



Department of
**Local Government, Sport
and Cultural Industries**

STATE OF WESTERN AUSTRALIA

and

Town of Victoria Park

GRANT AGREEMENT

LOCAL PROJECTS AND LOCAL JOBS FUNDING

Planning and/or construction of a synthetic hockey turf for the Victoria Park Xavier
Hockey Club

MET506

2020/21

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THIS AGREEMENT dated

BETWEEN

The State of Western Australia represented by its Department of Local Government, Sport and Cultural Industries ABN: 14445022107 ("**the State**")

and

The Party whose name and address is set out in Schedule 1 ("**the Organisation**")

RECITALS

The Organisation is undertaking the Project.

The State has agreed to contribute funding towards the Project on the provisions of this Agreement.

OPERATION PART

The parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this agreement, including any recitals, schedules, annexures and appendices.

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

Business Day means any day when banks are open for business in the Perth central business district, Western Australia.

Grant means the grant money described as such in Schedule 1.

Grant End Date means the date set out as such in Schedule 1 by which the Project must be completed and the Grant fully acquitted or such other date as is approved in writing by the State, in the State's absolute discretion, on the request of the Recipient.

GST means the goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the happening of any of the following events in relation to the Organisation:

- (a) an application is made to a court for it to be wound up or for the appointment of a provisional liquidator;

- (b) a meeting is convened to place it in voluntary liquidation or to appoint an official manager or an administrator or a controller of any of its assets;
- (c) the appointment of a liquidator, provisional liquidator, official manager or administrator, receiver or receiver and manager of any of its assets, or a controller of any of its assets;
- (d) it is wound up or dissolved;
- (e) it proposes to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them;
- (f) it goes into any form of external administration;
- (g) it is, or is to be regarded as being under and law including section 460(2) or section 585 of the Corporations Act, insolvent or unable to pay its debts; or
- (h) it becomes an insolvent under administration as defined in section 9 of the Corporations Act.

Laws mean legislation, subsidiary legislation (including by-laws, rules and regulations) and rules of law and equity.

Milestones means the milestones described as such in Schedule 1.

Notice includes direction, request, consent, notification and other communication.

Obligation means an obligation under this Agreement.

Party means The Department or the Organisation and **Parties** means both of them.

Project means the project described as such in Schedule 1.

Provision means term, condition, promise, undertaking or warranty in or of this Agreement.

Records means the written records referred to in clause 6.1.

Reports means the written reports referred to in clause 6.4.

Right means right, power or remedy.

Special Conditions means those Provisions specified as Special Conditions in Schedule 1.

State means the State of Western Australia.

Term means the period specified in Schedule 1 of this agreement.

The Department means the Department of Local Government, Sport and Cultural Industries.

1.2 Interpretation

In the Agreement, unless the contrary intention appears:

- (a) headings, underlining and numbering are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) a gender includes every gender;
- (d) the word "person" includes a firm, company, partnership, joint venture, association, corporation or other body corporate or a government authority;
- (e) references to parts, clauses and parties are reference to parts and clauses of, and parties to, the Agreement;
- (f) a reference to a statute, regulation, proclamation, ordinance or by-law includes every statute, regulation, proclamation, ordinance or by-law varying, consolidating or replacing it, and a reference to a statute includes every regulation, proclamation, ordinance or by-law issued under that statute;
- (g) a reference to an agreement includes an undertaking, deed, agreement, guarantee or legally enforceable arrangement or understanding, whether or not in writing;
- (h) a reference to a document includes an agreement in writing, or a certificate, notice, instrument or other document of any kind and includes every permitted amendment, variation or supplement to, or replacement or novation of, that document;
- (i) a reference to a party to the Agreement or to another document referred to in the Agreement includes that Party's successors and permitted assigns;
- (j) where a day on or by which a thing is required to be done is not a Business Day, that thing is to be done on or by the succeeding Business Day;
- (k) an obligation, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- (l) an obligation, representation or warranty on the part of 2 or more persons binds them jointly and severally;

- (m) each obligation of one Party to the other of them has effect as a covenant;
- (n) where the words "including" or "includes" are used, they are to be taken to be followed, where the context allows, by the words "but not limited to";
- (o) in the interpretation of the Agreement, no rules of construction apply to the disadvantage of a party because that Party was responsible for the drafting of the Agreement or of a part of the Agreement;
- (p) a reference in the Agreement to a sub-clause, paragraph or sub-paragraph is a reference to a sub-clause, paragraph or sub-paragraph of the clause or definition in which the reference occurs.

