

Annexure M

201

BETWEEN:

**CHIEF EXECUTIVE OFFICER OF
THE DEPARTMENT OF PARKS AND WILDLIFE
and**

[INSERT NAME] REGIONAL CORPORATION

**[INSERT NAME] AREA CONSERVATION ESTATE CO-OPERATIVE
MANAGEMENT AGREEMENT**

CO-OPERATIVE MANAGEMENT AGREEMENT

11 October 2013

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THIS AGREEMENT is made the day of 201.

BETWEEN

STATEMENT OF RESPECT

- A. The Department of Parks and Wildlife (Department) recognises that the Noongar people are the traditional owners of the land and waters in the South West Native Title Settlement Area (Settlement Area) with continuing cultural, spiritual and social connections to the area.
- B. The Department recognises that the Noongar people have a cultural responsibility to care for country within the Settlement Area and unique traditional knowledge and expertise that will assist in managing the

other cooperative instruments and arrangements as required to give effect to these partnership arrangements.

- G. The Committee will, among other things, work to identify and prioritise specific areas of the Conservation Estate to be jointly managed by Joint Management Bodies established under Joint Management Agreements referred to in Recital D (ii) above.
- H. The Committee may also recommend the establishment of forms of consultative and co-operative management over all of the Conservation Estate within the [INSERT NAME] Area as a way of working towards formal joint management arrangements in specific areas of the Conservation Estate as capacity and resources become available. The Committee will participate in the development of policies and/or frameworks that describe the conditions that need to be met for formal joint management to occur on parts of the Conservation Estate within the INSERT NAME Area.
- I. In accordance with this Agreement, the CEO will use the Committee to fully and actively engage with the Corporation and the INSERT NAME people in the amendment of existing Management Plans and the identification, prioritisation and drafting of new Management Plans that are presented to the Conservation Commission or the Marine Parks and Reserves Authority (as the case may be) for Ministerial approval.
- J. The Parties will work together to put in place Management Plans that include joint management arrangements over as much of the Conservation Estate within the [INSERT NAME] Area as is reasonably practicable, having regard to the statutory processes under the CALM Act and the resources of the Department and the Corporation available for this purpose.
- K. The CEO will fully engage with the Corporation in matters of site selection, design and development of capital works including economic development opportunities arising from those works in the Agreement Area through the Committee and the consultation processes endorsed by the Committee.
- L. This Agreement is substantially in the form set out in the ILUA.

THE PARTIES AGREE AS FOLLOWS:

1. COMMITMENT TO PURSUE JOINT MANAGEMENT OPPORTUNITIES IN THE [INSERT NAME] AREA

The State has agreed in the ILUA that, subject to clause 11 [no fettering of statutory powers or discretions] of the ILUA it will put in place:

- (a) at least one Joint Management Agreement for land and waters in the Conservation Estate in the [INSERT NAME] Area within five years of the Commencement Date; and
- (b) unless the parties agree otherwise, at least one further Joint Management Agreement in relation to another part of the Conservation Estate in the [INSERT NAME] Area within ten years of the Commencement Date.

2. ESTABLISHMENT OF CO-OPERATIVE MANAGEMENT COMMITTEE

- (a) The [INSERT NAME] Area Conservation Estate Co-operative Management Committee (Co-operative Management Committee) is established.
- (b) The Co-operative Management Committee shall be comprised of at least 8 Representative Members, nominated in accordance with clause 4.1.

3. CO-OPERATIVE MANAGEMENT COMMITTEE

3.1. Role of the Co-operative Management Committee

- (a) The role of the Co-operative Management Committee shall be, consistently with the CALM Act, the *Wildlife Conservation Act 1950* (Wildlife Conservation Act) and any regulations made under those Acts, to:
 - (i) provide advice to the CEO and the Corporation on, and oversee and participate in, the identification of Conservation Estate lands within the [INSERT NAME] Area to jointly manage including identifying land to be jointly managed under Clause 1(a) and 1(b);
 - (ii) make recommendations on the priorities for the development and review of Management Plans for the Conservation Estate within the [INSERT NAME] Area;
 - (iii) subject to clause 3.1(b), provide advice to the CEO on, and fully and actively participate in, the preparation and amendment of all Management Plans within the [INSERT NAME] Area including (if appropriate) to provide for joint management and the establishment of a Joint Management Body for specific areas of the Conservation Estate;
 - (iv) provide advice to the CEO and the Corporation (as appropriate) on, and participate in, the preparation of policies, programs and other management documents for (J14. 78.3(I)21.7(N(ERT a)-618(A)618MCE)-95(ja)-7.3 f)-9.1(A

include providing advice to the CEO on how to meet the Department's publicly stated Aboriginal employment targets within the agreement area;

4. MEMBERSHIP OF THE CO-OPERATIVE MANAGEMENT COMMITTEE

4.1. Nomination of Representative and Alternate Members

(a) After the Commencement Date but before the first meeting convened pursuant to clause 5.1, the Parties shall each nominate persons to be Representative Members of the Co-operative Management Committee and Alternate Members of the Co-operative Management Committee in the following manner:

- (i) The Corporation shall nominate:
 - a. six (6) persons to be Representative Members of the Co-operative Management Committee, at least one of whom should be, if possible, employed in the Corporation's or the

Member and any reference to the Representative Member in this Agreement includes an Alternate Member acting in the position of a Representative Member, including the obligations under this clause 4.2.

