



# **APPENDICES**

## **Ordinary Council Meeting**

**Monday, 16 December 2019**



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SY194-12/19 Agreement for Disbursement of SEAVROC funds held in Tied Funds Reserve 40  
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## Distribution Agreement – SEAVROC Funds

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Shire of York

Shire of Beverley

Shire of Brookton

Shire of Cunderdin

Shire of Quairading

Shire of Tammin



**McLEODS**

Barristers & Solicitors

Stirling Law Chambers | 220 Stirling Highway | CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: [mcleods@mcleods.com.au](mailto:mcleods@mcleods.com.au)

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## Details

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### Parties

**Shire of York**

of PO Box 22, York, Western Australia  
(Shire of York)

**Shire of Beverley**

of PO Box 20, Beverley, Western Australia  
(Shire of Beverley)

**Shire of Brookton**

of PO Box 42, Brookton, Western Australia  
(Shire of Brookton)

**Shire of Cunderdin**

of PO Box 100, Cunderdin, Western Australia  
(Shire of Cunderdin)

**Shire of Quairading**

of PO Box 38, Quairading, Western Australia  
(Shire of Quairading)

**Shire of Tammin**

of PO Box 53, Tammin, Western Australia  
(Shire of Tammin)

### Background

- A On 22 June 2007, the Shires of Beverley, Brookton, Cunderdin, Quairading and York entered into a memorandum of understanding (**MOU**) to establish the principles, objectives and rules of the South East Avon Voluntary Regional Organisation of Councils (**SEAVROC**), an organisation initiated by those Shires in July 2006.
- B The Shire of Tammin was joined as a party to SEAVROC on 18 November 2010.
- C Funding was sought from various sources including the former Department of Local Government (**DLG**) to deliver collaborative projects through SEAVROC.
- D On 4 September 2014, the Shires of Cunderdin, Quairading and Tammin withdrew as parties to SEAVROC and SEAVROC was subsequently disbanded.
- E At the time SEAVROC was disbanded, there were outstanding projects with unexpended funds.
- F The current balance of the unused SEAVROC funds is \$104,451.00, comprising –
- |                              |             |
|------------------------------|-------------|
| (1) Awareness Training Grant | \$11,373.55 |
|------------------------------|-------------|

(2)	You're Welcome Grant	\$11,602.69
(3)	Connecting Local Governments	\$44,054.00
(4)	Business Case Funds	\$13,117.00
(5)	Workforce Plan	\$18,185.00
(6)	Zero Waste Plan	\$6,118.76

**(Current SEAVROC Funds).**

- G The SEAVROC Funds are held on SEAVROC's behalf by the Shire of York in its Tied Funds Reserve 40.
- H The Shire of York contacted the DLG (now known as the Department of Local Government, Sport and Cultural Industries (**DLGSC**)) on 21 March 2017 and 21 March 2019, to obtain the Department's advice on how to deal with the SEAVROC Funds.
- I On 17 May 2017, the Shire of York repaid \$11,000.00 of the SEAVROC Funds (specifically related to amalgamation proceedings) to DLGSC, under DLGSC's instruction.
- J The DLGSC has not provided any other advice or guidance on how the Parties should deal with the SEAVROC Funds.
- K The Parties have now agreed in principle to distribute the SEAVROC Funds equally between the Parties, subject to –
- “(a) An agreement being prepared and presented to each of the local governments involved, for consideration and approval of Council.
- (b) The Shire President and Chief Executive Officer of each local government signing the agreement (if approved to do so by their Council).
- (c) Each local government being provided with a copy of the agreement when signed by every representative.
- (d) A copy being sent to the DLGSC for information.”
- L The Parties enter into this Agreement to record the terms and conditions of their agreement for the distribution of the SEAVROC Funds.



# Agreed Terms

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## 1. Definitions and Interpretation

### 1.1 Defined Terms

In this Agreement -

**Agreement** means this document, as varied, novated or replaced from time to time;

**Commencement Date** means the date that the last of the Parties executes this Deed;

**Current SEAVROC Funds** is defined in **Recital G** of this Agreement;

**DLG** is defined in **Recital C** of this Agreement;

**DLGSC** is defined in **Recital I** of this Agreement;

**MOU** is defined in **Recital A** of this Agreement;

**Original Parties** means the Shires referred to in Recital A of this Agreement;

**Parties** means the parties to this Agreement;

**Remaining SEAVROC Funds** mean the amount of the SEAVROC Funds that remain after the deduction of legal fees under clause 5(1) of this Agreement;

**SEAVROC** is defined in **Recital A** of this Agreement; and

**SEAVROC Funds** means the funds held on SEAVROC's behalf by the Shire of York in its Tied Funds Reserve 40, as adjusted by interest and bank charges and fees.