2. PROJECT

The Organisation must carry out the Project strictly in accordance with this Agreement.

3. PAYMENT OF GRANT

The Organisation must claim, and the State must pay, the Organisation the Grant in accordance with this Agreement. The Organisation may only apply for and be entitled to payment of the Grant on or before the Grant End Date.

4. USE OF GRANT

- 4.1 The Organisation must use the Grant for the performance of its obligations under clause 2, and for no other purpose.
- 4.2 The Organisation must use the Grant in a competent, diligent, satisfactory and professional manner, and to a high standard and in a manner which obtains the best value for money for taxpayer's money.

5. PROJECT

- 5.1 The Organisation must comply with all Laws and applicable industry codes (howsoever described) in relation to its carrying out of the Project.
- 5.2 The Organisation must comply with the purchasing requirements set out in Schedule 2. The Organisation must not "contract split" to avoid the intent of this clause.
- 5.3 The Organisation must comply with the Western Australian Government's Buy Local policy in carrying out the Project.
- 5.4 The Organisation must achieve the Milestones by the times and in accordance with any other stipulations set out in Schedule 1.

- 5.5 The Project, as constructed or purchased, must be of a good quality and fit for purpose.
- 5.6 In undertaking its Obligations the Organisation must act with integrity, good faith and probity in accordance with good corporate governance practices.
- 5.7 The Organisation must effect and maintain throughout the Term adequate insurance, with a reputable insurer, to provide cover for the Project undertaken by the Organisation, including Public Liability and Workers' Compensation insurances and property insurance covering loss of or damage to any property that the Organisation uses on the Project for its full replacement value, and produce evidence of this fact to the Department on demand.

6. RECORDS

- 6.1 The Organisation must keep complete, up-to-date, accurate and detailed written records of:
 - (a) income or funds for or on account of the Project (including the source/s) of such income or funds;
 - (b) expenditure or other financial commitment in respect to the Project on an individual supply and supplier basis;
 - (c) labour used on the Project, including payment therefor;
 - (d) challenges, set-backs and actual or proposed solutions, associated with the Project;
 - (e) proposed, actual, and achieved time-frames associated with the Project; and
 - (f) actual or likely problems or difficulties with staff or contractors working on the Project (including any actual or proposed solutions).
- 6.2 The Department may inspect and make and take copies of the Records at any time and from time to time.
- 6.3 If the Department requires the Organisation to provide the Department with information or documentation relating to or touching on any aspect of the Project (including the cost thereof), the Grant or this Agreement, the Organisation must:
 - (a) promptly and properly comply with such requirement; and
 - (b) ensure that all information and documentation so provided is accurate, complete, sufficiently detailed, up-to-date and neither misleading nor deceptive.

- 6.4 The Organisation must, if and when requested by the Department, provide the Department with a detailed written report properly and comprehensively addressing all the matters set out in clause 6.1(a) to (f) inclusive.
- 6.5 The Recipient must provide to the Department a report (the Acquittal) at the completion of the Project or the conclusion of this Agreement (whichever occurs first), which must include a financial report (certified by the Chief Financial Officer or Accountable Officer of the Recipient and audited by an Auditor) certifying that the Funding was used for the Project. The Acquittal must be submitted within three (3) months after the completion of the Project.
- 6.6 Clauses 6.1 to 6.5 inclusive survive the end of this Agreement by 3 years.

