

HOUSING AUTHORITY
AND
THE TRUSTEE OF THE NOONGAR BOODJA TRUST
AND
LAND SUB

FUNDING AGREEMENT

This document has been agreed in principle on a without prejudice basis between the State, the Noongar Negotiation Team and SWALSC

Housing Authority
99 Plain Street
EAST PERTH WA 6004

LEG130851

THIS AGREEMENT is made on [insert date and year]

BETWEEN HOUSING AUTHORITY, a statutory authority constituted under the *Housing Act 1980*, of 99 Plain Street, East Perth, Western Australia (**Authority**)

AND The Trustee of the Noongar Boodja Trust (Insert ACN) of [address], Western Australia (**NBT**)

AND [Insert details] of [address] (**Land Sub**)

BACKGROUND

- A. This Agreement is entered into pursuant to the SW ILUAs.
- B. The Parties have entered into the Property Transfer Deed which identifies the Properties and details the timing and process for their transfer.
- C. The Parties acknowledge that as part of the transfer of each Property, the Authority will make available to the NBT payment from the Fund to be applied towards the Project Works.
- D. The NBT shall decide upon, manage, administer, undertake and be responsible for Project Works for any of the Properties on behalf of the Land Sub.
- E. The Authority will make payments from the Fund to the NBT for the Project Works in accordance with the terms of this Agreement.

THE PARTIES AGREE AS FOLLOWS

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this funding agreement, including its recitals, the Schedule and annexures (if any);

Asbestos has the meaning given in the *Occupational Safety and Health Regulations 1996* (WA);

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

BCA means a property assessment referencing the requirements of, and compliance with the National Construction Code 2013 prepared for each Property by a building surveyor appointed by the Authority and provided to the NBT as part of the transfer of the Property to the Land Sub;

Business Day means a day, not being a Saturday, Sunday or public holiday, on which banks in Western Australia are open for general business;

Commencement Date means 60 Business Days after either the declaration of the NBT or the incorporation of the Land Sub, whichever is the later;

Fund means the amount specified in Item 1 of the Schedule;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituting for or amending any of the foregoing;

ILUA means an Indigenous Land Use Agreement and has the meaning given to it by the NTA;

Land Sub has the meaning given in the Settlement Terms;

Native Title Agreement Groups has the meaning given in the Settlement Terms;

NTA means the *Native Title Act 1993* (Cth);

Native Title Claims means the following native title claims in South West Western Australia:

- Ballardong (WAD 6181/98);
- Gnaala Karla Booja (WAD 6274/98);
- South West Boojarah (WAD 253/2006);
- Harris Family (WAD 6085/98);
- Wagyl Kaip (WAD 6286/98);
- Southern Noongar (WAD 6134/1998);
- Whadjuk (WAD 242/11); and
- Yued (WAD 6192/98);

Party means each of the Authority or the NBT or the Land Sub as the context requires and **Parties** means all of them;

Property Transfer Deed means the agreement of even date entered into between the Parties to govern the transfer of the Properties;

Project Works means either the:

- (a) refurbishment, upgrade or repair work on any of the Properties to bring an existing dwelling to a good and tenable condition that is ready for occupation; or
- (b) demolition of a Property,

as determined by the NBT in accordance with clause 6;

Property or Properties has the meaning given in the Property Transfer Deed between the Authority, the NBT and the Land Sub;

Practical Completion means the completion of Project Works on any of the Properties such that the Property is ready for occupation or that any improvements on a Property have been demolished;

Schedule means the schedule to this Agreement;

Schedule of Project Works means a description of activities undertaken for the Project Works and referred to in Item 2 of the Schedule;

Settlement Terms means the settlement terms attached to the SW ILUAs at Schedule 9;

SWALSC means the South West Aboriginal Land & Sea Council Aboriginal Corporation (ICN 3832); and

SW ILUAs means each of the six ILUAs entered into by the Native Title Agreement Groups, SWALSC, the State and others in relation to the settlement of the Native Title Claims and includes the Settlement Terms.

