

Memorandum of Understanding  
- Amenities/Clubhouse Facility  
Faye Gladstone Netball Courts,  
Hamilton Road South Hedland

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Town of Port Hedland

Port Hedland Netball Association Inc



McLEODS

Barristers & Solicitors

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# Details

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## Parties

### Town of Port Hedland

of PO Box 41, Port Hedland, Western Australia  
(Town)

### Port Hedland Netball Association Inc

of PO Box 2117, South Hedland, Western Australia  
(PHNA)

## Background

- A The Town is vested with care, control and management of the land described in **Item 1** of the Schedule (**Land**) for the purpose of “Recreation”.
- B The Town in association with PHNA intends to construct a new purpose built amenities facility as described in **Item 2** of the Schedule on the Land and depicted in **Annexure A** (**Facility**), which upon completion will be used by PHNA.
- C PHNA applied for and obtained the grant of funds described in **Item 3** of the Schedule (**Grant**), which is to be applied toward the cost of designing and constructing the Facility.
- D The Parties enter into this Memorandum of Understanding (**MOU**) to outline the agreement reached in relation to the provision of grant funds to the Town for the purpose of construction of the Facility on the Land, including:
- (a) grant funds from BHP Billiton Iron Ore (**BHPBIO**) pursuant to a funding agreement between the Town and BHPBIO a copy of which is annexed as **Annexure B**; and
  - (b) the Grant to PHNA from Pilbara Development Commission (**PDC**) through the Royalties for Regions funding program (**RFR**) pursuant to a funding agreement between PHNA and PDC a copy of which is annexed as **Annexure C**.

# Agreed terms

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## 1. Construction of Facility

- (1) Subject to clause 2, the parties acknowledge and agree that the Town will undertake and manage construction of the Facility on the Land and will use reasonable endeavours to comply with the project time frames set out in **Annexure D**.
- (2) The Town will appoint a suitably experienced consultant team (Architectural and Construction) to construct the Facility.
- (3) It is anticipated that construction of the Facility will commence by {TBA} and be completed by {TBA}.
- (4) The parties acknowledge and agree that the estimated cost of constructing the Facility at is \$1,270,000, which will be funded through the following means:
  - (a) \$922,095 from BHPBIO including \$12,000 as a contribution towards the first three years of operational costs associated with the Facility;
  - (b) \$212,905 residual from BHPBIO and Town of Port Hedland partnership funds;
  - (c) \$170,000 from the Grant to PHNA, funded by PDC through the RFR funding program.
- (5) The funding referred to in subclause (4) will be applied by the Town to the costs for construction of the Facility, an estimated breakdown of which is provided in **Annexure E**.

## 2. Payment of Grant to the Town

- (1) PHNA shall apply the Grant toward the costs incurred by the Town in the design and construction of the Facility (**Facility Costs**) in accordance with clause 2.2 and shall not use or expend the Grant for any other purpose.
- (2) PHNA shall pay from the Grant any invoice provided to it by the Town for Facility Costs within 7 days until such time as the total amount of the Grant is expended.
- (3) Any amount of the Grant paid to the Town by PHNA shall be applied to the Facility Costs and shall not be used for any other purpose.

## 3. Use of Facility

Upon:

- (a) completion of the Facility; and
- (b) PHNA entering into a lease or licence of the Land or Facility, if it has not already done so, the terms and conditions of which shall be to the satisfaction of the Town,

PHNA will be entitled to use of the Facility for sporting and recreational purposes.

#### 4. Legally enforceable

The terms of this MOU are intended to be legally enforceable.

#### 5. Further assurance

Each party shall promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete under the provisions of this MOU and any transaction contemplated by it.

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# Schedule

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## Item 1 Land

Faye Gladstone Netball Courts, Reserve Number 31895 being land more particularly described as Lot 602 on Deposited Plan 71984 Certificate of Crown Land Title Volume LR3161 Folio 582

## Item 2 Facility

An amenities/clubhouse facility on the Land as depicted on the plan attached as Annexure A.

## Item 3 Grant

Funding from the PDC through the RFR funding program in the amount of \$170,000, with \$80,000 allocated specifically for detailed design. The balance of the Grant funds are allocated to the construction phase of the project.

Draft

# Signing page

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**EXECUTED**

2015

The **COMMON SEAL** of the **TOWN OF PORT HEDLAND** was hereunto affixed by authority of a resolution of the Town in the presence of:

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
(Print full name)

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
(Print full name)

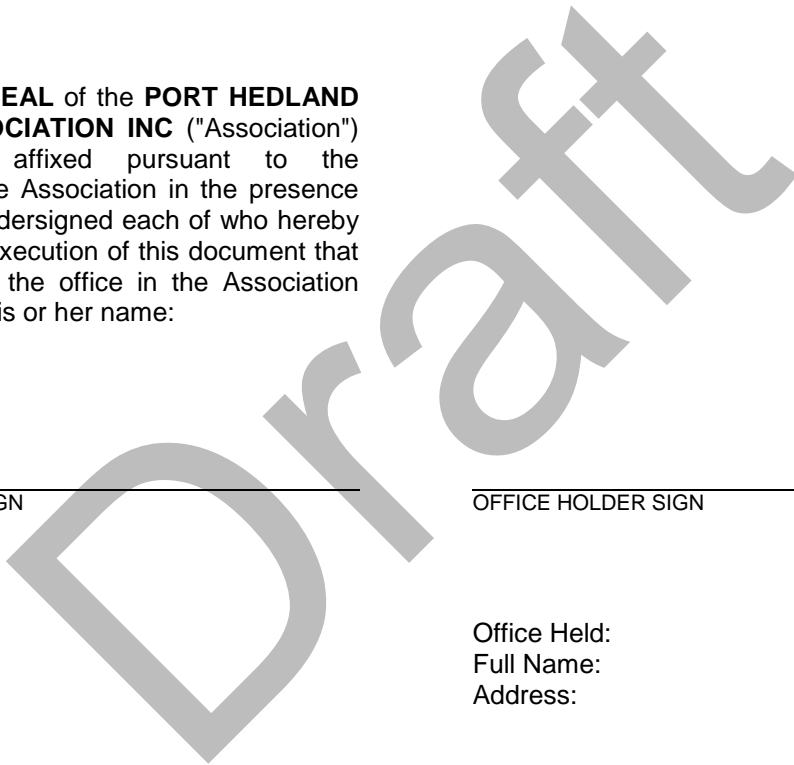
The **COMMON SEAL** of the **PORT HEDLAND NETBALL ASSOCIATION INC** ("Association") was hereunto affixed pursuant to the constitution of the Association in the presence of each of the undersigned each of who hereby declares by the execution of this document that he or she holds the office in the Association indicated under his or her name:

