,500,000.

**Legislation / Policy:**

Local Government Act – Council is the responsible authority for local roads.

## **RECOMMENDATION**

1. THAT Council receive and note Report Number 8/0780.
2. THAT the Mayor and Chief Executive Officer be authorised to sign and seal the Capital Grant Funding Agreement for the Strategic Local Roads Fund Grant Scheme in Attachment A to Report Number 8/0780.

**Recommending Officer:** Mark Spangler, Director of Technical Services

Any queries on this report may be directed to Mark Spangler, Director of Technical Services on telephone (08) 8935 9958 or email [mark.spangler@palmerston.nt.gov.au](mailto:mark.spangler@palmerston.nt.gov.au).

## **Schedule of Attachments:**

Attachment A: Capital Grant Funding Agreement

# **CAPITAL GRANT FUNDING AGREEMENT**

**BETWEEN:**

**NORTHERN TERRITORY OF AUSTRALIA**

**AND:**

**CITY OF PALMERSTON**

**Department of Transport**  
Level-1 Energy House 18-20 Cavenagh Street Darwin  
Telephone: 08 89247121 Facsimile: 08 8924 7211

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## **DETAILS**

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### **PARTIES**

**NORTHERN TERRITORY OF AUSTRALIA** care of its agency the Department of Transport  
(ABN 84 085 734 992) (“Territory”)

Address for service of notices:	Contact Person:	Chief Executive, Department of Transport
	Physical address:	Level 1, Energy House, Cavenagh St Darwin NT 0801
	Postal address:	GPO Box 2520 Darwin NT 0801
	Telephone:	08 8924 7029
	Facsimile:	08 8924 7200

**AND**

**City of Palmerston (ABN 42 050 176 900)** (“The Recipient”)

Address for service of notices:	Contact Person:	Mark Spangler, Director Technical Services
	Physical address:	Cnr University Ave & Chung Wah Tce
	Postal address:	Po Box 1, Palmerston NT 0831
	Telephone:	08 8935 9922
	Facsimile:	08 8935 9900

### **BACKGROUND**

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- A. The Territory has established the Improving Strategic Local Roads Infrastructure Program (ISLRIP) to assist local governments to deliver road infrastructure projects in their areas
- B. The Recipient is a successful applicant for the ISLRIP Funding.
- C. The Recipient has agreed to use the Funding in accordance with this Agreement.

# AGREED TERMS

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Defined Terms

In this Agreement, unless a contrary intention appears:

- (a) **Agreement** means this document, and a reference to a Background clause (recital), clause, schedule, item, attachment or annexure is a reference to a recital, clause, schedule, item, attachment or annexure of or to this Agreement, and all recitals, clauses, schedules, items, attachments and annexures form part of this Agreement;
- (b) **Approved Account** means the account opened and operated by the Recipient pursuant to clause 3;
- (c) **Asset** means any item of personal, real or incorporeal property, with a price or value of \$5,000 or more (inclusive of GST), and which has been purchased, leased, created, acquired or otherwise brought into existence wholly or in part with the Funding;
- (d) **Business Day** means a day which is not a Saturday, Sunday or Public Holiday in Darwin in the Northern Territory of Australia;
- (e) **Commencement Date** means the date the Recipient must commence the Project under this Agreement, as specified in Item 4;
- (f) **Completion Date** means the date the Project must be completed, as set out in Item 5;
- (g) **Date of this Agreement** means the date the last party to sign this Agreement does so;
- (h) **Employees** means any employees, staff, officers, consultants, volunteers, personnel or other persons employed or engaged by the Recipient to perform any activities related in any way to the Project or this Agreement, whether paid or not;
- (i) **Funding** means the total amount of funding the Territory will pay the Recipient during the Term, as set out in Item 2, and, where the context permits or requires, includes the whole or any part of the Funding, and any interest accrued on the investment of the Funding or any part of it;
- (j) **Information** includes documents, software, information and data stored, provided or disclosed by any means, whether electronic, written or otherwise, and where relevant, includes information provided verbally or visually;
- (k) **Interest Rate** means the Interest Rate specified in Item 10 (if any), or such other Interest Rate as the Territory may notify the Recipient of from time to time;
- (l) **Invoice** means an invoice for the whole or part of the Funding issued in accordance with Item 11;
- (m) **Item** means an Item in Schedule 1 of this Agreement;
- (n) **Main Contractor** means the main contractor or contractors (whether a corporation, partnership, individual or otherwise) engaged by the Recipient to undertake the Project, whether or not that Main Contractor or those Main Contractors further subcontract part or all of the Project;
- (o) **Milestones** means any separate or discrete component or aspect of the Project, as set out in Item 7;
- (p) **Payment Timeframe** means the timeframe set out in Item 3, being the timeframe for the Territory to make payment to the Recipient after provision or receipt of the



Recipient's Approved Account details as required by clause 3, or a Tax Invoice as required by clause 14;

- (q) **Project** means the Project as a whole as set out in Item 6;
- (r) **Recipient's Premises** means any premise or land on or from which the Project will be conducted in whole or part (whether by the Recipient, the Recipient's Employees or the Recipient's subcontractors), and includes the Recipient's interest in those premises or that land;
- (s) **Records** means all or any of the Information required to be kept, maintained or created by the Recipient pursuant to this Agreement (including, but not limited to, the Reports and any Information required pursuant to clauses 7.1 or 7.2), and any other Information kept, maintained or created by the Recipient which is relevant in any way to the operation of the Recipient, this Agreement, the Funding, or the Project;
- (t) **Reports** means the reports, statements and Information specified in Item 8 which the Recipient must provide to the Territory pursuant to clause 7.2;
- (u) **Schedule** means a Schedule to this Agreement; and
- (v) **Term** or **Term of this Agreement** means the Term of this Agreement pursuant to clause 2.

## **1.2 Interpretation**

In this Agreement, unless the contrary intention appears:

- (a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include all other genders;
- (d) the word "including" is not a word of limitation, and is to be interpreted as though it were immediately followed by the words "but not limited to";
- (e) where a clause in this Agreement provides that an action requires consent, approval, agreement, authorisation, permission or words of similar effect ("Consent"), then that Consent must be given or obtained in writing to be effective;
- (f) if an act must be done on a day which is not a Business Day, that act must be done on the immediately following Business Day;
- (g) headings and sub-headings have been included for ease of reference only and this Agreement is not to be construed or interpreted by reference to such headings or sub-headings;
- (h) a reference to party or parties means a party or the parties to this Agreement, and includes the officers, employees, agents and subcontractors of that party (and in the case of the Recipient, the Recipient's Employees), and the party's successors and permitted substitutes or assigns (including, where applicable, any party's legal personal representative, guardian, executor, administrator, transferee, assignee, agent, liquidator or trustee in bankruptcy), all of whom are, respectively, bound by this Agreement;
- (i) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (j) a reference to a person, partnership, body corporate, unincorporated body, government or local authority or agency or other entity includes any of them;

- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to an agreement or document (including, without limitation a reference to this Agreement, or a document attached to, annexed to or referred to by this Agreement) is to the agreement or document as amended, varied, supplemented, notated or replaced, except to the extent prohibited by the Agreement or that other agreement or document;
- (m) no rules of construction apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this document or any part of it; and
- (n) a reference to dollars and \$ is to Australian currency.

