

Rescuing our Waterways Program Funding Agreement for Financial Assistance

Grant Details

Program: *Rescuing our Waterways Program (Phase Six)*

Recipient: «Applicant»

Project: «Project_Name»

Maximum Funding Amount: \$xxx

Funding Level: «Funding_Level_Approved» %

Funding Term: Commencement Date: XX/XX/20XX
Completion Date: «Completion_Date»

Acceptance of Conditions:

On behalf of «Applicant», I accept the following conditions of this Funding Agreement.

_____ (signature)

_____ (name)

_____ (Position)

Date: _____

Note: This agreement must be signed by the General Manager or senior officer delegated with authority to bind the Recipient

Approval of Agreement between the Department of Planning, Industry and Environment – Crown Lands and «the Recipient»:

Signed for and on behalf of the Department of)
Planning, Industry and Environment – Crown)
Lands representing the Crown in right of New)
South Wales by)

Executive Director, Crown Lands)

_____)
(signature)

Date: _____

Please return the signed Agreement to: Mr David Hopper, Department of Planning Industry and Environment – Crown Lands by email at dave.hopper@crowland.nsw.gov.au by xxxx 2019. If the signed Agreement is not returned by this date, the offer of funding may lapse.

Conditions

1 Definitions and Interpretation

Defined terms and aids to interpretation of this Agreement are set out in the Dictionary at the end of this Agreement.

2 The Department of Planning, Industry and Environment – Crown Lands obligations

- 2.1 The Department of Planning, Industry and Environment – Crown Lands (hereon “the Department”) will pay the Recipient, in accordance with the terms of this Agreement, an amount up to the Maximum Funding Amount towards the Recipient’s performance of the Project.
- 2.2 The Department will not pay the Recipient for anything that is part of the Recipient’s Core Activities.
- 2.3 The Department will assist the Recipient with technical support for the project when it is practical to do so.

3 Recipient’s obligations

- 3.1 Before commencing work the Recipient will submit a detailed Work Plan in the format provided by the Department.
- 3.2 The Recipient will carry out the Project as outlined in its Application and in accordance with the Work Plan.
- 3.3 The Recipient will advise the Department immediately if it has sought, is offered, or intends to accept funding from any other source(s) for this Project at any time during the Funding Term.
- 3.4 The Recipient must ensure that all funds provided by the Department under this Agreement are applied only to the actual cost of the Project.
- 3.5 The Recipient will ensure that all activities undertaken under the Project are consistent with the objectives of the Rescuing our Waterways Program. If necessary, the Recipient may seek clarification of this obligation from the Department.
- 3.6 The Recipient will undertake or oversee all technical, environmental, heritage and risk assessments, and obtain the necessary approvals and/or consents in relation to the Project in accordance with NSW legislative requirements and accepted best practice guidelines.
- 3.7 The Recipient will undertake to manage the project in a professional manner and in accordance with acceptable contemporary industry practice. This includes the tendering of works and evaluation of tenders in accordance with local Council procedures and guidelines. It will be the responsibility of the Recipient to also ensure that all works meet relevant Australian standards, codes and statutory requirements
- 3.8 The Recipient will, in conjunction with the Department, monitor and evaluate the Project against the agreed project outcomes as described in the Work Plan or any subsequent written agreement between the parties.
- 3.9 The Recipient will keep the Department informed of the progress of the Project in relation to the Work Plan and will highlight any significant technical issues.
- 3.10 The Recipient will report on or explain any aspect of the Project requested by the Department, and give due consideration to all comments issued by the Department.
- 3.11 The Recipient’s Representative will be responsible for managing the Recipient’s obligations under this Agreement. The Recipient must notify the Department immediately of any change to the Recipient’s Representative at any time during the Funding Term.

4 Record keeping

4.1 The Recipient must:

- (a) Maintain financial receipts and expenditure details and other correspondence and materials related to the Project until the grant is formally acquitted;
- (b) Permit the Department to inspect (and if necessary be supplied with copies of) all the Recipient's accounts and any other documents, including any application documents, relating to the Project; and
- (c) Comply with all reasonable requests by the Department for other information and particulars concerning the Project within 14 days of such request.