7. FREEDOM OF INFORMATION ACT 1992 AND FINANCIAL MANAGEMENT ACT 2006

- 7.1 The Organisation acknowledges and agrees that this Agreement and information regarding it is subject to the *Freedom of Information Act* 1992 and that the State may publicly disclose information in relation to this Agreement, including its terms and the details of the Organisation.
- 7.2 The Parties acknowledge and agree that, despite any provision of this Agreement to the contrary, the powers and responsibilities of the Auditor General under the *Financial Management Act* 2006 (WA) are not limited or affected by this Agreement.
- 7.3 The Organisation must allow the Auditor General, or an authorised representative, to have access to and examine the Organisation's Records and information concerning the Agreement.

8. NO LIABILITY OF STATE

Neither the State nor any department, agency, instrumentality or emanation of the State (and any Minister, officer or employee of any of them) shall be:

- (a) liable, in negligence or otherwise, for the success or otherwise of the Project; or
- (b) responsible for any losses or financial shortfalls encountered by the Organisation in connection with the Project.

9. ACKNOWLEDGMENT OF STATE

The Organisation must acknowledge the State Government's contribution to the Project as may be reasonable or as requested by the State in writing, for the term of this Agreement. This acknowledgement must include:

- Project signage;
- Acknowledgement of the financial contribution in any written or verbal media involving the Project, including the State Government Logo and the phrase “supported by the Local Projects, Local Jobs program”;
- Invitation to and involvement in any official openings or events regarding the Project; and
- Use of the State Government Logo as requested and approved by the Department.

10. DEFAULT

10.1 Event of Default

- (a) The Parties agree that it is an Event of Default if:
 - (i) progress of the Project is not, in the reasonable opinion of the Department, satisfactory;
 - (ii) the Organisation breaches a Provision which breach cannot be remedied;
 - (iii) the Organisation breaches any other Provision and that breach is not remedied within a reasonable period of time after the Department gives a Notice to the Organisation requiring the breach to be remedied;
 - (iv) in the reasonable opinion of the State the reputation of the State is, or is likely to be, damaged by any act or omission of, or any conduct by, the Organisation;
 - (v) the Organisation commits 3 or more breaches of this Agreement in any given 180-day period; or
 - (vi) this Agreement or any part of it is for whatever reason void or invalid as against the Organisation.
- (b) Upon the happening of an Event of Default, the State may terminate this Agreement.
- (c) Whilst the Organisation is in breach of a Provision, the State may suspend the performance of its Obligations.

10.2 Other Termination Events

If this Agreement provides for or contemplates the Parties reaching further agreement on something and they fail to do so within a reasonable time the State may terminate this Agreement by Notice to the Organisation..

10.3 Consequences of Event of Default

If an Event of Default occurs or the State is entitled to otherwise terminate this Agreement then:

- (a) the Organisation must immediately take all action necessary to cease further expenditure of the Grant;
- (b) upon demand by the State, the Organisation must immediately repay to the State the Grant less costs in respect of approved purposes under clause 4.1:
 - (i) already properly incurred by the Organisation; and
 - (ii) not yet paid by the Organisation but which are due and payable,

provided that in respect of such costs, the Organisation has provided the State within 5 Business Days after the State's demand:
 - (A) documentary evidence that such costs were properly incurred in accordance with this Agreement; and
 - (B) in respect of costs referred to in clause 10.3(b)(i), documentary evidence that the Organisation has paid such costs.

However, if an Event of Default involves expenditure of the Grant contrary to this Agreement, then upon demand by the State, the Organisation must immediately repay to the State all amounts of the Grant improperly spent or committed.

11. PAYMENT OBLIGATIONS

In compliance with the Australian Taxation Office (ATO), the Recipient (the Department) and the Supplier ORGANISATION agree that:

The grant funding referred to in this funding agreement/application is exclusive of GST.

- (a) If the ORGANISATION **is registered for GST**, the grant will be 'grossed up' by 10% of the grant amount. The Department will issue the ORGANISATION with a Recipient Created TAX Invoice (RCTI) with the grant payment.
- (b) If the ORGANISATION **is not registered for GST** and has an ABN then a payment will be processed in accordance with the funding agreement.