### **1.3 Special Conditions**

This Agreement will be subject to the Special Conditions (if any) set out in Schedule 2.

### **1.4 Conflict and precedence**

If there is a conflict between any Background clause (recital), clause, schedule, item, attachment or annexure in this Agreement, the provisions or documents will be interpreted in the following order of priority from highest to lowest, and the terms of a higher ranked provision or document will prevail over a lower ranked provision document to the extent of the inconsistency:

- (a) Special Conditions (if any) set out in Schedule 2;
- (b) clauses of this Agreement;
- (c) Schedule 1;
- (d) Schedule 3;
- (e) other Schedules;
- (f) attachments or annexures;
- (g) documents incorporated into this Agreement by reference.

## **2. TERM OF AGREEMENT**

This Agreement will:

- (a) take effect from the Date of this Agreement; and
- (b) unless terminated earlier in accordance with this Agreement, expire on the later to occur of the Completion Date, or the date when the Recipient has provided the Territory with everything required to fully acquit the Funding pursuant to clause 7.2.

## **3. APPROVED ACCOUNT**

- (a) The Recipient must notify the Territory in writing of the details of the Approved Account before the Territory will be obliged to pay the Funding. If the Approved Account details are known at the date of this Agreement, they may be specified in Item 1.
- (b) Unless the Territory otherwise agrees in writing, the Approved Account must be:
  - (i) an interest bearing account of a type appropriate for the amount of the Funding and for the purposes of the Project;
  - (ii) one which requires two signatories, each authorised by the Recipient, to operate the Approved Account;

- (iii) the only account used by the Recipient for receipt and expenditure of the Funding; and
- (iv) be held with an authorised deposit-taking institution under the Banking Act 1959 (Clth), in an account under the Recipient's sole name and control.

## **4. FUNDING**

### **4.1 Payment of Funding**

- (a) Subject to this Agreement, the Territory will pay the Recipient the Funding for conduct of the Project.
- (b) Subject to clause 14, the Territory will pay the Funding into the Recipient's Approved Account as specified in Item 2.

### **4.2 Use of Funding**

- (a) The Recipient must:
  - (i) ensure that any amount of the Funding not immediately required for expenditure is held in the Approved Account, and any interest earned on those monies is applied and accounted for as though it formed part of the Funding provided by the Territory
  - (ii) use the Funding (including any interest earned on the Funding), solely for the Project and in accordance with this Agreement; and
- (b) Where the expenditure of the Funding is delayed for any reason, the Recipient may, with the prior written consent of the Territory, invest such Funding in bonds or securities provided that the Funding can be withdrawn immediately it is required.
- (c) Except with the Territory's prior written approval, the Recipient must not use the Funding, this Agreement or any of the Territory's obligations under this Agreement as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest.

### **4.3 No further funding for Project or ongoing costs**

The Recipient acknowledges that the Territory:

- (a) is under no obligation to provide any further monies to the Recipient if the Recipient's expenditure on the Project, or any Component, exceeds the Funding or any part of the Funding attributable to a specific Component, and the Recipient accepts responsibility for any additional expenditure or costs incurred in the Project or any Component; and
- (b) will have no responsibility for any costs associated with the upkeep and management of the Project (including Assets) constructed, purchased or otherwise acquired using the Funding.

## **5. THE PROJECT**

### **5.1 General Conduct of Project**

- (a) The Recipient must:
  - (i)
    - A. commence the Project from the Commencement Date;
    - B. ensure any Milestones are completed by the relevant Milestone Completion Date; and
    - C. ensure the Project is completed by the Completion Date;
  - (ii) comply with the Standards set out in Item 1 of Schedule 3;

- (iii) comply with the Rural and Arterial Roads Standards set out in Item 2 of Schedule 3;
  - (iv) carry out the Project diligently, effectively, in a proper and workmanlike manner, to a high professional standard and in accordance with this Agreement, Australian Standards, and comply with the provisions of any relevant statutes, regulations and by-laws in force from time to time, and if applicable, must also comply with any specific measures specified in Item 12;
  - (v) keep the Territory fully informed on a regular basis, and/or on the request of the Territory, as to the progress of the Project;
  - (vi) comply, in a timely fashion, with all reasonable requests or directions of the Territory in respect of the Project; and
  - (vii) promptly advise the Territory in writing of any relevant matters which might affect the Recipient's ability to continue or to complete the Project, or to meet any of the Recipient's obligations under this Agreement.
- (b) The Recipient is responsible for the Project and for ensuring that it complies with this Agreement, and will not be relieved of that responsibility because of any:
- (i) involvement by the Territory in the performance of this Agreement; or
  - (ii) subcontracting by the Recipient of any part of this Agreement.
- (c) Other than in the case of Force Majeure in accordance with clause 17:
- (i) the Recipient must not suspend the Project without the prior written consent of the Territory, which consent may be withheld, or given subject to conditions, in the Territory's absolute discretion; and
  - (ii) if the Recipient suspends the Project or any part of it, whether with the consent of the Territory or otherwise, the Recipient must immediately notify the Territory of that suspension, with detailed reasons, and the Territory may in its absolute discretion take action pursuant to clause 13.1.

## **5.2 Main Contractor General Obligations**

- (a) The Recipient acknowledges that any Main Contractor(s) it engages on the Project must be done by written contract.

## **5.3 Project Meetings**

- (a) During the Term the Recipient must, and must ensure that the Recipient's Employees, any Main Contractor and any subcontractors, if requested by the Territory:
- (i) participate in such meetings between the Recipient, the Territory, representatives of the Territory, and/or such other third parties as the Territory may reasonably request from time to time, for purposes including information sharing and coordination of the Project; and
  - (ii) provide such information (in writing if requested) as is reasonably requested by the Territory, relating to the conduct and progress of the Project, including as to how the Project is progressing against Budgets and timeframes.
- (b) The Recipient acknowledges that continued cooperation with the Territory and compliance with this clause is an essential term of this Agreement, and that the Territory may take action pursuant to clause 13.1 if the Recipient fails to comply with clause 5.3(a).

## **5.4 Management and Maintenance**

- (a) The Recipient is, at its own cost, responsible for the ongoing management and maintenance of the Project after completion of the Project.