1.2 Interpretation

- (a) In this document:
- (i) headings are for reference only and do not affect interpretation;
 - (ii) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
 - (iii) unless stated otherwise, anything required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;
 - (iv) no provision or expression is to be construed against a Party on the basis that the Party (or its advisers) was responsible for its drafting;
 - (v) examples and use of the word 'including' and similar expressions do not limit what else may be included;
 - (vi) nothing contained in this Agreement will be deemed or construed as creating the relationship of partnership or of principal and agent;
 - (vii) if a Party is obliged to do something it must do so at its own cost unless expressly provided otherwise in this Agreement; and
- (b) Unless the context requires otherwise, a reference in this document to:
- (i) a Party to any document includes that person's successors and permitted substitutes and assigns;
 - (ii) a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
 - (iii) any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
 - (iv) clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
 - (v) a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
 - (vi) time is to Perth, Western Australia time unless stated otherwise;
 - (vii) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement; and
 - (viii) clause headings are for convenience only and will be ignored in the interpretation of this Agreement.

2. Term of this Agreement

The term of this Agreement commences on the Commencement Date and shall operate until the earlier of:

- (a) 12 months after the last Property is transferred to the Land Sub pursuant to the Property Transfer Deed; or
- (b) the Fund is expended; or
- (c) the termination date of the last SW ILUAs; or
- (d) a date fixed by written agreement between the Parties.

3. Relationship with SW ILUAs

- (a) The Parties acknowledge and accept the terms of clauses 9.6, 9.7 and 10 of the SW ILUAs and how the operation of those clauses may affect this Agreement
- (b) Where any one or more of clauses 9.6, 9.7 and 10 applies in any one or more SW ILUAs this Deed will not apply and no funding will be provided in relation to any transferred Property that is located in any area that is covered by that or those SW ILUAs unless the Authority agrees otherwise in writing.

4. Authority to establish the Fund

As soon as reasonably practicable after the Commencement Date the Authority will establish the Fund.

5. Refurbishment Recommendations

- (a) As part of the transfer of each Property the Authority will provide the NBT with a BCA for the Property except where the Property comprises vacant land.
- (b) The BCA will contain recommendations that either:
 - (i) no refurbishment of the existing dwelling be required; or
 - (ii) the existing dwelling be refurbished or repaired, in which case the BCA will also provide details of the works recommended to be undertaken to bring the dwelling to a tenantable standard; or
 - (iii) the existing dwelling be demolished.
- (c) The NBT is under no obligation to the Authority to comply with the recommendations in the BCA, either as to whether to refurbish or demolish, or as to the details of the works that will be undertaken with respect to any particular Property.
- (d) For the avoidance of doubt, both the NBT and the Land Sub acknowledge that the Authority will have no responsibility or liability in respect of any recommendation made in the BCA.

6. Project Works

6.1. NBT represents the Land Sub

The Parties acknowledge that the NBT will undertake the Project Works for and on behalf of the Land Sub.

6.2. Risk

- (a) The NBT accepts liability for all risks in respect of or arising from any Project Works undertaken by the NBT.
- (b) To the fullest extent available at law, each of the NBT and the Land Sub release the Authority, the State of Western Australia and all of its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, servants, agents, contractors, invitees and licensees of any of them from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, equity, tort or statute or any combination thereof which the NBT or the Land Sub may suffer or incur in respect of or in connection with the Project Works.

6.3. Procuring Project Works

The NBT has sole responsibility for the engagement of any consultant, project manager, builders and tradespersons to undertake or oversee any Project Works.

6.4. Obtaining consents and approvals

In undertaking any Project Works, the NBT must obtain all necessary consents, approval and permits, including but not limited to:

- (a) any consent or other approval required for demolition of any existing building or structure on the Property; and
- (b) any building approval or licence including those which are required to be obtained from planning and/or local government in relation to the Project Works.

6.5. Competence of contractors engaged to undertake Project Works

The NBT must ensure that the contractors engaged to undertake any Project Works are appropriately qualified and are compliant with all requisite licensing, registration or approval requirements, including but not limited to requirements for works or demolition where Asbestos may be present.

6.6. Insurance of contractors engaged to undertake Project Works

The NBT must ensure that the contractors engaged to undertake any Project Works are adequately insured.