\_\_\_\_\_  
OFFICE HOLDER SIGN

\_\_\_\_\_  
OFFICE HOLDER SIGN

Office Held:  
Full Name:  
Address:

Office Held:  
Full Name:  
Address:

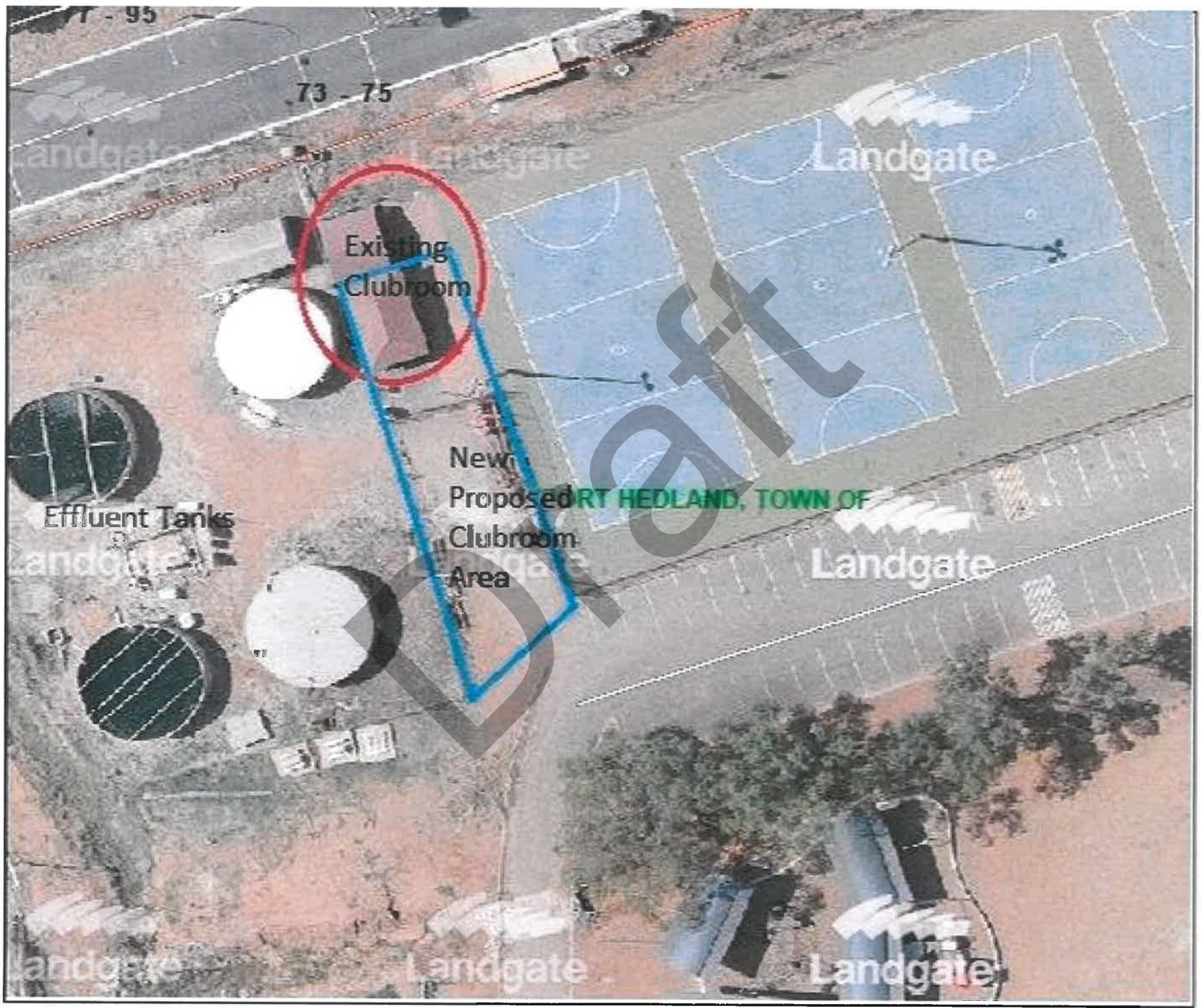


# Annexure A – Plan of Facility

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7 - 95

73 - 75

Existing Clubroom

New Proposed Clubroom Area

Effluent Tanks

RT HEDLAND, TOWN OF

Landgate

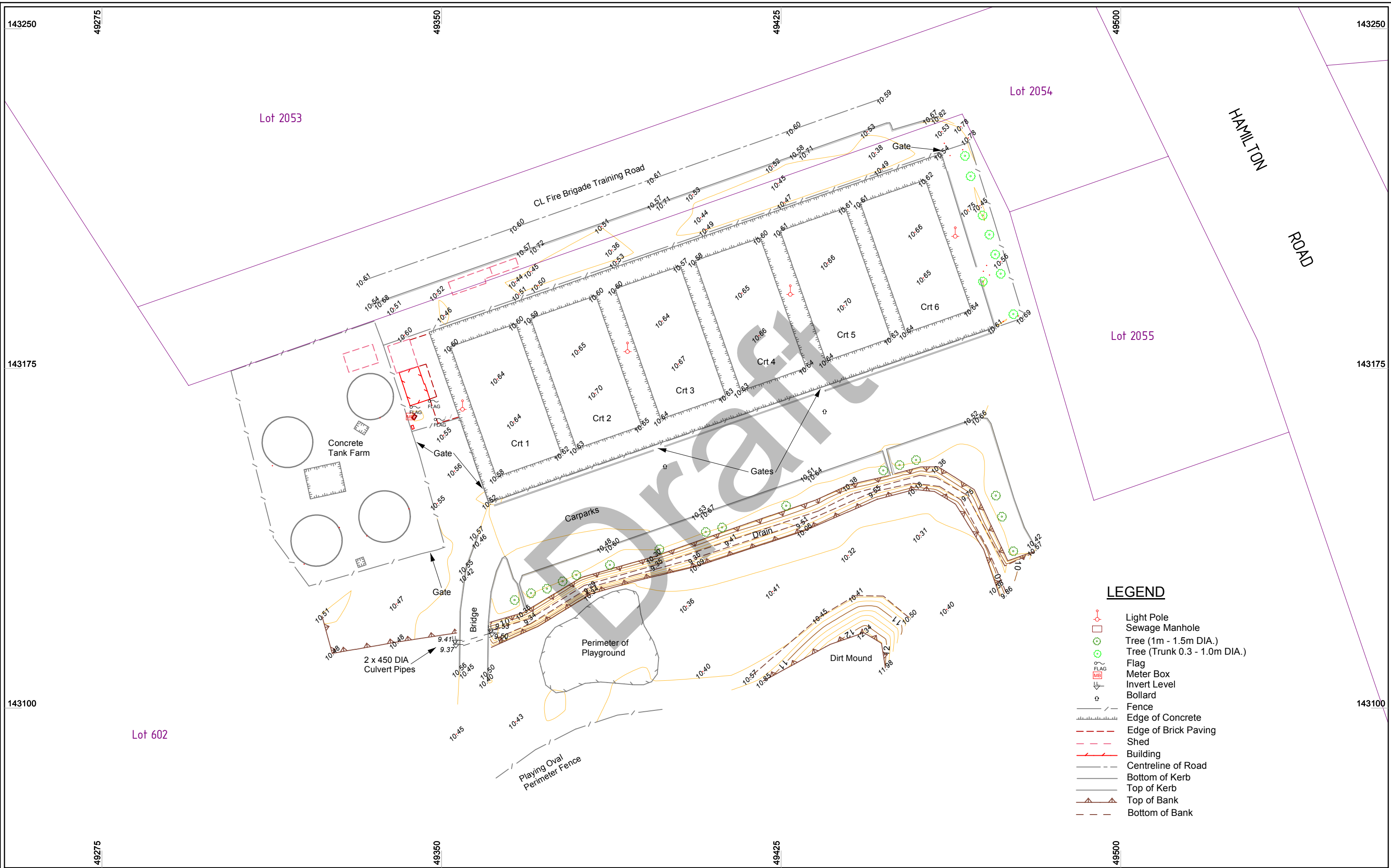
Landgate

Landgate

Landgate

Landgate

Draft



**LEGEND**

- Light Pole
- Sewage Manhole
- Tree (1m - 1.5m DIA.)
- Tree (Trunk 0.3 - 1.0m DIA.)
- Flag
- Meter Box
- Invert Level
- Bollard
- Fence
- Edge of Concrete
- Edge of Brick Paving
- Shed
- Building
- Centreline of Road
- Bottom of Kerb
- Top of Kerb
- Top of Bank
- Bottom of Bank

Rev.	Description	Drawn	Date	Checked
A	Initial Issue	CEB	20/01/2014	TAV

SCALE 1:750 @ A3  
 0 10 20 30 40 50  
 ALL DISTANCES ARE IN METRES  
 For a true to scale reproduction of this plan, plot it to A3 with the Pacing Scaling set to None.

The contents of this plan are current and correct as of the date stated within the revision panel. All consultants and persons wishing to utilise this data should satisfy themselves of this plan's currency by contacting the McMullen Nolan Group.

Surveyor: MJ  
 Survey Date: 16/01/2014  
 Precal/Cad: WALIS

FILES  
 File - Drawing  
 98384B - 98384.de-001a



The boundaries shown on this plan were not re-established as part of this survey, therefore this plan does not guarantee their accuracy. Existing easements, encumbrances or interests are not depicted and a title search is recommended to obtain this information. Re-establishment of the cadastral boundaries is recommended for any proposed works on or near existing boundaries.