## **6. RECIPIENT'S PREMISES**

### **6.1 Access to Recipient's Premises**

During the Term the Recipient must, and must ensure that the Recipient's Employees, any Main Contractor and any subcontractors, if requested by the Territory and upon the Territory providing at least 24 hours' notice, allow the Territory and/or its representatives access to the Recipient's Premises to view the state of progress of the Project.

### **6.2 Recipient's Premises generally**

- (a) The Recipient warrants that:
  - (i) the Recipient's Premises are, and will at all times be, fit for the purposes of carrying out the Project;
  - (ii) the undertaking of the Project does not, and will not, infringe any condition of ownership or occupation of the Recipient's Premises;
  - (iii) any use of the Recipient's Premises for the Project does not, and will not, infringe any legislative requirements; and
  - (iv) the Recipient's Premises, after completion of the Project, will comply with all Australian Standards and any other standards or requirements which relate to the ongoing use of the Recipient's Premises for the purposes of this Agreement.
- (b) During the Term, the Recipient must safeguard the Recipient's Premises and the Project against loss, damage or unauthorised use, and maintain the Recipient's Premises and the Project in good condition.
- (c) If the Recipient is not the owner of the Recipient's Premises, the Recipient must not do anything that would give the owner of the Recipient's Premises the right to terminate or forfeit the Recipient's right of occupancy of the Recipient's Premises during the Term.
- (d) The Recipient must not assign, transfer, abandon or otherwise dispose of the Recipient's Premises or the Recipient's right to occupy the Recipient's Premises at any time during the Term without the prior written approval of the Territory. The Territory may give approval subject to any conditions, including the condition that part or all of the Funding must be repaid to the Territory.
- (e) Except with the Territory's prior written approval, the Recipient must not use the Recipient's Premises as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest.

### **6.3 Essential Term**

The Recipient acknowledges that continued cooperation with the Territory and compliance with this clause 6 is an essential term of this Agreement, and that the Territory may take action pursuant to clause 13.1 if the Recipient fails to comply with this clause 6.

## **7. RECORDS, REPORTING AND ACQUITTAL**

### **7.1 Records**

The Recipient must, at its own expense:

- (a) clearly identify the receipt and expenditure of the Funding within its accounting records separately from all other monies, so that at all times the Funding is identifiable and ascertainable;

- (b) keep financial records relating to the Funding and the Project to enable:
  - (i) a complete and detailed report and explanation of:
    - A. the expenditure of the Funding on the Project, and each Component, and whether the Funding was properly expended for the Project and each Component;
    - B. any other expenditure on each Component or the Project as a whole (including the provision of any in-kind contributions); and
    - C. implementation and progress of each Component;
  - (ii) the Recipient to provide the Reports in compliance with clause 7.2(a);
  - (iii) all receipts and payments to be identified in the Recipient's accounts and reported in accordance with this Agreement;
  - (iv) the preparation of General Purpose Financial Statements in accordance with the Australian Accounting Standards; and
  - (v) an audit of the accounts and records in accordance with the Australian Auditing Standards;
- (c) ensure that all records and accounts comply with the accounting principles applied to government and as required by law; and
- (d) provide the information and records described in subclauses 7.1(a) and 7.1(b) to the Territory, upon the reasonable request of the Territory, and within ten (10) Business Days of the request.

## **7.2 Reporting and Acquittal Requirements**

- (a) In order to acquit the Funding, the Recipient must provide the Territory with the Reports as specified in Item 8.
- (b) The Territory may, in its absolute discretion, give the Recipient a notice requiring the Recipient to resubmit any of the Reports, and the Recipient must resubmit the relevant Report within the time, and in accordance with any request, specified in the notice.
- (c) If:
  - (i) the Recipient fails to submit or resubmit a Report under clauses 7.2(a) or 7.2(b) in the time or manner required, or at all, or
  - (ii) the Territory considers that the Report is still deficient in some way, the Territory may, in its absolute discretion:
    - (iii) take steps under clause 7.2(b); or
    - (iv) take action under clause 13.1.

## **7.3 Retention, Inspection and Audit of Records**

- (a) The Recipient must keep all Records for a period of six (6) years after the expiry or earlier termination of this Agreement.
- (b) The Recipient must, at all reasonable times, give to the Territory and persons authorised by the Territory, permission to inspect and take copies of all Records, and in this respect the Recipient must fully cooperate with, and provide all assistance reasonably requested by, the Territory.
- (c) The Territory may engage a third party to inspect and audit the Recipient's Records at any time during the period specified in subclause 7.3(a).

- (d) The cost of any audit under clause 7.3(c) will be borne by the Territory, unless the responsible auditor determines that there is a material discrepancy pursuant to clause 7.3(e), in which case the Recipient will bear the cost of the audit.
- (e) The decision as to whether any discrepancy is material for the purposes of determining whether the Recipient has breached this Agreement will lie with the responsible auditor, in their absolute discretion.

## **8. INSURANCE, RISK, RELEASE AND INDEMNITY**

### **8.1 Insurance**

- (a) The Recipient must, and must ensure that any Main Contractor does, take out and keep in force, for so long as any obligations remain in connection with this Agreement, insurance policies (noting the interest of the Territory, if applicable), for all matters, and for not less than the minimum amounts, specified in Item 9.
- (b) The Recipient must provide the Territory with a copy of the insurance policies, or a copy of a certificate of currency for the policies, required by this clause within 5 Business Days of a request by the Territory.
- (c) The Recipient must, and must ensure that any Main Contractor does, not do or omit to do or permit to be done or omitted any act where any insurance required under this clause may be rendered void or voidable.

### **8.2 Risk**

The Recipient accepts all risks in respect of this Agreement and the Project, including the risk of:

- (a) the design, construction and commissioning of the Project;
- (b) the actual cost of the design, construction and commissioning of the Project being greater than anticipated;
- (c) the design, construction and commissioning of the Project not being completed in accordance with the requirements of any contract between the Recipient and any Main Contractor or any subcontractor;
- (d) the actual cost of performing its obligations under this Agreement being greater than anticipated;
- (e) any goods or services not being supplied in accordance with the requirements of any contract between the Recipient and any third party;
- (f) all liabilities associated with:
  - (i) occupational health and safety;
  - (ii) environmental issues;
  - (iii) payments and liabilities to third parties, including to contractors and subcontractors; and
- (g) compliance with all laws relating to the Project and the Recipient's obligations under this Agreement.

### **8.3 Release**

The Recipient releases to the full extent permitted by law, the Territory and its officers, employees, agents, subcontractors, visitors and invitees (in this clause referred to as "those released") from all responsibility or liability for the risks referred to in clause 8.2, loss of or damage to any property, or injury or death to any person, or any other loss or damage whatsoever, arising out of any involvement of those released pursuant to this Agreement.