6.7. NBT to comply with Government policies

In carrying out the Project Works the NBT must comply with the following State Government policies as if it was a State public authority, namely:

- Value for Money.
- Probity and Accountability
- Open and Effective Competition
- Buy local

- Priority Start Building

details of which can be obtained at this website:

<http://www.finance.wa.gov.au/cms/content.aspx?id=3699>

7. Payments from the Fund

- (a) An initial payment of \$500,000 (five hundred thousand dollars) (**Float**) will be released by the Authority to the NBT from the Fund not later than twenty (20) Business Days after the date of the transfer of the first Property by the Authority to the Land Sub.
- (b) The NBT will use the Float to make payments toward the costs of any Project Works undertaken in accordance with the requirements of this Agreement (**Payments**).
- (c) The Authority will reimburse the NBT from the Fund for the Payments (**Reimbursement**) subject to the Float comprising a total of no more than \$500,000 (five hundred thousand dollars) at all times.
- (d) Reimbursements must be based on valid tax invoices provided by the NBT to the Authority and will be subject to:
 - (i) the NBT having first submitted to the Authority a Schedule of Project Works in respect of a Property, and providing any amended Schedule of Works where the anticipated works changes; and
 - (ii) compliance with the Schedule of Project Works or any amended Schedule of Project Works from time to time for that Property.
- (e) Notwithstanding any other provision contained in this Agreement, unless the Parties agree otherwise in writing, the total Reimbursement from the Fund is capped at a maximum of \$2,000,000 (two million dollars) for each financial year of the term of this Agreement commencing from the Commencement Date.
- (f) Once the Fund is exhausted, the balance of the Float must be used by the NBT to pay the costs of any Project Works and accounted for in accordance with clause 7(d), except that no Reimbursements will be made.
- (g) The NBT must repay to the Authority on demand any funds that the Authority has paid which are not used in accordance with this Agreement unless there has been written agreement otherwise between the Parties.
- (h) If the cost of all of the Project Works is less than the Fund, the remaining balance of the Fund will be retained by the Authority.
- (i) If the cost of all of the Project Works exceeds the value of the Fund, the NBT will be responsible for any difference.
- (j) The NBT must provide the Authority with an annual audited statement of income received from the Fund, including the Float, and expenditure on the Project Works (**Audited Statement**) within three (3) months of the end of each financial year for the term of this Agreement.
- (k) If the Audited Statement is not provided to the Authority in accordance with clause 7(j), then notwithstanding any other provision contained in this

Agreement no further payments will be made from the Fund until clause 7(j) is first complied with.

8. Obligations of the NBT and the Land Sub

8.1. Use of Disbursement Payment

The NBT must use all payments from the Fund solely to meet or reimburse the cost of any Project Works undertaken.

8.2. Accounts

The NBT must keep proper financial records in accordance with generally accepted accounting principles and practices in respect of the Project Works.

8.3. Request for Information and Access

- (a) The NBT must provide the Authority with any documents or information relating to this Agreement or to any Project Works anticipated or undertaken, including any progress reports, evaluation reports, contracts and financial records, within ten (10) Business Days of receiving a request from the Authority.
- (b) Upon reasonable notice, the NBT must also provide the Authority, the Auditor General or their respective agents, with access at any reasonable time and from time to time to the NBT's premises, including any of the Properties, financial records, other documents including contracts, equipment and other property for the purpose of audit and inspection by the Authority or the Auditor General in order to verify compliance by the NBT with this Agreement.
- (c) The NBT must ensure that all contracts with contractors in respect of Project Works contain similar provisions which would require any contractor to provide similar access to the Authority and the Auditor General and their respective agents when requested.

8.4. General Undertaking of NBT/Land Sub

The NBT and the Land Sub must:

- (a) at all times duly perform and observe its obligations under this Agreement and will promptly inform the Authority of any occurrence which might adversely affect its ability to do so in a material way;
- (b) undertake its responsibilities under this Agreement with integrity, good faith and probity in accordance with good corporate governance practices;
- (c) comply with all State and Commonwealth laws, rules, regulations and by-laws; and
- (d) cooperate fully with the Authority in the administration of this Agreement.

9. Limitation of Liability

The Authority does not accept any responsibility or liability for the success or otherwise of any Project Works anticipated or undertaken and is not liable for

any losses which may be suffered by the NBT or the Land Sub in undertaking the Project Works.