**bsi** ISO 9001 Quality Management

**McMULLENOLAN GROUP**  
 Surveying Excellence

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 ABN 90 009 363 311

**NETBALL CLUB SOUTH HEDLAND DETAIL SURVEY**

CLIENT: **RFF AUSTRALIA**

Project Mng: Trevor Veen Datum: PHG94 / AHD

**98384 - DE - 001 - A**

Job Number Type Plan Number Revision

# Annexure B – BHPBIO Funding Agreement

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Draft



**bhpbilliton**  
resourcing the future

## Iron Ore

BHP Billiton IO Mining Pty Ltd  
ABN 71 153 371 138  
125 St Georges Terrace  
Perth WA 6000 Australia  
PO Box 7122 Cloisters Square  
Perth WA 6850 Australia  
Tel +61 8 63210000 Fax +61 8 63229978  
bhpbilliton.com

22 October 2015

Graeme Hall  
Manager Recreation Services  
Town of Port Hedland  
PO Box 41  
PORT HEDLAND WA 6721

Dear Graeme

### **Faye Gladstone Netball Court Upgrade**

I write in regards to the above mentioned project, which was recently considered for funding from our executive.

I am pleased to inform you that we have now finalised all approval requirements and I can confirm that funding support of \$1,142,000 has been confirmed.

Whilst this letter confirms our approval we request the provision of key performance indicators, and related timeframes in a table form, for us to finalise the deliverables under the Agreement for this project. Recognition elements will also need to be provided to us for approval.

I look forward to working with the Town of Port Hedland on this worthwhile project.

If you have any queries in relations to this please do not hesitate to contact me.