4.3. Chairperson

- (a) At the first meeting of the Co-operative Management Committee, the Representative Members shall elect a Chairperson from the Representative Members nominated by the Corporation, to serve for a twelve month term.
- (b) Notwithstanding anything in paragraph (a), the Chairperson remains in the Chairperson position after the expiry of a 12 month term until another Chairperson is elected or he or she is re-elected.
- (c) The Chairperson shall preside at a meeting of the Co-operative Management Committee, but, if the Chairperson is absent from such a meeting, the meeting shall elect a Representative Member to preside at that meeting.

4.4. Persons ineligible to be members

Unless otherwise agreed by the Parties, a member of the [INSERT NAME] Group who is an employee of the CEO is not eligible to be nominated as a Member.

4.5. Vacancy of Member

- (a) The position of a Member becomes vacant if he or she:
 - (i) resigns his or her position by notice delivered to the Chairperson; or
 - (ii) is absent, without leave from the Chairperson, for three consecutive meetings of which he or she has had notice under clause 24;
 - (iii) is removed from the position by the Co-operative Management Committee under clause 4.7 or 4.8; or
 - (iv) dies.
- (b) If the position of any Member becomes vacant for any reason, including because of paragraph (a), a new Member shall be nominated for the remainder of the three year term in the following way:
 - (i) If the Member was nominated by the Corporation, the Corporation shall nominate the new Member.
 - (ii) If the Member was nominated by the CEO, the CEO shall nominate the new Member.
 - (iii) A Party shall give to the other Party, written notice, in accordance with clause 24, of a nominated new Member.

4.6. Vacancy of Chairperson

- (a) The position of Chairperson becomes vacant if he or she:
 - (i) resigns their position by notice delivered to the CEO; or
 - (ii) is absent without leave from the CEO for three consecutive meetings of which he or she has notice under clause 24; or
 - (iii) is removed from the position by the Co-operative Management Committee under clause 4.7 or 4.8; or

- (iv) dies.
- (b) If the position of the Chairperson becomes vacant for any reason, including

- (c) If the Co-operative Management Committee cannot reach a unanimous decision, decisions shall be made by a majority of each of the Representative Members nominated by the Corporation present at the meeting and the Representative Members nominated by the CEO present at the meeting.
- (d) If a majority of each of the Representative Members nominated by the Corporation present at the meeting and the Representative Members nominated by the CEO present at the meeting cannot agree the outcome of the same agenda item at two (2) consecutive meetings of the Co-operative Management Committee then the business which is the subject of that agenda item becomes a **Dispute** for the purposes of clause 10.

10. CO-OPERATIVE MANAGEMENT COMMITTEE DISPUTE

10.1. Referral to CEO and Corporation's CEO

- (a) A reference in this clause to the CEO or to the Corporation's CEO is a reference to those persons acting personally.
- (b) If the circumstances in clause 9(d) arise, the Chairperson shall, within 5 Business Days after the second meeting, give notice of the Dispute to the CEO and to the Corporation's CEO setting out details of the Dispute.
- (c) Upon receiving notice of a Dispute under paragraph 10.1(b), the CEO and the Corporation's CEO, shall, within 20 Business Days of the date of that notice:
 - (i) determine the Dispute; or
 - (ii) refer the Dispute to a Mediator in accordance with clause 10.2; or

- (d) The role of the mediator is to assist in negotiating a resolution of the Dispute, during or following which, the CEO and the Corporation's CEO may together determine the Dispute.
- (e) Any information or documents disclosed by the CEO and the Corporation s CEO under this clause 10:

Event of Default on the Non-defaulting Party and the period (not less than 5 Business Days) within which those steps must be taken.

- (b) Upon receiving a Default Notice, the Defaulting Party shall:
 - (i) in the case of an Event of Default under clause 14.1(b)(i):
 - (A) remedy the Event of Default within 20 Business Days; or
 - (B) if the Event of Default cannot reasonably be remedied in 20 Business Days, demonstrate that it is taking steps in good faith to remedy the Event of Default and continue to take such steps until the Event of Default is remedied, provided that the default must be remedied by no later than 3 months from the date of the Default Notice; and
 - (C) take such steps to mitigate the effect of the Event of Default as are specified in the Default Notice within the period specified in that notice.
 - (ii) in the case of an Event of Default under clause 14.1(b)(ii), and to the satisfaction of the Non-defaulting Party (acting reasonably), take all reasonable steps open to the Defaulting Party within a period of 20 business days commencing on the date of the Default Notice to ensure that further breaches of the terms of this Agreement do not occur.