10. Default and Termination

10.1. Event of Default

An event of default (**Event of Default**) occurs if the:

- (a) NBT or the Land Sub breaches any of its obligations under this Agreement which continues without remedy for ten (10) Business Days after notice in writing has been served on the NBT by the Authority;
- (b) NBT or the Land Sub breaches an obligation under this Agreement which is incapable of being remedied;
- (c) NBT or the Land Sub becomes insolvent or is deemed to be insolvent under the *Corporations Act 2001* (Cth);
- (d) Authority has reasonable grounds to believe that the NBT or the Land Sub is unwilling or unable to comply with its obligations under this Agreement and remains of that belief despite notice in writing having been served by the Authority on the NBT to comply with the NBT's or Land Sub's obligations; or
- (e) Property Transfer Deed is terminated.

10.2. Effect of Event of Default

If an Event of Default occurs, the Authority may:

- (a) terminate this Agreement and recover any funds already paid but not expended on Project Works whether in whole or in part; or
- (b) suspend payments from the Fund.

10.3. Recommencement of Disbursement Payments

Where payments from the Fund have been suspended in accordance with clause 10.2(b), the Authority may, in its absolute discretion, recommence payments if and when the NBT or Land Sub has remedied the Event of Default.

11. Disputes and Mediation

- (a) A Party must not start arbitration or final court proceedings in respect of a dispute arising out of or in connection with this Agreement (**Dispute**) unless it has first complied with this clause.
- (b) A Party claiming that a Dispute regarding this Agreement has arisen must give written notice to the other Party within ten (10) Business Days of the Dispute first arising, giving details of the Dispute (**Notice of Dispute**).

- (c) Each Party must thereafter make all reasonable efforts to negotiate in good faith and reasonably with a view to resolving the Dispute.
- (d) If the Parties have not resolved the Dispute within a period of twenty (20) Business Days after receipt of the Notice of Dispute, they must refer the Dispute to a mediator to be agreed between the Parties.
- (e) If, twenty (20) Business Days after receipt of the Notice of Dispute, the Parties cannot agree on a particular mediator to be appointed, the Parties must request the Chairman of the Institute of Arbitrators and Mediators Australia (WA Chapter) to appoint a mediator.
- (f) Unless otherwise agreed between the Parties, each Party shall jointly bear the costs of any mediation in equal proportion.
- (g) If the Parties are not able to resolve the Dispute through mediation within twenty (20) Business Days of participating in the first mediation with the mediator, or such other period of time as agreed by the Parties, then either Party is thereafter entitled to commence action to resolve the dispute in a court of competent jurisdiction or, if agreed to by the Parties by arbitration under the *Commercial Arbitration Act 2012 (WA)*.
- (h) Any information or documents disclosed by a Party under this clause must be kept confidential and may only be used to attempt to resolve the Dispute, under this clause or otherwise.
- (i) All communications between the Parties made pursuant to this clause are without prejudice to any subsequent action in a court of competent jurisdiction.

12. NBT/Land Sub Indemnity

- (a) The NBT and the Land Sub jointly and severally indemnify and will keep indemnified the Authority, the State of Western Australia and all of its departments, agencies and instrumentalities established by statute (whether expressed to be agents of the Crown or not) and all officers, servants, agents, contractors, invitees and licensees of any of them (the **Indemnified Parties**) from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, equity, tort or statute or any combination thereof which the Indemnified Parties (or any of them) may suffer or incur or which may at any time be brought maintained or made against them (or any of them) in respect of or in connection with:
 - (i) a breach of this Agreement by the NBT or the Land Sub;
 - (ii) any negligent or tortious act or omission of the NBT or the Land Sub arising out of or in connection with this Agreement;
 - (iii) any breach by the NBT or the Land Sub of a State or Commonwealth law arising out of or in connection with this Agreement; and

- (iv) any third party claim arising out of or in connection with this Agreement or the Project Works.
- (b) The NBT's or the Land Sub's liability under this indemnity will be reduced proportionally to the extent caused or contributed to by the Indemnified Parties or their officers, servants, agents, contractors, invitees and licensees.
- (c) The Parties agree to use their reasonable endeavours to cooperate with each other, at their own cost, in respect of the conduct of any defence, or the agreement of any settlement, of any third party action, suit, claim, demand or proceeding the subject of this indemnity.