5 Reports

5.1 The Recipient must prepare and submit to the Department:

- (a) a Milestone Report and Expenditure Certificate for each Milestone achieved, and
- (b) a Final Report for the Project within two months of the project completion date.

5.2 The reports must be prepared using the **relevant templates provided by the Department**.

6 Claiming a payment

6.1 The Department will make a Milestone Payment to the Recipient under this Agreement up to a total amount not exceeding the Maximum Funding Amount.

6.2 The Department will make a Progress Payment to the Recipient in response to the successful delivery of a Milestone and the submission of a satisfactory Milestone Report and Expenditure Certificate (form attached) in accordance with clause 5.1.

6.3 The Milestone Payment for a Milestone will be the proportion, set as the Funding Level, of the Recipient's **Actual Expenditure** in delivering the Milestone as detailed in the relevant Milestone Report and Expenditure Certificate, subject to clause 6.4.

6.4 If a Milestone Payment determined under clause 6.3 would mean that the total amount the Department pays under this Agreement would exceed the Maximum Funding Amount, that Milestone Payment will be reduced by the amount by which the Maximum Funding Amount would be exceeded.

6.5 If the total amount of all the Milestone Payments the Department makes for the Project is less than the Maximum Funding Amount, the Department will not be liable to make additional payments to the Recipient.

6.6 Payments will not be made until the Recipient provides the Department with a tax invoice and valid Australian Business Number.

7 Goods and Services Tax (GST)

7.1 In this clause, the expressions 'Australian law', 'consideration', 'GST', and 'input tax credit', have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.

7.2 Funding made under this Agreement is a payment specifically covered by an appropriation under Australian law, which is not the provision of consideration for GST purposes.

7.3 Monetary amounts set out in this Agreement are exclusive of GST, unless otherwise noted.

7.4 The Department's financial assistance to the Recipient under this Agreement will be based upon the Project's actual costs, less any input tax credits the Recipient is entitled to.

8 Variation

- 8.1 The Recipient must obtain written approval from the Department for any variation to the:
- (a) Agreement (including the Funding Term),
 - (b) Work Plan,
 - (c) Budget (including any changes to funding sources), or
 - (d) Scope of the Project (to that outlined in the Application).

9 Breach of conditions

- 9.1 If the Recipient breaches any of the Recipient's obligations under this Agreement, or is otherwise not undertaking or is unable to carry out the Project in accordance with the Work Plan, the Department may make a written request to the Recipient to rectify the breach or to resume carrying out the Project in accordance with the Work Plan.
- 9.2 The Department may suspend or withhold any payments under this Agreement or part thereof until the Recipient has taken action to comply with a request under clause 9.1.
- 9.3 If the Recipient cannot rectify a breach or complete the Project to the satisfaction of the Department after receiving a request under clause 9.1, the Department may terminate this Agreement.
- 9.4 If the Department terminates the Agreement, the Department will only be liable to pay the Recipient in respect of Milestones that the Recipient has satisfactorily delivered at the date of termination and for which the Recipient has submitted a Milestone Report and Expenditure Certificate.

10 Publicity

- 10.1 The Recipient must acknowledge the NSW Government's contribution in any public statements or written material in relation to the Project.
- 10.2 The Recipient must also use the current NSW Government logo in any publicity provisions related to the Project (including brochures, signage, advertising, invitations etc.), and ensure compliance with any accompanying logo style guides.
- 10.3 The Recipient must extend an invitation to a government representative to any launch or public event associated with the Project.
- 10.4 The Department may publicise the awarding of the funding at any time after it is awarded.
- (a) the Recipient's name;
 - (b) the amount of financial assistance;
 - (c) the title and description of the Project; and
 - (d) the outcomes of the Project.