Yours sincerely

### **Peta Greening**

Team Leader Community Relations Port Hedland  
Group Corporate Affairs

# Annexure C – PDC Funding Agreement

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Draft



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**REGIONAL GRANT SCHEME GRANT AGREEMENT**

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**Faye Gladstone Netball Court Redevelopment  
Project (Clubhouse)**

**Pilbara Development Commission**

**And**

**Port Hedland Netball Association**

THIS GRANT AGREEMENT is made on \_\_\_\_\_

**BETWEEN:**

**Pilbara Development Commission**  
**("Grantor")**

and

**Port Hedland Netball Association    A.B.N. 123 188 244 27**  
**("Grantee")**

## **RECITALS**

The Grantee has applied to the Grantor for financial assistance to undertake the Approved Purpose and the Grantor has agreed to provide a grant from the Royalties for Regions, Regional Grant Scheme subject to the terms and conditions of this Agreement.

**THE PARTIES AGREE as follows:**

### **1. DEFINITIONS AND INTERPRETATION**

In this Agreement, unless the context otherwise requires:

**Agreement** means this agreement, including its recitals and any schedules or annexures (if any).

**Acquittal** occurs when the Grantor has advised the Grantee that the reports and financial information provided by the Grantee in accordance with clause 3.6 are satisfactory.

**Acquittal Date** means the date that Acquittal occurs.

**Acquittal Report** means that report referred to in Schedule 2.

**Application** means the original grant application.

**Approved Budget** means the budget approved by the Grantor and attached to this Agreement as attachment A.

**Approved Purpose** means the purpose or purposes set out in item 2 of Schedule 1.

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

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

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

**Commencement Date** means that date for commencement of the Project specified in item 3 of Schedule 1.

**Completion Date** means that date for completion of the Project as specified in item 3 of Schedule 1.

**Event of Default** means an event of default described in clause 9.1.

**Grant Funds** means the amount or amounts specified in item 4 of Schedule 1.

**Insolvency Event** means the happening of any of these events:

- (a) an application is made to a court for an order that a Party be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed, unless the application is withdrawn, struck out or dismissed within 7 days of it being made;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to any of its assets;
- (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
- (e) it proposes a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors, or its winding up or dissolution;
- (f) it is insolvent as disclosed in its accounts or otherwise states that it is insolvent or it is presumed to be insolvent under an applicable law;
- (g) it is taken to have failed to comply with a statutory demand;
- (h) a writ of execution is levied against it or its property; or
- (i) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

**Party** means each of the Grantor or the Grantee as the context requires and **Parties** means both of them.

**Project** means the initiative or activities to be undertaken with the Grant Funds specified in Schedule 1.



**Region** means the Pilbara region, as defined in the Regional Development Commissions Act 1993.

**Special Conditions** means any conditions specified in item 5 of Schedule 1.

## 1.2 Interpretation

- (a) In this Agreement, unless the context otherwise requires the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a public body, a company and an incorporated or unincorporated association or body of persons and also includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (e) if the Grantee consists of a partnership or joint venture, then:
  - (i) an obligation imposed on the Grantee under this Agreement binds each person who comprises the Grantee jointly and severally;
  - (ii) each person who comprises the Grantee is deemed to agree to do all things necessary to enable the obligations imposed on the Grantee under this Agreement to be undertaken;
  - (iii) the act of one person who comprises the Grantee binds the other persons who comprise the Grantee; and
  - (iv) an Event of Default by one person who comprises the Grantee constitutes an Event of Default by the Grantee;
- (f) an agreement, representation or warranty on the part of, or in favour of, 2 or more persons binds, or is for the benefit of, them jointly and severally;
- (g) a reference to this Agreement or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Grantor or the Grantee;
- (h) a reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment or appendix to, this Agreement;
- (i) headings are included for convenience and do not affect the interpretation of this Agreement;

- (j) 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;
- (k) no rule of interpretation is to be applied to disadvantage the Grantor or the Grantee on the basis that it was responsible for preparing this Agreement;
- (l) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (m) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (n) a reference to writing includes all means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (o) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (p) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (q) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day; and
- (r) a reference to a monetary amount means that amount in Australian currency.

## **2. PAYMENT OF GRANT FUNDS**

- (a) Subject to the terms and conditions of this Agreement, the Grantor will pay to the Grantee the Grant Funds in accordance with the payment schedule specified in item 6 of Schedule 1.
- (b) Upon signing of the Grant Agreement by both parties the Grantor may issue the Grantee with a purchase order number for the Grant Funds plus GST where appropriate. All tax invoices must specify the purchase order number (if provided) and the Grantee must submit a tax invoice in order to be processed for payment.
- (c) The Grantee will notify the Grantor of the identifying details of a bank account into which Grant Funds can be deposited, including without limitation its name, styling and number and the name and BSB number of the branch at which the bank account is held.

- (d) The Grantee will ensure that the bank account into which the Grant Funds are deposited is not overdrawn at any time during the term of this agreement, and that the bank account requires two signatories for any withdrawal related transactions.

### **3 OBLIGATIONS OF GRANTEE**

#### **3.1 Use of Grant Payment**

- (a) The Grantee will use the Grant Funds solely for the Approved Purpose in accordance with the Application and Approved Budget and expend such funds by the Completion Date.
- (b) The Grantee will carry out all their responsibilities for the project and fulfil its Obligations to a high standard in a competent, diligent, satisfactory and professional manner. In carrying out the Project, the Grantee must comply with and meet all milestones as outlined in Schedule 1 including completing the Project by the Date for Completion.
- (c) Any interest earned on the Grant Funds must be used for the purposes of the Project, or returned to the Grantor.
- (d) Payment of Grant Funds to the Grantee shall be subject to:
- (i) the financial and in-kind contributions being provided, as specified in item 4 of Schedule 1;
  - (ii) milestones and reporting requirements under item 6 of Schedule 1 having been met;
  - (iii) the reporting requirements under Schedule 2 having been met;
  - (iv) any Special Conditions having been met; and
  - (v) the Grantee not being, in the opinion of the Grantor, in breach of any of the term and conditions.
- (e) Where the Grantee purchases equipment with Grant Funds, it must not be disposed of within three (3) years of the Completion Date without the written consent of the Grantor.