- (c) If the ORGANISATION **is not registered for GST** and does not have an ABN, the ORGANISATION must investigate their eligibility to obtain an ABN with the ATO. If the ORGANISATION **does not** have an ABN, 49% of the grant amount will be withheld and forwarded to the ATO on your behalf, as per ATO legislation. Refer the ATO website – <http://www.ato.gov.au/businesses>, ABN, Introduction to ABN, NO ABN withholding – questions and answers.
- (d) With regard to Recipient Created Tax Invoices (RCTI), the Department (recipient) and the ORGANISATION (supplier) agree that:
- (i) The recipient can issue tax invoices in respect of the supplies;
 - (ii) The supplier will not issue tax invoices in respect of the supplies;
 - (iii) The supplier acknowledges that it is registered for GST when it lodges this application and that it will notify the recipient if it ceases to be registered;
 - (iv) The supplier acknowledges that it is registered when it lodges this application and that it will notify the recipient if it ceases to be registered for the GST or if it ceases to satisfy any of the requirements of the Commissioner's determination of the classes of invoices that recipients may issue; and
 - (v) The supplier must not issue a document that would otherwise be a RCTI, on or after that date when the recipient or the supplier has failed to comply with any of the requirements of the Commissioner's determination of the classes of invoices that recipients may issue.

12. RELATIONSHIP

The Parties acknowledge and agree that nothing in this Agreement may be construed to make either of them a partner, agent, employee or joint venturer of the other.

13. ADMINISTRATION OF THIS AGREEMENT BY THE DEPARTMENT

The Organisation acknowledges that the Department will be administering this Agreement for and on behalf of the State but the State may transfer responsibility for the administration of this Agreement to any another State Government department or agency from time to time.

14. NOTICES

14.1 Notices

A Notice that may or must be given in connection with this Agreement:

- (a) must be in writing;

- (b) may be given by an authorised officer of either Party; and
- (c) must be:
 - (i) sent by prepaid ordinary post to, or left at the address of, the addressee at the address set out in clause 14.4;
 - (ii) sent by facsimile to the facsimile number of the addressee set out in clause 14.4; or
 - (iii) sent by email to the email address set out in clause 14.4.

14.2 Receipt of Notices

A Notice takes effect from the time it is received, unless a later time is specified in the Notice. For the purposes of this clause 14, a letter or facsimile is taken to be received:

- (a) in the case of a letter sent by post, on the third Business Day after posting;
- (b) in the case of a facsimile, on production of a transmission report from the facsimile machine from which the notice or communication was sent which shows that the entire facsimile was sent to the facsimile number of the addressee set out in clause 14.4; and
- (c) in the case of email, at the time of transmission.

14.3 Receipt of Notices

A Notice which is received after 5.00 pm on a day is taken to be received on the next Business Day after that day.

14.4 Address for Service

The Parties' addresses for service are as follows:

- (a) State's address for service:

Department of Local Government, Sport and Cultural Industries
246 Vincent St, LEEDERVILLE, WA, 6007
PO Box 8349, PERTH BUSINESS CENTRE, WA, 6849
grant.admin@dlgsc.wa.gov.au

- (b) To the Organisation:

Town of Victoria Park
Locked Bag 437
VICTORIA PARK WA 6979
sbillingham@vicpark.wa.gov.au

15. WAIVER

- (a) No Right under this Agreement shall be deemed to be waived except by Notice signed by each Party.
- (b) A waiver by either Party pursuant to this clause 15 will not prejudice that Party's Rights in respect of any subsequent breach of this Agreement by the other Party.
- (c) Any failure by either Party to enforce any Provision, or any forbearance, delay or indulgence granted by one Party to the other Party will not be construed as a waiver of Rights under this Agreement.

16. PARTIES' RIGHTS

A Party may exercise a Right at its discretion, and separately or concurrently with another Right. A single or partial exercise of a right by a Party does not prevent a further exercise of that or an exercise of any other Right. Failure by a Party to exercise or delay in exercising a Right does not prevent its exercise.