11 Indemnity and release

- 11.1 The Project shall be performed at the Recipient's risk. The Recipient accepts full responsibility for the performance of the Project and for the consequences of implementing any of the Project's findings and recommendations.
- 11.2 The Recipient indemnifies and keeps indemnified the Department and its employees and agents from and against all actions, claims, demands and other proceedings that may be made or recovered against the Department, its employees or agents, in respect of any damage to property, personal injury or death where the damage, injury or death was

caused by any wilful, unlawful or negligent act or omission of the Recipient or its employees or agents in relation to the carrying out of the Project. The Department will inform the Recipient as soon as it becomes aware of any such action, claim, demand or proceeding.

- 11.3 The Recipient will release the Department and its employees and agents, the Minister and the Crown in right of NSW from and against all actions, claims, demands and other proceedings that the Recipient may make or recover against the Department, its employees or agents, the Minister and the Crown in right of NSW, in respect of any damage to property, personal injury or death suffered by the Recipient, its employees or agents in relation to the carrying out of the Project.
- 11.4 The indemnity and release provided by the Recipient in clauses 11.2 and 11.3 is reduced proportionately to the extent that the relevant damage to property, personal injury or death is caused or contributed to by any wilful, unlawful or negligent act or omission by the Department or its employees or agents.

12 Insurance

- 12.1 The Recipient shall be responsible for effecting and maintaining all insurances required under workers' compensation legislation and for taking all other actions requisite as employer of person engaged to carry out all or any part of the Project. The Recipient shall also be responsible for ensuring volunteers carrying out any part of the Project are covered by volunteer personal accident insurance.
- 12.2 The Recipient must effect and maintain public liability insurance in relation to all premises and sites on which the Project is carried out for all works and activities undertaken for this Project. The insurance shall be for an amount of at least \$20,000,000. The policies or certificates of currency shall be made available to the Department for inspection on request.

13 Survival of obligations

- 13.1 The Recipient's obligations under clauses 9, 10 survive the termination or expiry of this Agreement.

14 Miscellaneous

- 14.1 Any written notice or demand provided for in the Agreement may be served by each party on the other party by ordinary prepaid post or email.
- 14.2 Neither the Recipient nor any person engaged by the Recipient shall be in the service or employment of the Department by virtue of this Agreement.
- 14.3 Any court proceedings arising out of or relating to this Agreement must not be heard or started in any court other than a court in NSW. The Agreement will be governed by and construed in accordance with the law for the time being in force in NSW.
- 14.4 The invalidity or unenforceability of any one or more of the conditions of the Agreement shall not invalidate or render unenforceable the remaining conditions of the Agreement. Any invalid or unenforceable condition shall be severable and all other conditions shall remain in full force and effect.
- 14.5 All project activities need to be consistent with relevant Government policy.

Specific conditions

15 Studies, investigations and design, monitoring and documentation projects

- 15.1 The following conditions apply to studies, investigations and design, monitoring and documentation projects only.
- 15.2 The Recipient will arrange for all work in the project to be undertaken by an external consultant selected through competitive tendering, unless the Department agrees otherwise.
- 15.3 If the project captures or generates survey data, all data will be supplied by the Recipient at, or before, the completion of the project to the Department.
- 15.4 At the completion of the Project, the Recipient will provide to the Department copies of final reports, model data files and reports, and final works designs and specifications, in the number and format specified by the Department.

16 Construction of works projects

- 16.1 The following conditions apply to construction of works projects only.
- 16.2 The Recipient will arrange for all construction work to be carried out by an external contractor selected through competitive tendering, unless the Department agrees otherwise.
- 16.3 The Recipient will arrange for full-time supervision of the construction work to be undertaken by an external contractor selected by competitive tendering, unless the Department agrees otherwise.
- 16.4 The Recipient will seek and obtain comments from the Department in writing of the draft plans, specifications and estimates for the works and consider comments from the Department before calling for tenders for the construction work.
- 16.5 The Recipient will submit a written report on tenders to the Department, seek comments on the recommended tender and consider all comments from the Department before awarding the contract for the construction work.
- 16.6 The Recipient will ensure that the works are constructed strictly in accordance with the approved plans and specifications. No variations are to be undertaken without the Department's prior written agreement.