## **8.4 Indemnity**

The Recipient indemnifies (and keeps indemnified) the Territory and its officers, employees, agents, subcontractors, visitors and invitees (in this clause referred to as 'those indemnified') against any:

- (a) loss, damage or other liability incurred by those indemnified; and
- (b) loss or expense incurred by those indemnified in dealing with any claim against them, (including legal costs on a solicitor and own client basis),

that is caused by or arises from:

- (c) the risks referred to in clause 8.2;
- (d) an act or omission by the Recipient, or any of the Recipient's officers, Employees, agents, volunteers, subcontractors, visitors or invitees in connection with this Agreement or the Project, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense; and/or
- (e) a failure by the Recipient to comply with any or all of the Recipient's obligations under this Agreement.

## **9. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY**

### **9.1 Definitions**

In this clause:

- (a) **Agreement Information** means all Information:
  - (i) brought into existence under or in accordance with this Agreement or for the purpose of performing a party's obligations under this Agreement;
  - (ii) incorporated in, supplied or required to be supplied along with the Information referred to in clause 9.1(a)(i); or
  - (iii) copied or derived from Information referred to in clauses 9.1(a)(i) or 9.1(a)(ii); and
- (b) **Confidential Information** means any Information:
  - (i) which is by its nature confidential;
  - (ii) which is designated as confidential by the person by or for whom the information is provided;
  - (iii) which a party knows, or ought to know, is confidential; or
  - (iv) which is agreed between the parties after the Date of this Agreement as constituting Confidential Information for the purposes of this Agreement;

and includes the terms (but not the existence) of this Agreement, but excludes Information which:

  - (v) is or becomes public knowledge other than by:
    - A. fault of a party;
    - B. breach of this Agreement; or
    - C. any other unlawful means;
  - (vi) was already in the possession of the party who receives the Information (the "**Receiving Party**") without restriction in relation to disclosure before the other party gave it to the Receiving Party; or



- (vii) had already been independently developed or acquired by the Receiving Party before the other party gave it to the Receiving Party;
- (c) **Intellectual Property** means all intellectual property rights including patents, copyright, rights in circuit layout, registered designs, trademarks and any right to have Confidential Information kept confidential; and
- (d) **Territory Information** means any Information provided by the Territory to the Recipient directly or indirectly for the purposes of this Agreement, or which is copied or derived from Information so provided, and includes all Confidential Information.

## **9.2 Confidential Information**

- (a) Subject to subclause 9.2(c), a party must not, without the prior written consent of the other party, use or disclose any Confidential Information of the other party.
- (b) In giving written consent to use or disclose its Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with those conditions.
- (c) The obligations on a party under this clause 9.2 will not be breached where that Confidential Information:
  - (i) is disclosed by a party to its employees, agents or subcontractors, solely in order to comply with obligations, or to exercise rights, under this Agreement, or is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Agreement-related activities;
  - (ii) is disclosed by the Territory to the Parliament, the Administrator, Cabinet, a Minister or any Parliamentary, Ministerial or Cabinet Committee of the Territory or in response to a request by the Legislative Assembly or a Committee of the Legislative Assembly;
  - (iii) is shared by a party within its organisation, or in the case of the Territory, with another department or agency of the Northern Territory of Australia, with the Commonwealth of Australia or any other State or Territory of Australia, where this serves the party's legitimate interests;
  - (iv) is authorised or required by law to be disclosed;
  - (v) is disclosed by a party and is information in a material form in respect of which an interest, whether by license or otherwise, in Intellectual Property in relation to that material form, has vested in, or is assigned to, the party under this Agreement or otherwise, and that disclosure is permitted by that license or otherwise; or
  - (vi) is in the public domain otherwise than due to a breach of this clause 9.2.

## **9.3 Territory Information**

- (a) Ownership of all Territory Information remains vested at all times in the Territory.
- (b) The Recipient must ensure that Territory Information is used, copied, supplied or reproduced only for the purposes of the fulfilling Recipient's obligations under this Agreement.
- (c) If the Territory advises Recipient of any restrictions or conditions attached to the Territory Information, the Recipient must only use that Territory Information in accordance with those conditions.
- (d) On the expiry or sooner termination of this Agreement, the Recipient must return to the Territory, or delete or destroy (at the Territory's option) all Territory Information remaining in the possession of Recipient.

## **9.4 Intellectual Property**

- (a) Subject to clauses 9.3 and 9.4(b), the Intellectual Property in all Agreement Information will vest in the Recipient.
- (b) The Recipient grants to the Territory perpetual, irrevocable, royalty-free and licence fee-free worldwide non-exclusive licences (including a right of sub-licence) to use, copy, modify and exploit the Agreement Information.
- (c) If requested by the Territory to do so, the Recipient must bring into existence, sign, execute or otherwise deal with any document, which may be necessary or desirable to give effect to this clause.
- (d) The Recipient warrants that it is entitled, or will be entitled or will procure that it is entitled at the relevant time, to deal with the Intellectual Property in any Agreement Information in the manner provided for in this clause.

## **9.5 Survival**

This clause 9 will survive the expiration or earlier termination of this Agreement.

# **10. ACKNOWLEDGMENT OF FUNDING AND MEDIA STATEMENTS**

## **10.1 Acknowledgment of Funding**

- (a) In this clause, “**Contract Information**” means all Information:
  - (i) brought into existence under or in accordance with this Agreement or for the purpose of performing the Project;
  - (ii) incorporated in, supplied or required to be supplied along with the Information referred to in clause 10.1(a)(i); or
  - (iii) copied or derived from Information referred to in clauses 10.1(a)(i) or 10.1(a)(ii).
- (b) The Recipient must acknowledge the Territory’s contribution to the Project in all Contract Information, promotional and advertising material and other documents and communications (for example in signs, advertising and public notices of the Project, annual reports, publications, letterheads, websites, when dealing with the media), in a manner that is commensurate with the Funding by using:
  - (i) the Northern Territory Government logo; or  
*(Note: the Northern Territory Government Logo will be made available to the Recipient by contacting the Territory directly. The logo may only be used to acknowledge Government’s financial support for the Recipient. It cannot be used to indicate Government endorsement of decisions or directions of the Recipient).*
  - (ii) the phrase “sponsored by the Northern Territory Government”; or
  - (iii) in such other way as the Territory may reasonably require from time to time by written notice to the Recipient.

## **10.2 Media Statements**

Public announcements about the Project to the media or others must not be made unless the Recipient has the prior consent of the Territory to do so.

# **11. CONFLICT OF INTEREST**

- (a) For the purposes of this clause 11, “**Conflict**” means any matter, circumstance, interest, or activity directly or indirectly affecting the Recipient or any Employee,

officer, member, agent or subcontractor of the Recipient (including holding any office, possessing any property, or having any professional or contractual obligation), which may, or may appear to, impair the ability of the Recipient or the relevant Employee, officer, member, agent or subcontractor to carry out the Recipient's responsibilities and obligations under this Agreement diligently and independently.