#### **3.2 No Changes**

The Grantee must not make any changes to the Project or any agreed budget (including the Project Budget) without the prior written consent of the Grantor, which consent may be withheld in the Grantor's absolute discretion.

#### **3.3 No Endorsement**

The Grantee agrees that nothing in this Agreement constitutes an endorsement by the Grantor of any goods or services provided by the Grantee.

### **3.4 Acknowledgement of Grantor**

- (a) The Grantee will provide the Grantor and funding source (State Government of Western Australia and Royalties for Regions) with public recognition on all literature and promotional material for the Project, in the format approved of by the Grantor.
- (b) Use of the Grantor, State Government of Western Australia and Royalties for Region's logo must be authorised by the Grantor, and used in the manner specified in item 9 of Schedule 1.
- (c) The Grantee will liaise with the Grantor in advance of any promotional event relating to the grant-aided project (e.g. official opening or similar) to ensure adequate time for appropriate representation to be arranged. Similarly any request for a representative of the Grantor to formally participate in the event must be approved by the Grantor in a timely manner prior to the event.

### **3.5 Request for Information**

- (a) The Grantee is to provide the Grantor with any documents or information relating to this Agreement or the Project within ten (10) Business Days of receiving a request from the Grantor.
- (b) The Grantee is to provide the progress reports, evaluation reports, financial statements and records specified in the schedules at the dates specified in the Schedules or as otherwise reasonably required by the Grantor.
- (c) This clause 3.5 survives the termination of this Agreement.

### **3.6 Accounts and Reporting**

- (a) Projects extending beyond twelve (12) months are required to provide a current status report on the project twelve (12) months after Grant Funds have been fully paid to the Grantee in a format reasonably acceptable to the Grantor
- (b) The Grantee is to keep proper financial records in accordance with generally accepted accounting principles and practices and otherwise to the complete satisfaction of the Grantor.
- (c) For Grant Funds (excluding GST) over \$20,000, within twelve (12) weeks of the Completion Date the Grantee must provide a financial statement of income and expenditure for the Project, signed by the Chief Executive Officer of the Grantee or equivalent and certified by an Auditor and include details of how the Grant Funds were expended. Audit must be completed to Australian Auditing Standards
- (d) For Grant Funds (excluding GST) of \$20,000 and less:

- (i) within twenty (20) Business Days of the Completion Date, the Grantee must provide a financial statement of income and expenditure for the Project, signed by the Chief Executive Officer of the Grantee or equivalent and include details and evidence of how the Grant Funds were expended.
  - (ii) The Grantor reserves the right to request an audited financial statement for the Project to be certified by an Auditor appointed by the Grantor as defined in Clause 1, costs to be borne by the Grantee
- (e) The Grantee acknowledges that submitting of the Acquittal Report, referred to in Schedule 2 does not mean “acceptance” by the Grantor of the said Acquittal Report. The Grantor reserves its right to evaluate the Acquittal Report to determine that it is satisfied with the contents reported therein.
- (f) This clause 3.6 survives the termination of this Agreement.

### **3.7 Special Conditions of Grant**

The Grantee agrees to comply with the Special Conditions.

### **3.8 General Undertaking of Grantee**

The Grantee must:

- (a) at all times duly perform and observe its obligations under this Agreement and will promptly inform the Grantor 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) cooperate fully with the Grantor in the administration of this Agreement; and
- (d) upon reasonable notice, provide the Grantor or its agents, with access at any reasonable time and from time to time to the Grantee’s premises, financial records, other documents, equipment and other property for the purpose of audit and inspection by the Grantor in order to verify compliance by the Grantee with this Agreement.
- (e) comply with all requests made by the Grantor in connection with this Agreement.

### **3.9 Negation of Employment, Partnership and Agency**

- (a) The Grantee must not represent itself, and must ensure that its employees, contractors, sub-contractors or agents do not represent

themselves, as being an employee, partner or agent of the State or the Grantor or as otherwise able to bind or represent the State or Grantor.

- (b) The Grantee will not by virtue of this Agreement be or for any purpose be deemed to be, an employee, partner, or agent of the State or the Grantor, or have any power or authority to bind or represent the State or Grantor.

#### **4. REPAYMENT AND RETENTION OF GRANT FUNDS**

The Grantee must repay to the Grantor within forty (40) Business Days any Grant Funds that the Grantor has paid which are not used in accordance with this Agreement or that remain unspent at the Completion Date unless there has been prior written agreement between the parties stating otherwise.

#### **5. LIMITATION OF LIABILITY**

- (a) The Grantor does not accept any responsibility or liability for the success or otherwise of the Approved Purpose or the Project and is not liable for any losses which may be suffered by the Grantee in undertaking the Approved Purpose or the Project.
- (b) If the Funding (and any interest which accrues on the Funding) is insufficient for the Recipient to properly fulfil all of its Obligations, then the Recipient must still fulfil its Obligations at its own cost.

#### **6. INSURANCE AND INDEMNITY**

- (a) The Grantee shall take out and maintain throughout the term of the Agreement adequate insurance to provide cover for the Project undertaken by the Grantee, including Public Liability and Workers' Compensation insurances.

If requested by the Grantor, the Grantee must provide any of the following:

- (i) a written statement of the applicable insurance cover held by the Grantee; or
- (ii) a copy of any policy of insurance, a Certificate of Currency, and receipts for premiums in connection with any policy of insurance.

The Grantor reserves the right to have any insurable risk assessed and to obtain expert advice in relation to adequacy of the Grantee's insurance cover by an insurance advisor of the Grantor's choice. The Grantee must provide any information requested by the Grantor's insurance advisor for the purpose of the assessment and must comply with any recommendation and advice received by the Grantor in respect to the assessment.