17 Project-specific conditions

Dictionary

“Actual Expenditure” means the actual monetary amount expended on the project and cannot include in-kind contributions.

“Agreement” means this funding agreement and includes the Grant Details, the Conditions, any Schedules, Attachments or Appendices.

“Application” means the recipient’s application for funding under the Rescuing our Waterways Program.

“Expenditure Certificate” means the form that details actual project expenditure to date and is lodged with a Monthly Report to generate a Milestone Payment

“Final Report” means the report outlining the achievements of the project, including financial acquittal.

“Funding Level” means the agreed proportion of funding contributed by the Rescuing our Waterways Program to the overall cost of the Project, without exceeding the Maximum Funding Amount, as set out in the Grant Details.

“Funding Term” means the duration of this Agreement as set out in the Grant Details or until the date on which this Agreement is terminated, whichever comes first.

“Maximum Funding Amount” means the maximum amount of funding that the Department will provide under this Agreement, as set out in the Grant Details.

“Milestone” is a significant event in the Project that signals the commencement and/or completion of some part of the Project, or a stage at which agreed parts of the Project will be completed as specified in the Work Plan.

“Milestone Date” means the date by which each Milestone must be completed as specified in the Work Plan.

Monthly Report” means the report which provides details of the activities carried out to achieve a Milestone.

“Milestone Payment” means a progress or final payment made on the successful delivery of a Milestone.

“The Department of Planning, Industry and Environment - Crown Lands” means the Department of Planning, Industry and Environment – Crown Lands representing the Crown in right of New South Wales.

“Project Materials” means anything brought or required to be brought into existence as part of, or for the purpose of, carrying out, or in connection with, the Project, including all reports, documents, computer models and field data.

“Recipient’s Representative” means the representative nominated by the Recipient to oversee the Project.

“Recipient’s Core Activities” means core activities undertaken by the Recipient, including preparation of study briefs, review of proposals and tenders, researching and copying the Recipient’s records, attending meetings, contract administration, accounting costs, and liaising with the public and government agencies.

“Work Plan” means the plan that details the Project’s planned activities, budget, timeline, outputs/outcomes and Milestones.

The following words have the meaning ascribed to them in the Grant Details: **“Commencement Date”**, **“Completion Date”**, **“Grant Number”**, **“Project”**, **“Recipient”**.

CERTIFICATE OF EXPENDITURE FOR FINANCIAL ASSISTANCE TO

Program:	Funding Ratio:
Financial Year:	Progress Cert. No:
Date of Offer:	Interim Final Certificate
Project:	Final Certificate
.....	(delete as appropriate)
Amount of Government Financial Assistance	\$
Amount of Recipient's Contribution	\$
Total	\$
Total Expenditure to date (A)	\$
Less GST input credits claimable (B)	\$
GST exclusive cost (A)-(B)	\$
Recipient's share to date (GST exclusive)	\$
Government share to date (GST exclusive)	\$
Less Progress Payment made to date	\$
Requested Progress Payment	\$

- The amounts stated above are correct, and the sum of \$..... from funds made available by the Government, and the sum of \$..... from own funds have been actually and properly expended/committed to the project approved by the Department of Planning, Industry and Environment – Crown Lands and are in accordance with the Conditions of Financial Assistance dated
- * All requested information/drawings have been furnished.
- * Work as Executed information, as furnished, accurately represents the works as undertaken. (* delete as appropriate)

.....General Manager
(This signature required on all milestone certificates and the final certificate)

.....Authorised Project Officer
.....Date

DETAILS OF EXPENDITURE

Item No.	Description of item	Amount Allocated (Crown Land + Recipient)	Expenditure (Crown Land + Recipient) The sum of these items must correspond with the total expenditure to date on the front page.
A	Total Cost/Expenditure		
B	Less GST inputs claimable by Recipient		
A-B	GST exclusive costs/expenditure		

This certificate was forwarded to the Department of Planning, Industry and Environment – Crown Lands

at.....on.....