17. REMEDIES

The Rights provided in this Agreement are cumulative with and not exclusive of the Rights provided by law or available in equity independently of this Agreement.

18. ENTIRE AGREEMENT

This Agreement constitutes the full and complete understanding between the Parties in relation to its subject matter and supersedes all prior negotiations, understandings and agreements with respect thereto.

19. SUPERVENING LEGISLATION

Any present or future legislation which operates to vary an obligation or Right of a Party or any person in connection with this Agreement is excluded except to the extent that its exclusion is prohibited or rendered ineffective at law.

20. GOVERNING LAW AND JURISDICTION

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

21. SPECIAL CONDITIONS

The Special Conditions form part of this Agreement.

22. SCHEDULE

Each expressed or implied Provision of any schedule hereto must be complied with in accordance with its terms.

23. NO ASSIGNMENT

This Agreement is personal to the Organisation. It may not be assigned or otherwise dealt with without the prior consent in writing of the State.

24. SIGNATURES

This Agreement may be executed by the Parties electronically and in counterpart.

SCHEDULE 1

1. Name and address of Organisation:

Town of Victoria Park

ABN: 77 284 859 739

Locked Bag 437

VICTORIA PARK WA 6979

2. Description of Project:

Planning and/or construction of a synthetic hockey turf for the Victoria Park Xavier Hockey Club

3. Grant and method of payment:

\$250,000

This payment will be made upon evidence of expected expenditure against an eligible cost of the Project, at mutually agreeable milestones between the Organisation and the State to:

BSB: 066-000

Account No: 1007 4440

By signing this Agreement on behalf of the Organisation the signatory to this Agreement confirms that the above bank details are true and correct and in the name of the ABN Holder.

4. Grant End Date:

15 June 2024

5. Term

The Term of the Agreement is four years from the date of execution of this Agreement by the State.

6. Special Conditions:

The Organisation must seek written approval from the State before committing funds under this Agreement, to ensure it is consistent with the Project.

SCHEDULE 2

Purchasing Processes: Up to \$5,000

The Organisation may source quotations for purchases/contracts valued below \$5,001 from suppliers / contractors by direct purchase. A minimum of one written quotation is required. Where the funding is being used for multiple items, that is – items of a different type, a minimum of one written quote for each item type is required. A copy of the quote may be requested by the Department for its records.

Purchasing Processes: Between \$5,001 and \$20,000

Planning for the purchase of goods or services is essential to meet identified needs.

The Organisation must allow sufficient time to allow for a considered and appropriate purchasing process to ensure that 'Value for Money' is obtained.

- For purchases / contracts in this price bracket two written quotations are generally required. Where this is not possible, for example the purchase is for an item where there are limited suppliers within Western Australia, the Organisation is required to certify this is the case in writing to the Department and the Department may accept a lesser number.
- All quotes must be documented and kept on an appropriate file by the Organisation with copies provided to the Department when requested for its records.

Purchasing Process: Over \$20,001

For purchasing/contracting exceeding \$20,001 the Organisation, in procuring goods and services in relation to the Project, must use an open, fair, competitive and transparent process and demonstrate to the Department that it has done so.

A minimum of three written quotations is required.

Where the Organisation is a Local Government Authority it must abide by its standard contracting and tendering guidelines.

the Department can provide guidance to non-government grantees on an appropriate purchasing process if required.

Authorised on behalf of the **Minister of Sport and Recreation** by **Kim Ellwood**,
Executive Director Sport and Recreation at the Department of Local Government, Sport
and Cultural Industries.

K Ell

Authorised on behalf of the
Town of Victoria Park

Anthony Vuleta

(Signed)

Anthony Vuleta

(Printed name)

Chief Executive Officer

(Position held)

Date 23 December 2020

in the presence of:

Alison Podmore

(Witness Sign)

Alison Podmore

(Witness printed name)

Executive Officer

(Witness position held)