- (b) The Grantee shall at all times indemnify, hold harmless and defend the State, the Grantor, its Ministers, officers, employees and agents from and against any loss, including legal costs and expenses or liability incurred against the State, the Grantor, its Minister, officers, employees and agents arising from any claim, suit, demand, action or proceeding by any person or body against the State, the Grantor, its Minister, officers, employees and agents arising from or in connection with:
- (i) any breach by the Grantee of an obligation under this Agreement;
  - (ii) any act or omission of the Grantee or its employees, officers or agents in connection with this Agreement or a matter contemplated by it;
  - (iii) any breach of a State or Commonwealth law relevant to the Agreement by the Grantee or its employees, officers or agents; or
  - (iv) the Project.
- (c) The indemnity in this clause 6 survives expiration or termination of this Agreement.

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

- (a) The Grantee acknowledges and agrees that this Agreement and information regarding it is subject to the *Freedom of Information Act 1992* and that the Grantor may publicly disclose information in relation to this Agreement, including its terms and the details of the recipient Grantee(s). This could result in requests for more detail to be released publicly.
- (b) 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* are not limited or affected by this Agreement.
- (c) The Grantee must allow the Auditor General, or an authorised representative, to have access to and examine the Grantee's records and information concerning this Agreement.

**8. NOTICES**

Any notice or other communication that may or must be given under this Agreement:

- (a) must be in writing;
- (b) may be given by an authorised officer of the Party giving notice;
- (c) must be:
  - (i) hand delivered or sent by prepaid post to the address of the Party receiving the notice as set out in item 8 of Schedule 1; or

- (ii) sent by facsimile to the facsimile number of the Party receiving the notice as set out in item 8 of Schedule 1;
- (d) subject to paragraph (e), 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
- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

## **9. DEFAULT AND TERMINATION**

### **9.1 Event of Default by the Grantee**

An Event of Default occurs if:

- (a) an Insolvency Event occurs in respect of the Grantee or a person is appointed under legislation to investigate or manage any part of the affairs of the Grantee;
- (b) the Grantee ceases to carry on business in Western Australia;
- (c) the Grantee 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 Grantee by the Grantor;
- (d) the Grantee fails to submit an Acquittal Report by the Acquittal Reporting Date; or
- (e) the Grantor is of the opinion that the Grantee is unwilling or unable to comply with its obligations under this Agreement.

### **9.2 Effect of Event of Default**

If an Event of Default occurs, the Grantor may either:

- (a) terminate the Agreement by providing a further ten (10) Business Days notice in writing to the Grantee of the Event of Default; or
- (b) suspend payment of the Grant Funds until the Event of Default is remedied; or
- (c) request that the Grantee reimburse the Grantor within forty (40) Business Days for any Grant Funds that were not used exclusively for the Project in accordance with the Application and Approved Budget;

### **9.3 Recommencement of Grant Funds Payment**

The Grantor may, in its absolute discretion, recommence payment of the Grant Funds if and when the Grantee has rectified the Event of Default.



#### 9.4 Acquittal

- (a) Unless earlier terminated, this Agreement will terminate upon submission and acceptance of the Acquittal Report.
- (b) Should the Grantee be unable to properly use the Grant Funds in accordance with this Agreement, the Grantee will advise the Grantor as immediately as it becomes aware of this and the Grantor may require that any unused portion of Grant Funds be returned within forty (40) Business Days.

#### 10. GOODS AND SERVICES TAX (GST)

- (a) For the purposes of this Agreement:
  - (i) "GST" means the goods and services tax applicable to any taxable supplies as determined by the GST Act; and
  - (ii) "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and includes all associated legislation and regulations;
  - (iii) the terms "supply", "tax invoice", "taxable supply" and "value" have the same meanings as in the GST Act.
- (b) If the supply of anything under this Agreement is a taxable supply under the GST Act, the Grant Funds shall be exclusive of GST.
- (c) The obligation of the Grantor to pay the GST on any supply by the Grantee under this Agreement is conditional upon the prior issue by the Grantee to the Grantor of a tax invoice, which complies with the GST Act. This provision applies notwithstanding any law to the contrary.
- (d) If the Parties agree that the Grantor will issue the Grantee with a Recipient Created Tax Invoice (RCTI), then the parties hereby agree that:
  - (i) the Grantor will issue a RCTI in respect of GST payable on the supply of the Project and the Grantee will not issue tax invoice in respect of that supply;
  - (ii) The Grantee warrants that it is registered for the purposes of GST and the Grantee will notify the Grantor in writing if it ceases to be registered for the purposes of GST during the term of this Agreement ("the Term");
  - (iii) the Grantor warrants that it is registered for the purposes of GST and the Grantor will notify the Grantee in writing if it ceases to be registered for the purposes of GST, or if it ceases to satisfy the requirements of the *GST Act* during the Term ; and
  - (iv) the Grantor will indemnify and keep indemnified the Grantee for GST and any related penalty that may arise from an understatement of the GST payable on the supply of the Project for which the Grantor issues a RCTI under this Agreement.

## 11. WAIVER

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by both Parties.
- (b) A waiver by either Party will not prejudice that party's rights in relation to any further breach of this Agreement by the other party.
- (c) Any failure to enforce this Agreement, or any forbearance, delay or indulgence granted by one party to the other Party, will not be construed as a waiver of any rights.

## 12. NO ONGOING COMMITMENT

- (a) The Grantor makes no commitment to funding the Project except to the extent specified in this Agreement.
- (b) The Grantee acknowledges that it will be responsible for any ongoing costs as a result of the Project and that the Grantor will not be obliged to provide additional funds.

## 13. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.

## 14. ASSIGNMENT

- (a) This Agreement is personal to the Grantee and may not be assigned by the Grantee without the Grantor's consent, which may be withheld at the Grantor's discretion. The Grantor may assign its rights and obligations under this Agreement as it sees fit.
- (b) For the purposes of this clause 14, the Grantee shall be deemed to have assigned this Agreement if any act, matter or thing is done or occurs, the effect of which is, in the opinion of the Grantor, to transfer, directly or indirectly, the management or control of the Grantee.

## 15. VARIATION

Any modification, amendment or other variation to this Agreement must be made in writing and agreed to by both Parties. This includes, but is by no means limited to, variations to timelines, milestones, significant changes to the Approved Budget and funding partners and all aspects of the Project as detailed in this Agreement.