### 1.2 Interpretation

In this Agreement, unless inconsistent with the context -

(1) words denoting -

(a) the singular includes the plural and vice versa; and

(b) a gender or genders include each other gender;

(2) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;

(3) a reference to -

(a) a person includes a firm, an unincorporated association, an incorporated association, a corporation and a government or statutory body or authority;

(b) a person includes their legal personal representatives, successors and assigns;

- (c) a statute, regulation, local law or any other written law, code or policy includes subsidiary legislation or an instrument made under it, and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a right includes a benefit, remedy, discretion, authority or power;
- (e) an obligation includes a warranty or representation, and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (f) provisions or terms of this Agreement, or another document, agreement, understanding or arrangement, include a reference to both express and implied provisions and terms;
- (g) time is to local time in Perth, Western Australia;
- (h) \$ or dollars is a reference to the lawful currency of Australia;
- (i) this Agreement or any other document includes this Agreement or other document as amended or replaced and despite any change in the identity of the parties;
- (j) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions or other electronic mail or transmissions;
- (k) any thing (including any amount) 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;
- (l) a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure to this Agreement; and
- (m) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

### 1.3 Headings

Headings do not affect the interpretation of this Agreement.

## 2. Distribution of SEAVROC Funds

The Parties agree that the Remaining SEAVROC Funds are to be distributed between the Parties in equal shares under clause 3 of this Agreement.

## 3. Shire of York's obligations

As soon as reasonably practicable after the Commencement Date, the Shire of York must transfer and distribute the Remaining SEAVROC Funds to each of the Parties in equal shares.

## 4. Limitation of liability and indemnity

- (1) Each Party acknowledges and agrees that it will receive and accept its share of the Remaining SEAVROC Funds at its own risk and without any reliance on any representation made by the Shire of York, or any employee of the Shire of York, and that it cannot make any claim against the Shire of York, or any employee of the Shire of York, in connection with any such reliance or representation.

- (2) Each Party further acknowledges and agrees that it is the responsibility of each local government to make its own investigations and enquiries into the permitted use of the SEAVROC Funds.
- (3) Each Party (other than the Shire of York) agrees to indemnify the Shire of York against any claim, demand or liability of any kind arising from the receipt, acceptance or use of the SEAVROC Funds.

## 5. Costs of this Agreement

- (1) The legal costs in relation to the preparation, negotiation and execution of this Agreement are to be deducted from the SEAVROC Funds prior to the distribution of those funds under clause 3.
- (2) Each Party is to bear its own legal costs (if any) in relation to the review of this Agreement.

## 6. Authority

Each Party enters into this Agreement under the authority of its Council.

## 7. Dispute resolution

- (1) If a dispute arises between any of the Parties in connection with this Agreement, the affected Party must give notice of the dispute to the other Party identifying the dispute and providing details of it.
- (2) The Parties to a dispute must endeavour to settle the dispute by mediation conducted by a independent mediator appointed by agreement of the Parties or, failing agreement, by a person appointed by the Chair of Resolution Institute or her or his nominee.
- (3) The Resolution Institute Mediation Rules are to apply to the mediation.
- (4) It is a condition precedent to the right of any Party to arbitrate or litigate the dispute that it has first complied with the mediation process in this **clause 7(1)**.

## 8. General provisions

### 8.1 Further assurance

Each Party must 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 Agreement and any transaction contemplated by it.

### 8.2 No fetter on discretion

Nothing in this Agreement is to fetter or limit, or is to be construed as an attempt to fetter or limit, the discretion or the powers of the Shire of York under any written law.