13. Goods and Services Tax (GST)

- (a) Terms defined in the GST Act have the same meaning when used in this clause, unless expressly stated otherwise.
- (b) Unless expressly stated otherwise, any consideration payable or to be provided or amount used in the calculation of a sum payable under this Agreement has been determined without regard to GST and must be increased, on account of any GST payable under this clause.
- (c) If GST is payable as a consequence of any supply made under or in connection with this Agreement by a party making a supply (Supplier), the recipient of that supply must pay an additional amount for GST (GST Amount) to the Supplier.
- (d) The recipient must pay any GST Amount at the same time and in the same manner as making payment of any consideration on which the GST Amount is calculated. If the GST Amount is not calculated on consideration, the recipient must pay the GST Amount within 7 days of receipt of a written demand by or on behalf of the Supplier.
- (e) For the avoidance of doubt, if a GST Amount is payable on any taxable supply that is made for a period or on a progressive basis and the consideration for the taxable supply is to be provided on a progressive or periodic basis, the recipient must pay the GST Amount, subject to the receipt of a Tax Invoice.
- (f) If at any time an adjustment is made or required to be made between the Supplier or any other payer of GST and the relevant taxing authority on account of any amount paid as GST as a consequence of any supply made under or in connection with this Contract by the Supplier, a corresponding adjustment must be made as between the Supplier and the recipient and any payment necessary to give effect to the adjustment must be made.
- (g) The recipient must pay any amount it is required to pay under this clause in full and without deduction, notwithstanding any entitlement that it may have to a credit or offset however arising.
- (h) As a condition precedent to payment of any GST Amount or any amount including any GST Amount, the Supplier must provide to the recipient a Tax Invoice complying with the GST Act.

- (i) If one of the Parties to this Agreement is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing.

14. Notices

- (a) Any notice or other communication which is required to be given or served under this Agreement (**Notice**) is duly given or served if in writing signed by a person duly authorised by the sender and delivered by hand or sent by prepaid post or facsimile transmission addressed to the other Party referred to in Item 3 of the Schedule.
- (b) Subject to paragraph (c), Notice is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery;
 - (ii) in the case of post, on the third Business Day after posting; and
 - (iii) in the case of facsimile, on the date of transmission; and
- (c) if received after 5.00pm or on a day other than a Business Day, is taken to be received on the next Business Day.

15. Confidentiality

- (a) In this clause 15 **Confidential Information** means all information provided by any of the Parties under or for the purposes of this Agreement:
 - (i) during negotiations preparatory to the execution of this Agreement; and
 - (ii) during the term of this Agreement,that is identified as confidential by the Party providing the information including the addresses of any Properties that are intended for or are transferred by the Authority to the Land Sub, and details of past or current tenants of any of those Properties.
- (b) Subject to the remainder of this clause 15, each Party agrees to keep all Confidential Information confidential and will not disclose Confidential Information to any person except in any of the circumstances described in sub-clause (c).
- (c) Subject to sub-clause (d), a Party receiving Confidential Information may disclose such information in any of the following circumstances:
 - (i) if it has the prior written consent of the Party from whom it received the Confidential Information;
 - (ii) if the information disclosed has come into the public domain through no fault of the Party seeking to make the disclosure;

- (iii) if the information was received from another person having the unrestricted legal right to disclose the Confidential Information
 - (iv) to the extent that the disclosure of the information is reasonably necessary for any processes or applications under any law or related to any approvals;
 - (v) in processes for resolving, settling or progressing any dispute or litigation concerning this Agreement and its subject matter;
 - (vi) to the receiving Party's officers, employees, agents, auditors, advisers, financiers, consultants, contractors, joint venturers and related bodies corporate;
 - (vii) to a Regional Corporation (as defined in the SW ILUAs);
 - (viii) to SWALSC, and when appointed by the NBT, the Central Services Corporation (as defined in the SW ILUAs);
 - (ix) to the legislative or executive arms of the Government of Western Australia;
 - (x) to the extent required by law;
 - (xi) to a Court or tribunal of competent jurisdiction; and
 - (xii) as otherwise permitted or required by this Agreement.
- (d) Before making any disclosure to a person under sub-clause (c), a Party (**Disclosing Party**) must:
- (i) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Disclosing Party's confidentiality obligations under this Agreement;
 - (ii) before making any disclosure (other than under sub-clauses (c) (ix), (x) and (xi)), and only if it is reasonably practicable and lawful to do so, notify the Party from whom it received the Confidential Information and give that Party a reasonable opportunity to take any steps that that Party considers necessary to protect the confidentiality of that information; and
 - (iii) in the case of a disclosure to a person or entity under sub-clause (c)(vi), (vii) and (viii), procure that the person or entity executes a deed with the Disclosing Party, in a form acceptable to the Disclosing Party (acting reasonably), imposing on the person or entity an undertaking of confidentiality having substantially similar effect as this clause 15 other than where the person or entity is under a statutory obligation of confidentiality.
- (e) Each Party acknowledges that:
- (i) it is aware that any breach of this clause 15 may result in the owner of Confidential Information suffering loss or damage, for which monetary damages may not be an adequate remedy; and
 - (ii) in the event of a suspected or actual breach of this clause 15 or of any obligation of confidentiality under this Agreement, any