## 16. RIGHTS AND REMEDIES

The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

**17. COSTS**

- (a) The Grantor and the Grantee must pay their own legal and other costs in connection with the preparation and signing of the Agreement.

**18. FURTHER ASSURANCES**

The Grantor and the Grantee must do everything reasonably necessary, including signing further documents, to give full effect to the Agreement.

**19. LOCAL PRODUCTS AND SERVICES**

The Grantee agrees to use products and services from the Region for the Project wherever reasonably practicable using an open and competitive process to the satisfaction of the Grantor.

**20. INTELLECTUAL PROPERTY**

All Intellectual Property shall be the property of the Grantee. Unless otherwise specified in the Grant Agreement schedule and subject to any confidentiality considerations, the Grantee must grant the Grantor a non-exclusive, unrestricted, royalty-free and perpetual licence to use, copy, distribute, reproduce and publish any reports (and/or variations of the reports) and any such reports in respect of the Project which are produced after the Completion Date, in any medium, throughout the world.

**21. GOVERNING LAW**

This Agreement is governed by the laws of the State of Western Australia. The Grantor and the Grantee irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.

**22. ACCESS TO LAND**

If the Project is being undertaken on land (whether freehold or Crown land) that is not owned, leased or managed by the Grantee, the Grantee must obtain and have in place from the Commencement Date until receipt of the Notification by the Grantee the written consent of the person owning or leasing that land to undertake the Project on that land.

**23. AGREEMENT BETWEEN THE RECIPIENT AND A THIRD PARTY**

If the Grantee enters into an agreement with any other party relating in any way to either or both of this Agreement and the Funding (Third Party Agreement), including a Third Party Agreement with a party to deliver or fulfil any of the Grantee's Obligations or to provide services to the Grantee to assist or enable it to fulfil its Obligations, the Grantee must ensure that the other party:

- (a) has obligations in the Third Party Agreement which, if properly fulfilled, will ensure that the Grantee properly fulfils its corresponding Obligations and to the extent necessary to ensure that the other party has these obligations, the Recipient must ensure that the Third Party Agreement mirrors the terms of this Agreement; and
- (b) agrees to the Grantee providing the Grantor with any documents that the other party provides to the Grantee and to the Grantor attending any meetings it has with the Grantee if the Grantor wishes to obtain copies of such documents or attend such meetings.

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Executed by the Parties hereto:

For and on behalf of the Grantor:

Signed by Terry Hill  
CHIEF EXECUTIVE OFFICER  
Acting with the express authority of the  
Pilbara Development Commission


as CEO on behalf of Terry Hill.

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)  
)

Dated: 17 June 2015

For and on behalf of the Grantee:

Signed by Kate Fry  
PRESIDENT  
Acting with the express authority of the  
Port Hedland Netball Association

)  
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)  
)

Dated: 15.06.15

# SCHEDULE 1

## PROJECT MANAGEMENT

1. **Project Title:** Faye Gladstone Netball Court Redevelopment Project (Clubhouse)

### 2. Approved Purpose of Grant

- (a) This grant has been approved to enable the Port Hedland Netball Association to deliver the Faye Gladstone Netball Court Redevelopment Project (Clubhouse). The project will include building on to the original facilities to provide additional toilets, an office for increased club administration, change rooms and meeting a multi-use club space for 50 people, as well as increasing security for the site, improving energy efficiency and increasing storage capacity
- (b) Grant Funds will be expended on the following items:

Item of project expenditure	expenditure (excluding GST) \$
Design and Construction of new Clubhouse at Faye Gladstone Courts	\$170,000
<b>Total expenditure of grant funds:</b>	<b>\$170,000</b>

- (c) Grant Funds will be expended in accordance with the Approved Budget marked Attachment A.

### 3. Agreement Term

**Commencement Date:** 1 July 2015  
**Completion Date:** 1 April 2016  
**Acquittal Date:** 1 July 2016

The project is to commence on the Commencement Date and Grant Funds are to be expended by Completion Date subject to Clause 9 of the Agreement, noting any extension must be sought in writing and approved by the Grantor. Acquittal documents detailed in Schedule 2 are to be submitted by the Acquittal Reporting Date specified above.

Grantee Initials: KF

Date: 15-06-15

PDC Initials: [Signature]

Date: 17/6/2015

#### 4. Grant Amount and Other Contributions

The Grantor agrees, subject to compliance with the terms of this Agreement by the Grantee, to provide Grant Funds of **\$170,000 plus GST**. The approval of this grant is subject to the securing of other funding, as outlined below.

Amount	Type	Source/Purpose
\$1,130,000	Cash	BHP Billiton

#### 5. Project Milestones, Reporting Requirements and Payment Schedules

Mile stone No.	Due Date	Outcome / Achievement / Reporting	Grant Funds allocated	GST
1	16 June (at the latest)	Execution of Grant Agreement and receipt of tax invoice	\$100,000	Ex
2	30 September 2015	Start of construction	\$70,000	Ex
3	1 January 2016	50% project completion	n/a	n/a
		Funds Payable	<b>\$170,000</b>	<b>Ex</b>
		Plus GST	N/A	
		<b>TOTAL PAYABLE</b>	<b>\$170,000</b>	<b>Ex</b>

Subject to the Grantor being satisfied with the above milestone reporting requirements and subsequent receipt of a tax invoice stating the purchase order number (where provided), payment of the Grant Funds plus GST where applicable, will be made in the amounts detailed above within twenty (20) business days.

#### 6. Variations to Milestone Dates

The Grantor will consider requests for variations to the milestone dates but must receive such requests before five (5) business days of the due date.