- (b) The Recipient warrants that, at the date of signing this Agreement, to the best of its knowledge, no Conflict exists or is likely to arise in the performance of the Recipient's obligations under this Agreement.
- (c) If, during the performance of this Agreement a Conflict arises, or appears likely to arise, the Recipient will immediately notify the Territory in writing of the Conflict and the steps it proposes to take to resolve or deal with the Conflict.
- (d) The parties will negotiate in good faith to resolve or deal with the Conflict. If the parties are unable to reach agreement within ten (10) Business Days of notification pursuant to clause 11(c), the Territory may, in its absolute discretion, take action pursuant to clause 13.1.
- (e) Information provided under clause 11(c) will be treated as confidential by the Territory.

## **12. REPAYMENT OF UNSPENT OR MISUSED FUNDING**

- (a) If, at the Completion Date or earlier completion of the Project, or earlier expiry or termination of this Agreement ("the Relevant Date") the Recipient still has any part of the Funding (excluding any part of the Funding legally committed for expenditure in accordance with this Agreement and which falls for payment thereafter), the Recipient must, within ten (10) Business Days of the Relevant Date, advise the Territory of that fact, and:
  - (i) subject to subclause 12(b), seek the Territory's written agreement to retain the remaining part of the Funding for a purpose approved by the Territory; or
  - (ii) return the remaining part of the Funding to the Territory.
- (b) If the Recipient seeks the agreement of the Territory pursuant to clause 12(a)(i) but the Territory has not agreed in writing to the Recipient retaining the remaining part of the Funding under clause 12(a)(i) within ten (10) Business Days of receiving the request from the Recipient, the Recipient must repay the remaining part of the Funding to the Territory within a further ten (10) Business Days.
- (c) If:
  - (i) at any time the Territory forms the reasonable opinion that the Funding has not been used, spent or committed for expenditure in accordance with this Agreement; or
  - (ii) on the expiration of the Term or on any earlier termination of this Agreement, any part of the Funding:
    - A. remains unspent or uncommitted, and the Territory has not agreed to the Recipient retaining that part of the Funding pursuant to clause 12(b); or
    - B. cannot, by reconciliation between the accounts and records maintained by the Recipient (as disclosed to, or reviewed by, the Territory in accordance with clauses 7.2 or 7.3) be shown to the reasonable satisfaction of the Territory to have been spent or committed in accordance with this Agreement;

then at the sole discretion of the Territory and by written notice the Territory may require the Recipient to:

- (iii) repay the Funding or any part of it to the Territory in the manner described in the notice; or
  - (iv) deal with the Funding or any part of it in accordance with any instructions of the Territory set out in the notice.
- (d) Prior to issuing a notice pursuant to clause 12(c) the Territory will give the Recipient a reasonable opportunity to respond to any concerns that the Territory may have regarding the expenditure of the Funding.
- (e) Any amount payable to the Territory pursuant to this clause 12 must be paid within ten (10) Business Days of a request, direction or demand from the Territory to pay it.
- (f) A failure to comply with clause 12(e) will:
  - (i) result in interest accruing on the outstanding amount of the Funding at the Interest Rate from the last date for payment required by the request, direction or demand referred to in clause 12(e) and which will be payable in addition to the principal amount. Interest will accrue on outstanding monies until full payment of the principal and interest is received; and
  - (ii) entitle the Territory to take action pursuant to clause 13.1.
- (g) Any amount owed to the Territory under this Agreement (including any interest) will, without prejudice to any other rights available to the Territory under this Agreement or at law or in equity, be recoverable by the Territory as a debt due to the Territory by the Recipient without further proof of the debt being necessary.

### **13. SUSPENSION AND TERMINATION**

#### **13.1 Right of Territory to Suspend or Terminate**

If:

- (a) notwithstanding any other clause in this Agreement, as a result of any change in Northern Territory or Commonwealth government policy, the Funding for the Project is to cease or be reduced, or if payment of monies to the Territory which will form part or all of the Funding (for example, under a Commonwealth funding agreement) is ceased, reduced or delayed;
- (b) the Recipient has failed to comply with a notice provided by the Territory to the Recipient requiring that the Recipient remedy a breach of the terms and conditions of this Agreement within the time specified in the notice, such time being a reasonable period of time according to the nature of the breach, or having received such a notice, the Recipient commits a further breach of the same or similar obligations, whether or not the original breach has been rectified, so that the Recipient's performance of its obligations under this Agreement have been materially affected;
- (c) the Recipient is dissolved, becomes insolvent, stops payment of its debts or is unable to pay its debts as and when they fall due, or the Recipient enters into an arrangement or composition with its creditors or is placed into receivership or liquidation, whether voluntary or otherwise, or an application or order is made for winding up the Recipient, or the Recipient has execution levied against it, or a controller within the meaning of the Corporations Act, appointed over any of its assets, or the Territory reasonably suspects that any of these things have occurred or may occur;
- (d) the Recipient (including any officer, Employee or member of the Recipient), is in the reasonable opinion of the Territory, guilty of any misconduct, misbehaviour, incompetence, carelessness or gross inefficiency in the discharge of its duties under the terms and conditions of this Agreement, or is convicted of any criminal offence, other than an offence which in the opinion of the Territory does not affect this

Agreement or the provision of the Project, or the Territory reasonably suspects this has occurred or may occur;

- (e) the Recipient is, in the reasonable opinion of the Territory, unable or unwilling, for any reason, to undertake the continuation or completion of the Project in a manner satisfactory to the Territory;

- (f) any clause in this Agreement provides that this clause 13.1 applies;

the Territory may, in its absolute discretion and by written notice to the Recipient, immediately:

- (g) suspend this Agreement and/or dealings with the Funding, and clause 13.2 will apply; or

- (h) terminate this Agreement, and clause 13.3 will apply.

### **13.2 Suspension**

If the Territory suspends dealings with the Agreement and/or Funding pursuant to clause 13.1(g):

- (a) the Territory may:

- (i) end the suspension by written notice to the Recipient, subject to such preconditions (including variations to this Agreement) which the Territory may require; and/or

- (ii) if the matter is not resolved to the satisfaction of the Territory, terminate this Agreement by further written notice to the Recipient, and clause 13.3 will apply; and

- (b) for the duration of any suspension, the Recipient must:

- (i) hold the Funding in utmost good faith for use only in accordance with the directions of the Territory and must cease all other dealings with the Funding; and

- (ii) if the Territory directs, cease undertaking the Project or undertake the Project with such conditions or limitations as the Territory may direct; and

- (c) the Territory will not be liable to the Recipient for any suspension of this Agreement and is not obliged to pay the Recipient any part of the Funding during the period of the suspension.

### **13.3 Termination**

- (a) The Territory may terminate this Agreement immediately by notice to the Recipient:

- (i) if clause 13.1(h) or 13.2(a)(ii) applies; or

- (ii) on giving one month's notice in writing of the intent to terminate this Agreement.