14.5. Remedies exercised under this clause 14 do not prejudice any other rights a Party may have

Any remedy exercised under this clause 14 is without prejudice to any other rights a Party may have under this Agreement or othe

- (f) If a Party breaches clauses 15.2, 15.3 or 15.4, the other Party does not have to comply with those clauses in relation to the Party Dispute before commencing legal proceedings.

16. CONFIDENTIALITY

16.1. Between Parties

- (a) Subject to paragraph (b), all information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) during negotiations leading up to executing this Agreement and during the term of this Agreement, that is identified by the Disclosing Party as confidential, is confidential and must be kept confidential and shall not be disclosed except as permitted by this clause 16 (**Confidential Information**).
- (b) The following information is not Confidential Information:
 - (i) information that the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
 - (ii) information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosure recipients).

16.2. Between Members of the Co-operative Management Committee

- (i) when a new Agreement is substituted for this Agreement; or
- (ii) when the Parties agree in writing to terminate the Agreement.

18. INTELLECTUAL PROPERTY

No change of ownership which may exist in any Party's intellectual property will occur by its being made available to the Co-operative Management Committee, the Department, the State, the Corporation or any other party pursuant to this Agreement.

19. CHIEF EXECUTIVE OFFICER OBLIGATIONS MAY BE PERFORMED BY OTHER OFFICERS

Any reference to the CEO in this Agreement, other than in clause 10, includes a reference to the CEO acting through the agency of a Departmental officer.

20. ACTS BY STATE NO FETTER UPON DISCRETION

Nothing in this Agreement can fetter or control the exercise by any person of a statutory power or discretion otherwise than in accordance with the relevant statute.

21. NO ASSIGNMENT WITHOUT CONSENT

The Corporation may not assign or otherwise dispose of its rights, title, obligations and interests under this Agreement without the consent of the CEO.

22. FORCE MAJEURE AND ABORIGINAL CULTURAL BUSINESS

- (a) In the event that a Party becomes wholly or partly unable to perform any of its obligations under the Agreement beca

- (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.

23.5. Survival

Clauses 15, 16, 18, 23.2, 23.3, 23.5, 24 and 25 survive termination of this Agreement.

24. NOTICE

Each notice or other communicati

Chairperson means the Chairperson of the Co-operative Management Committee elected pursuant to clause 4.3.

Commencement Date means the date on which this Agreement is executed by all Parties.

Conservation Commission means a body corporate established under section 18 of the *Conservation and Land Management Act 1984*.

Conservation Estate has the same meaning as 'land to which this Act applies' in section 5(1) of the CALM Act.

Co-operative Management Committee means the body established in clause 2.

Corporation s CEO means:

- (a) the person duly appointed as the Corporation s CEO howsoever named; or
- (b) where there is no such person, the Chairperson of the Corporation.

Department has the same meaning as in the CALM Act.

Force Majeure means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide, adverse weather conditions;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, terrorism; or
- (d) the effect of any law or authority exercised by government official by law.

ILUA means the Indigenous Land Use Agreement entered into by the State and others and the [INSERT NAME] native title group which was entered on to the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act.

Insolvency Event

Parion

Land Partnership Fund means the fund established and administered by the Department of the Premier and Cabinet pursuant to the South West Native Title Settlement for the purpose of facilitating the implementation of the ILUAs including making provision for certain funding for joint management arrangements.

LEADR means LEADR, a company limited by guarantee, ACN: 008 651 232.

Management Plan means a management plan prepared under Part II Division 3 or Part V Division 1 of the CALM Act (as the case may be).

Marine Parks and Reserves Authority means the body established by section 26A of the CALM Act.

Member means a Representative Member or an Alternate Member.

Minister means the Minister to whom the administration of the CALM Act is committed, which for the time being is the Minister for Environment.

Noongar Boodja Trust means trust established pursuant to the Noongar Boodja Trust Deed as required by the ILUA.

Party means a party to this Agreement.

Replacement Corporation means a replacement corporation appointed by the Trustee of the Noongar Boodja Trust pursuant to the Noongar Boodja Trust Deed.

Representative Member means a person specified under clause 2 and nominated under clause 4.1.

South West Native Title Settlement means the six regional ILUAs under which the native title claims in relation to those areas of the south west of Western Australia have been resolved in exchange for Noongar people receiving a package of benefits.

Term means the term of this Agreement specified in clause 17.1.

[INSERT NAME] Area means the land and waters

- (f) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (g) a reference to a person established

EXECUTION

Executed by the Parties as an agreement.

THE **COMMON SEAL** of)
The **CONSERVATION AND**)
LAND MANAGEMENT)
EXECUTIVE BODY a body)
corporate established under)
section 36 of the Conservation)
and Land Management Act)
was affixed hereto in the presence of)

Signature of Chief Executive Officer

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

SIGNED by the **CHIEF EXECUTIVE**)
OFFICER for and on behalf of)
[INSERT NAME])
CORPORATION)
in the presence of:)

CHIEF EXECUTIVE OFFICER

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

SCHEDULE 1. [INSERT NAME Area]