Grantee Initials: KF

Date: 15-06-15

PDC Initials: ⊕

Date: 17/6/2015

## 7. Notice Addresses

- (a) Grantor Pilbara Development Commission  
Address: 2/6 Wedge Street, Port Hedland WA 6721  
Email: [cassie.baldock@pdc.wa.gov.au](mailto:cassie.baldock@pdc.wa.gov.au)
- (b) Grantee Port Hedland Netball Association  
Address: PO Box 2117  
SOUTH HEDLAND WA 6722  
Email: [netballporthedland@hotmail.com](mailto:netballporthedland@hotmail.com)

## 8. Acknowledgement of Grantor

Access and permission to use the logos of the Grantor must be obtained by contacting the Communications Officer of the Grantor. The Grantor must approve the use of the logo prior to printing or publication. Where logos are used, they must include, in order, those of the Government of Western Australia, Royalties for Regions and the Pilbara Development Commission.

Grantee Initials: RF

Date: 15.06.15

PDC Initials: Ⓟ

Date: 17/6/2015



## SCHEDULE 2

### REPORTING REQUIREMENTS

The Grantee will submit an Acquittal Report by the Acquittal Reporting Date. The Acquittal Report will include sections describing and evaluating Project aims and objectives and detailing and confirming budget and financial expenditure on the Project as detailed in this Agreement and the Application.

Please refer to the Guideline Acquittal and Audit of Grants, which can be supplied by the Grantor, for further details on Audit requirements.

#### 1. Project Aims and Objectives

Information required will include:

- The effectiveness of the project against the aims and objectives detailed in the Grant Application including a comparison of proposed to actual outcomes and evidence of any new initiatives.
- How these project aims and objectives impacted on:
  - i. the Regional Grant Scheme Objectives:
    - Increase capacity for local strategic planning and decision-making.
    - Retain and build the benefits of regional communities.
    - Promote relevant and accessible local services.
    - Assist communities to plan for a sustainable economic and social future.
    - Enable communities to expand social and economic opportunities.
    - Assist regional communities to prosper through increased employment opportunities, business and industry development opportunities, and improved local services.
  - ii. The Pilbara Strategic Objectives.
  - iii. and/or other nominated documents.
- Where relevant detail and numbers of new jobs created during the project.
- Where relevant detail and numbers of ongoing jobs created by the project.
- Evidence of acknowledgement including copies of promotion and publications and media items relating to the project.
- Any reports or research documents as a result of the project.
- Photos which detail the progress and change of a project.
- Other documentation to evidence the project.
- Evidence of compliance with any special conditions placed on the grant.

Grantee Initials: KF

Date: 15.06.15

PDC Initials: AS

Date: 17/6/2015

## 2. Financial Obligations

As part of the acquittal process, the Grantee will be required to provide the following components:

- Statement of Income and Expenditure relating to the entire project signed by the Chief Executive Officer or equivalent.
- Clearly detail that Grant Funds were expended in accordance with the expenditure proposed in the funding application.
- Comparison of proposed financials detailed in the application to actual financials, detailing any major variations.
- Confirmation of all in-kind contributions made to the project and how the contributions have been calculated signed by the Chief Executive Officer or equivalent.

## 3. Audit Requirements

- As per Clause 3.6 of the Agreement, where the Grant Funds are valued at over \$20,000 (exclusive of GST) an audited financial statement for the project must be included with the Acquittal Report.
- Please refer to the Guideline Acquittal and Audit of Grants, which can be supplied by the Grantor, for further details on Audit requirements.

## 4. Other Reporting Requirements

- Report on Special Conditions detailed in Schedule 1 Item 5.

Grantee Initials: KF

Date: 15-06-15

PDC Initials: [Signature]

Date: 17/6/2015

**ATTACHMENT A is the Approved Budget.**

Details of Project Items to be funded through Cash Contributions						
Project Items	Own organisation cash \$ (ex GST)	Other source/s cash \$ (ex GST)	Name of other funding source/s, including other Royalties for Regions funding source/s	Other funding status: Approved or Requested	PDC RfR Grant Funds \$ (ex GST)	TOTAL \$ (ex GST)
Design and Construction		1,130,000	BHP Billiton	Pending (24 <sup>th</sup> June final approval)	170,000	1,300,000
<b>Cash Sub Totals</b>	<b>(A) \$(ex GST)</b>	<b>(B) \$(ex GST)</b>			<b>(C) \$(ex GST)</b>	<b>(A+B+C)\$(ex GST)</b>
	\$	\$1,130,000			\$170,000	\$1,300,000
Details of Project Items to be funded through In-Kind Contributions						
Project Items	Own organisation In-Kind \$ Value (ex GST)	Other source/s In-Kind \$ Value (ex GST)	Name of Other In-Kind Source			TOTAL \$ Value (ex GST)
<b>In-Kind Sub Totals</b>	<b>(D) \$ Value(ex GST)</b>	<b>(E) \$ Value(ex GST)</b>			<b>(D+E) \$ Value(ex GST)</b>	<b>\$</b>
	\$	\$				
<b>Total Project Expenditure A + B + C + D + E</b>						<b>\$1,300,000</b>

Grantee Initials: KF

Date: 15.06.15

PDC Initials: JD

Date: 17/6/2015

# Annexure D – Project Time Frames

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# Annexure E – Project Cost Breakdown

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Description	Cost
Preliminaries	\$ 113,479.00
Headworks & Demo	\$ 150,000.00
Consultancy fees	\$ 85,900.00
Site Works	\$ 31,556.00
Concrete	\$ 63,031.00
Structural steel and roofing	\$ 145,500.00
Metal work	\$ 48,116.00
Joinery	\$ 41,613.00
Internal and external linings	\$ 54,550.00
Tiling	\$ 30,000.00
Floor Coverings	\$ 11,600.00
Painting	\$ 14,500.00
Hydraulics	\$ 169,028.00
Electrical	\$ 47,725.00
Mechanical	\$ 41,600.00
Landscaping	\$ 8,000.00
Site service investigation/design	\$ 6,000.00
Builders margin and attendance (10%)	\$ 106,219.80
Project Management	\$ 45,000.00
Contingency	\$ 75,000.00
Application Fees	\$ 8,100.00
<b>Subtotal</b>	\$ 1,296,517.80
<b>GST</b>	\$ 129,651.78
<b>Total</b>	\$ 1,426,169.58