- (b) Termination of this Agreement does not affect any accrued right or liability of any party, nor will it affect the coming into force, or the continuation in force, of any provision of this Agreement that is expressly, or by implication, intended to come into or continue to be in force on or after the termination.

- (c) On termination:

- (i) the Recipient must hold the Funding in utmost good faith for use only in accordance with the directions of the Territory and will cease all other dealings with the Funding;

- (ii) the Territory will not be liable to pay any other part of the Funding not already paid; and

- (iii) the Recipient is obliged to repay the Territory on demand any part of the Funding already paid to the Recipient and not spent in accordance with this Agreement.
- (d) A failure to comply with clause 13.3(c)(iii) will result in interest accruing on the outstanding amount of the Funding at the Interest Rate from the last date for payment required by the demand referred to in clause 13.3(c)(iii) and which will be payable in addition to the principal amount. Interest will accrue on outstanding monies until full payment of the principal and interest is received, and clause 12(g) will apply.
- (e) The Territory will not be liable to the Recipient for termination of this Agreement, and in any event, the Territory will not be liable to pay any amount in excess of the amount of the Funding remaining unpaid under this Agreement at the date of termination.

## **14. GST (GOODS AND SERVICES TAX)**

- (a) Any term used in this clause that is referred to in *A New Tax System (Goods and Services Tax) Act 1999* will have the meaning which it has in that Act.
- (b) The parties acknowledge that the consideration under this Agreement has been set exclusive of GST.
- (c) Where the consideration under this Agreement becomes subject to GST, for whatever reason, the following will apply:
  - (i) the consideration under this Agreement payable after the date the consideration becomes subject to GST will be increased by an amount equal to the relevant consideration multiplied by the appropriate GST Rate;
  - (ii) Tax Invoices will be issued in accordance with the process in Item 11; and
  - (iii) if the supplier subsequently ceases to be registered for GST, the supplier must immediately notify the recipient in writing of that fact, and must repay to the recipient within ten (10) Business Days an amount equal to 1/11 of the relevant amount paid, less the actual GST incurred by the supplier.
- (d) Any disbursements incurred by the Recipient and which are reimbursed by the Territory must exclude the input tax credit able to be claimed by the Recipient in respect of those amounts. Where clause 14(c) applies these disbursement will then be grossed up for GST in accordance with that clause.

## **15. DISPUTE RESOLUTION**

### **15.1 Disputes**

Each party must follow the procedures in this clause 15 before starting court proceedings (except for urgent injunctive or declaratory relief).

### **15.2 Notice of Dispute**

Any party to this Agreement who wishes to claim that a dispute has arisen must give written notice to the other party setting out details of the dispute.

### **15.3 Meeting of Parties**

Within five (5) Business Days of the provision of the written notice, the parties must meet to take whatever actions or investigations as each deems appropriate, in order to seek to resolve the dispute, including by:

- (a) referring the matter to personnel who may have authority to intervene and direct some form of resolution; and/or

- (b) attempting to agree upon a process for resolving the whole or part of the dispute through means other than litigation, such as further negotiations, mediation, conciliation or independent expert determination.

**15.4 Appointment of Mediator**

- (a) If the dispute is not resolved within the following five (5) Business Days (or within such further period as the parties may agree is appropriate) then one or both parties will nominate a mediator to determine the Dispute.
- (b) If the parties fail to agree to the identity of a mediator within five (5) Business Days of a party nominating a mediator, then either or both of the parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate a mediator to mediate the Dispute.
- (c) It is a condition precedent to the right of either party to commence litigation other than for interlocutory relief, that it has first offered to submit the dispute to mediation.

**15.5 Appointment of Independent Expert**

- (a) If the dispute is not resolved within twenty (20) Business Days after appointment of the mediator (or within such further period as the parties may agree is appropriate) then one or both parties will nominate an independent expert to determine the Dispute.
- (b) If the parties fail to agree to the identity of an independent expert within five (5) Business Days of a party nominating an independent expert, then either or both of the parties may refer the matter to the President for the time being of the Law Society of the Northern Territory who will nominate an independent expert to determine the Dispute.
- (c) The expert must not be the same person as the mediator.

**15.6 Decision of Independent Expert**

- (a) The decision of the independent expert is absolute and final and will bind the parties accordingly and this Agreement will be deemed to be amended to incorporate the terms of the independent expert's decision.
- (b) The independent expert will be deemed to be acting in making any decision as an expert and not an arbitrator.

**15.7 Costs and materials**

- (a) The parties will bear the costs of the independent expert's determination equally.
- (b) The parties will make available to the independent expert all materials requested by it and will furnish it with all other materials which are relevant to the determination.

**15.8 Legal Proceedings**

If the alternative process for resolving the dispute (such as further negotiations, mediation, conciliation or independent expert determination) fails, or if either party states that it does not wish to proceed with such alternative processes or the parties cannot otherwise agree on such an alternative process, then either party may commence legal proceedings against the other.

**15.9 Parties to Perform Obligations**

Notwithstanding the existence of a dispute, but subject to clause 13.1, each party must continue to perform its obligations under this Agreement.

## **16. NOTICES**

### **16.1 Form and Service of Notices**

Any notice, approval, consent, demand or other communication required or permitted to be given under this Agreement must be in writing and given in one of the following ways:

- (a) by hand delivering to the relevant person;
- (b) by sending a letter through registered mail to the relevant address for service; or
- (c) by sending a fax to the relevant fax number,

specified in the details of the parties appearing at the start of this Agreement, or such other person, address, fax number or email address as may be advised by a party in writing from time to time.

### **16.2 Receipt of Notices**

A notice given under clause 16.1 is deemed to be given, in the case of:

- (a) hand delivery, immediately on delivery;
- (b) registered mail, on the third Business Day after posting; or
- (c) facsimile, on receipt of a complete and correct transmission report by the sender,

but if such delivery or receipt is later than 4.00pm (addressee's time) on a Business Day, it is deemed to be received at 9.00am on the next Business Day in the place of receipt.