aggrieved Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause¹⁵; and

- (iii) clause 11 of this Agreement does not apply to this sub-clause (e).
- (f) Disclosure of Confidential Information in connection with this Agreement does not waive or transfer any intellectual property rights in that Confidential Information held by a disclosing Party.

16. General Provisions

16.1. Legal and other costs

Each Party must bear its own legal costs in connection with the preparation, negotiation, execution and completion of this Agreement.

16.2. Assignment and Encumbrances

- (a) No Party may assign, transfer, novate or otherwise dispose of its rights, title, obligations or interests under this Agreement in any circumstances.
- (b) The NBT and the Land Sub must not grant any encumbrance, mortgage or charge in respect of the whole or any part of its rights, title, obligations and interests under this Agreement in any circumstances.

16.3. Entire agreement

This Agreement and the documents referenced herein constitute the entire agreement between the Parties as to its subject matter and, in relation to that subject matter, supersedes any prior understanding or agreement between any of the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

16.4. Governing law and jurisdiction

- (a) This Agreement is governed by the law applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia.

16.5. Severance

If any provisions of this Agreement is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this Agreement to the extent necessary unless it would materially change the intended effect and objectives of this Agreement.

16.6. Waiver

A right or power under this Agreement shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or

power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and

- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

16.7. No merger

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Agreement.

16.8. Counterparts

This Agreement may be executed in a number of counterparts. All counterparts together will be taken to constitute the one instrument. If this Agreement is to be executed in counterparts the Parties must execute sufficient numbers for each of them to retain one instrument (as constituted by the counterparts).

16.9. Further action

Each Party must use its best efforts to do all things necessary or desirable to give full effect to this Agreement and the matters contemplated by it.

16.10. Survival

Clauses 1, 7, 8, 9, 10.2, 12, 13, 14, 15 and 16 survive termination of this Agreement.

Executed by the Parties as an agreement on the _____ day of _____ 2014

The common seal of)
the **Housing Authority**)
was hereunto affixed in)
the presence of the)
DIRECTOR GENERAL)

Grahame John Searle

THE COMMON SEAL of the)
Noongar Boodja Trust (Insert ACN))
was hereunto affixed in the)
presence of:)

**We will need the correct
execution clause for
the NBT**

.....
Signature of Authorised Person

.....
Signature of Authorised Person

.....
Name of Authorised Person in full
(block letters)

.....
Name of Authorised Person in full (block
letters)

THE COMMON SEAL of Land Sub)
ABN ## was hereunto affixed in the)
presence of:)
)

**We will need the correct
execution clause for
the NBT**

.....
Signature of Authorised Person

.....
Signature of Authorised Person

.....
Name of Authorised Person in full
(block letters)

.....
Name of Authorised Person in full (block
letters)

SCHEDULE

Item 1: Fund

\$10,000,000 (ten million dollars).

Item 2: Schedule of Project Works

The following table should accompany all Tax Invoices.

| Schedule of Project Works as at [Insert Date] | | | | |
|--|-----------------------|---|-----------------------|-----------------|
| Property Details | | Project Works | BCA Ref Number | Expenses |
| Lot No. | Street Address | Description of activities undertaken | | \$ |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Total Expenses for the Period | | | | \$ |

Item 3: Notice Addresses for Service

(a) Authority

| | |
|----------------------|--|
| Contact Person: | |
| Address for Service: | |
| Telephone No: | |
| Facsimile No: | |

(b) NBT

| | |
|----------------------|--|
| Contact Person: | |
| Address for Service: | |
| Telephone No: | |
| Facsimile No: | |

(c) Land Sub

| | |
|----------------------|--|
| Contact Person: | |
| Address for Service: | |
| Telephone No: | |
| Facsimile No: | |