## **17. FORCE MAJEURE**

### **17.1 Meaning of Force Majeure**

In this clause 17, **Force Majeure Event** means an event or a circumstance:

- (a) beyond the reasonable control of the party affected by it and which occurs without the fault or negligence of the party; and
- (b) which causes or results in a default or delay in the performance by that party of any of its obligations under this Agreement (excluding obligations to pay money); and
- (c) where such default or delay and the occurrence and the effects of such event or circumstance could not have been prevented, overcome or remedied by the exercise by that party of a standard of foresight, care and diligence consistent with that of a prudent and competent person under the circumstances, including the expenditure of reasonable sums of money and the application of technology known to prudent and competent persons;

but it excludes any act, omission, default or negligence of any agent of that party or anything within the reasonable control of any agent of that party, other than acts, omissions or defaults that would otherwise constitute Force Majeure Event if that agent was a party to this Agreement;

### **17.2 Effect of Force Majeure**

- (a) If a party ("the **Affected Party**") is unable to wholly or in part carry out its obligations due to a Force Majeure Event, the Affected Party must comply with clause 17.2(b), whereupon such obligation will be suspended so far as it is affected by such intervening event.
- (b) The Affected Party must:
  - (i) notify the other party as soon as possible of full particulars of the event or circumstance of the Force Majeure Event including:



- A. the date of commencement of the event or circumstance of the Force Majeure Event and an estimate of the period of time required to enable it to resume full performance of its obligations;
  - B. where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event; and
  - C. the nature and extent of the obligations affected by, or other consequences of the Force Majeure Event;
- (ii) use all reasonable diligence and employ all reasonable means to remedy, mitigate or abate the Force Majeure Event as expeditiously as possible, including the expenditure of reasonable sums of money and the application of technology known to prudent and competent persons;
- (iii) resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event has abated to an extent which permits resumption of performance;
- (iv) notify the other party when the Force Majeure Event has terminated or abated to an extent that permits resumption of performance to occur; and
- (v) notify the other party when resumption of performance has occurred.
- (c) Once such intervening event has ended, the Affected Party will carry out all acts which it would have been liable to carry out had the Force Majeure Event not intervened, with any necessary time frames extended by the period of suspension under clause 17.2(a).
- (d) The Affected Party will take all reasonable steps to ameliorate and eliminate the intervening event and resume performance as promptly as practicable.
- (e) Notwithstanding the existence of a Force Majeure Event, each party must continue to perform its other obligations under this Agreement, not being obligations suspended under clause 17.2(a).
- (f) If:
  - (i) a party has invoked the operation of this clause; and
  - (ii) the same Force Majeure Event prevents or inhibits performance of any obligation or condition required to be performed under this Agreement for a period of 3 months,

then either party may terminate this Agreement by 20 Business Days' notice and, unless there has been a cessation of the event of the Intervening Event, this Agreement will automatically expire upon the expiry of that 20 Business Days.

## **18. GENERAL**

### **18.1 No Merger**

Notwithstanding the termination or sooner expiry of this Agreement, all provisions of this Agreement which are capable of taking effect after termination or sooner expiry will continue to remain in full force and effect.

### **18.2 Governing Law**

This Agreement is governed by and construed in accordance with the laws of the Northern Territory of Australia and the Courts of the Northern Territory at Darwin have jurisdiction to entertain any action in respect of, or arising out of, this Agreement.

**18.3 Warranties by Recipient**

The Recipient warrants that it is properly established and constituted at law, and has power and authority to enter into this Agreement.

**18.4 No Assignment**

The Recipient must not assign, transfer or otherwise deal with this Agreement, or any of the Recipient's rights or obligations under this Agreement, unless the Recipient has been given prior written approval to do so from the Territory.

**18.5 Entire Agreement**

This Agreement constitutes the entire agreement between the parties, and overrules any previous agreement or understandings between the parties in relation to the Project.

**18.6 No Employment, Partnership Or Agency**

- (a) Nothing in this Agreement or its performance gives rise to any relationship of employment, partnership or agency between the parties, and it is the express intention of the parties that any such relationships are denied.
- (b) The Recipient acknowledges that any agreement entered into between the Recipient and a third party in relation to this Agreement or the Project, constitutes a private contractual arrangement between the Recipient and that third party, and the Territory will not be deemed to be a party to any such agreements, understandings and arrangements, and the Territory will not be responsible for any monies owed by either party to such agreement.

**18.7 Amendments**

This Agreement cannot be amended or added to unless the amendment or addition is in writing and signed by all of the parties.

**18.8 Severance**

If a court determines that a word, phrase, sentence, paragraph or provision in this arrangement is unenforceable, illegal or void then it will be severed and the other provisions of this arrangement will remain operative.

**18.9 Waiver and Time**

- (a) This Agreement and the rights and obligations set out in this Agreement will not be abrogated, prejudiced or affected by the granting of time, credit or any indulgence or concession by one party to another party or to any other person whomsoever or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any rights of a party or by any omission or neglect or any other dealing, matter or thing which, but for this clause could or might operate to abrogate, prejudice or affect the rights of a party or obligations of a party.
- (b) Waiver of any provision of or right under this Agreement must be in writing signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out in any written waiver.
- (c) Time is of the essence for all obligations under this Agreement.

**18.10 Costs and Stamp Duty**

The parties will each pay their own costs of and incidental to the negotiations for and the preparation and execution of this Agreement, and the Recipient will bear any costs of stamping of this Agreement.

**18.11 Counterparts**

This Agreement may be signed in any number of counterparts and all such counterparts when taken together constitute one instrument.

**18.12 Further Acts**

Each party will promptly do and perform all acts and execute and deliver all documents (in a form and context reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this Agreement.

## SIGNING SECTION

**Executed** by the parties as an Agreement:

**SIGNED** by ..... )  
(print name) )

for and on behalf of the **NORTHERN TERRITORY  
OF AUSTRALIA** care of its agency the Department  
of Transport pursuant to a delegation under the  
*Contracts Act* in the presence of:

.....  
Signature

) Date: ..... 2015

.....  
Signature of Witness

.....  
Name of Witness

The **COMMON SEAL** of the **City of Palmerston** was hereto affixed in accordance with section 26 of the *Local Government Act* 2008 in the presence of:

Date: ..... 2015

.....  
Signature of Chief Executive Officer

.....  
Signature of Council member

.....  
Print name of Chief Executive Officer

.....  
Print name of Council member

## SCHEDULE 1 ITEMS

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### Item 1 APPROVED ACCOUNT (clause 3)

Bank Name:	NAB Palmerston
Account Name:	City of Palmerston
BSB:	085-933
Account Number:	17 1902236

### Item 2 FUNDING SCHEDULE (clause 4.1)

Approximate Payment Date (subject to clauses 4.1 and 14)	Amount (exclusive of GST)
Completion of Stage 1 Asphalt (30th June 2016)	\$1,000,000.00 (exclusive of GST)
Completion of Stage 2 Asphalt (31 <sup>st</sup> August 2016)	\$1,000,000.00 (exclusive of GST)
Practical Completion (23 <sup>rd</sup> September 2016)	\$500,000.00 (exclusive of GST)
<b>Total Funding</b>	<b>\$2,500,000.00 (exclusive of GST)</b>

### Item 3 PAYMENT TIMEFRAME (clauses 1.1(p), 4.1 and 14)

20 Business Days

### Item 4 COMMENCEMENT DATE (clauses 1.1(e) and 5.1(a)(i))

24<sup>th</sup> March 2016

### Item 5 COMPLETION DATE (clauses 1.1(f) and 5.1(a)(i)C)

23<sup>rd</sup> September 2016

### Item 6 PROJECT (clauses 1.1(q) and 5.1)

The Boulevard Reconstruction – Stage 2

**Item 7 PROJECT MILESTONES**

<b>MILESTONE</b>	<b>MILESTONE COMPLETION DATE</b>
1. Completion of Asphalt Stage 1	30th June 2016
2. Completion of Asphalt Stage 2	31 <sup>st</sup> August 2016
3. Practical Completion	23 <sup>rd</sup> September 2016

**Item 8 REPORTING REQUIREMENTS** (clause 7.2)

All Reports must be certified as correct by Chief Executive Officer of the Recipient and signed by its Chief Executive Officer.

<b>REPORT</b>	<b>DATES REQUIRED</b>
Progress Report-1 at Completion of Asphalt Stage-1 , in the form set out in Schedule 4	10 July 2016
Progress Report-1 at Completion of Asphalt Stage-2 , in the form set out in Schedule 4	10 September 2016
Final Report, in the form set out in Schedule 5	Within 30 days of completion of the Project.
Funding Acquittal Statement, in the form set out in Schedule 6	Within 30 days of completion of the Project.
Any other reports or information as reasonably requested by the Territory	At such times as may be reasonably requested by the Territory

**Item 9 INSURANCE REQUIREMENTS** (clause 8.1)

<b>Insurance</b>	<b>Minimum Amount</b>
The Recipient's Premises, the Project and all Assets purchased, constructed or otherwise acquired with the Funding	Full replacement value
General Third party Liability (Public Risk) Insurance	Not less than TWENTY MILLION dollars (\$20,000,000) for any one event

Workers' Compensation and Employer's Liability insurance (including common law liability)	Including, but not limited to, the insurance required under the <i>Workers Rehabilitation and Compensation Act</i>
Professional Indemnity Insurance	1. TWENTY MILLION dollars (\$20,000,000) for any one claim; <b>and</b> 2. TWENTY MILLION dollars (\$20,000,000) in the aggregate for any 12 month period of insurance

**Item 10 INTEREST RATE** (clause 1.1(k), 12(f)(i) and 13.3(d))

The rate set by the Territory in its 30 Day Payment Policy or any substituted policy, or, if no rate is set in any such policy, the 90 day bank bill rate published by the Reserve Bank of Australia as at the immediately preceding 1 June

**Item 11 INVOICE REQUIREMENTS** (clause 14)

- (a) The Recipient must:
  - (i) provide the Territory with Invoices and/or adjustments notes in relation to an amount of Funding, prior to an amount being paid by the Territory under this Agreement; and
  - (ii) do all things reasonably necessary to assist the Territory to claim and obtain any input tax credit available to it in respect of the Funding.
- (b) The amount of Funding will be paid within the Payment Timeframe in Item 3 after receipt of a tax invoice from the Recipient.
- (c) The Invoices must be submitted to:
 

Receiver of Territory Monies  
Department of Transport  
GPO Box 2520 Darwin NT 0801

**Item 12 SPECIFIC MEASURES RECIPIENT MUST COMPLY WITH** (clause 5.1(a)(iv))

If the Territory advises the Recipient at any time that the Territory is bound by a funding agreement with the Commonwealth (being an agreement under which the Territory receives monies forming any part of the Funding paid to the Recipient), then the Recipient must:

- (d) do all things which the Territory requests the Recipient to do (including, but not limited to, the Recipient providing information to the Territory, or the Recipient doing or refraining from doing some thing) in order for the Territory to comply with the terms of the funding agreement the Territory has with the Commonwealth; and
- (e) so far as possible, comply with the terms of the funding agreement between the Territory and the Commonwealth as though the Recipient were a party to that agreement.

## **SCHEDULE 2 SPECIAL CONDITIONS (CLAUSE 1.3)**

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1. Nil.



## **SCHEDULE 3 STANDARDS**

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Related Australian Standards and Austroads Guidelines for Road Infrastructure Works

## SCHEDULE 4 PROGRESS REPORT

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Recipient's Name: [FUNDING RECIPIENT]

Project Description: [INSERT]

Milestones	Funding Amount
	\$
	\$
<b>Total:</b>	\$

Please provide details of steps the Recipient has taken to meet the Performance Measures listed in the Agreement.

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Does the Recipient expect to successfully meet the Performance Measures listed in the Agreement?

☐ Yes ☐ No

Please advise of any known obstacles or variations the Recipient may need to make to the Project.

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.....  
 Certified as correct by the Recipient's [insert details eg] treasurer, accountant, Chief Financial Officer, etc

Date: ..... / ..... / .....

.....  
 Signed by the Recipient's [insert details eg] CEO, Mayor, etc

Date: ..... / ..... / .....  
 .....

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### For Territory's Use:

Performance Measures successfully met ☐ Yes ☐ No

Comments:

## SCHEDULE 5 FINAL REPORT

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Recipient's Name: [FUNDING RECIPIENT]

Project Description: [INSERT]

Milestones	Funding Amount
	\$
	\$
<b>Total:</b>	\$

Was the Project completed by the Completion Date? ☐ Yes ☐ No

If no, please detail why the Completion Date was not met.

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Has the Recipient met the Performance Measures listed in the Agreement?

☐ Yes ☐ No

If no, detail why the Performance Measures have not been met and how the Recipient has addressed this situation.

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.....  
 Certified as correct by the Recipient's [insert details eg] treasurer, accountant, Chief Financial Officer, etc

.....  
 Signed by the Recipient's [insert details eg] CEO, Mayor, etc

Date: ..... / ..... / .....

Date: ..... / ..... / .....  
 .....

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### For Territory's Use:

Performance Measures successfully met ☐ Yes ☐ No

Comments:

## SCHEDULE 6 FUNDING ACQUITTAL STATEMENT

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Recipient's Name: [FUNDING RECIPIENT]

Project Description: [INSERT]

Milestones	Funding Amount
	\$
	\$
<b>Total:</b>	\$

### RECIPIENT CERTIFICATION

- I certify that [FUNDING RECIPIENT] has expended the total amount of \$\_\_\_\_\_ on the Project for which funds were allocated from the Territory as per the funding agreement between the Recipient and the Territory dated ...../...../.....
- I have completed progress reports as required under the Records, Reporting and Acquittal clause in the Agreement.
- I have enclosed a copy of our most recent audited financial statements including Income and Expenditure statements and Balance Sheet. These statements clearly identify the Territory's funding contribution by component, received during this audited period.

.....  
 Certified as correct by the Recipient's [insert details eg] treasurer, accountant, Chief Financial Officer, etc

.....  
 Signed by the Recipient's [insert details eg] CEO, Mayor, etc

Date: ..... / ..... / .....

Date: ..... / ..... / .....

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### For Territory's Use:

Performance Measures successfully met ☐ Yes ☐ No

Comments:

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