### 8.3 Notices

- (1) Any notice, direction or other communication which must or may be given in connection with this Agreement -
  - (a) must be in writing in order to be valid;

- (b) is sufficient if executed by the Party giving the notice or on its behalf by any director, secretary, duly authorised officer or solicitor of that Party;
  - (c) in order to be valid must be given to a Party by -
    - (i) delivering or sending it by prepaid post to, or leaving it at, the 'notice details' address of that Party as set out in subclause (2);
    - (ii) sending it to the email address or facsimile number of that Party as set out in subclause (2);
    - (iii) delivering or sending it to another address, email address or facsimile number as is notified in writing by that Party to the other Party from time to time; and
  - (d) if given in accordance with paragraph (c), will be deemed to take effect -
    - (i) in the case of prepaid post, on the second business day after the date of posting;
    - (ii) in the case of facsimile, on receipt of a transmission report from the sending machine confirming successful transmission;
    - (iii) in the case of delivery by hand, on delivery; and
    - (iv) in the case of email at the time or receipt as defined in section 14 of the *Electronics Transactions Act 2011*.
- (2) The following notice details apply for the purposes of subclause (1) -

Shire of York

Postal address PO Box 22, York, Western Australia

Facsimile number (08) 9641 2202

Email address [records@york.wa.gov.au](mailto:records@york.wa.gov.au)

Shire of Beverley

Postal address PO Box 20, Beverley, Western Australia

Facsimile number (08) 9646 1409

Email address [admin@beverley.wa.gov.au](mailto:admin@beverley.wa.gov.au)

Shire of Brookton

Postal address PO Box 42, Brookton, Western Australia

Facsimile number N/A

Email address [mail@brookton.wa.gov.au](mailto:mail@brookton.wa.gov.au)

Shire of Cunderdin

Postal address PO Box 100, Cunderdin, Western Australia

Facsimile number (08) 9635 1464

Email address [admin@cunderdin.wa.gov.au](mailto:admin@cunderdin.wa.gov.au)

Shire of Quairading

Postal address PO Box 38, Quairading, Western Australia

Facsimile number (08) 9645 1126

Email address [shire@quairading.wa.gov.au](mailto:shire@quairading.wa.gov.au)

Shire of Tammin

Postal address PO Box 53 Tammin, Western Australia

Facsimile number N/A

Email address [shire@tammin.wa.gov.au](mailto:shire@tammin.wa.gov.au)

#### **8.4 Relationship between the Parties**

The Parties acknowledge and agree that no relationship of partnership, agency or employment is expressly intended or to be implied into this Agreement.

#### **8.5 Entire agreement**

- (1) The Parties acknowledge that they have entered into this Agreement in full reliance on their own enquiries, investigations, examinations and advice and not in reliance on or as a result of any statement, claim, representation or warranty (expressed or implied) made or given by the Shire of York or any employee, agent or other person on behalf of the Shire of York in respect of any matter whatsoever affecting this Agreement.
- (2) The Parties agree that this Agreement constitutes the whole and entire agreement between them with respect to the distribution of Remaining SEAVROC Funds and supersedes all previous negotiations and agreements written or oral.

#### **8.6 Severability**

In the event of part of this Agreement being or becoming void or unenforceable then that part is to be severed from this Agreement with the intention that the balance of this Agreement is to remain in full force and effect, unaffected by the severance.

#### **8.7 Amendment and waiver**

- (1) This Agreement may not be modified, amended or varied except by a document in writing signed by or on behalf of each of the Parties.
- (2) Any modification to a term or condition of this Agreement, or waiver or relinquishment of the performance of any term or condition of this Agreement, will be effective only if made in writing and executed by or on behalf on the Parties granting the waiver.
- (3) No waiver of any one breach of any term or condition of this Agreement is to operate as a waiver of any other breach of the same or other term or condition of this Agreement.

**8.8 Laws of Western Australia apply**

This Agreement is to be construed and interpreted in accordance with the laws of the State of Western Australia and the Parties agree to submit to the jurisdiction of the courts of that State and of courts competent to hear appeals from them.

## Signing page

**EXECUTED** by the Parties as a Deed on

**2019.**

**THE COMMON SEAL** of **SHIRE OF YORK** was affixed by authority of a resolution of the Council in the presence of -

\_\_\_\_\_  
Shire President

\_\_\_\_\_  
(Print Full Name)

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

\_\_\_\_\_  
(Print Full Name)

**THE COMMON SEAL** of the **SHIRE OF BEVERLEY** was affixed by authority of a resolution of Council in the presence of -

\_\_\_\_\_  
Shire President

\_\_\_\_\_  
(Print Full Name)

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

\_\_\_\_\_  
(Print Full Name)

**THE COMMON SEAL** of the **SHIRE OF BROOKTON** was affixed in the presence of - )  
)  
)

\_\_\_\_\_  
Shire President

\_\_\_\_\_  
(Print Full Name)

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

\_\_\_\_\_  
(Print Full Name)

The **COMMON SEAL** of the **SHIRE OF CUNDERDIN** was affixed in the presence of - )  
)  
)

\_\_\_\_\_  
Shire President

\_\_\_\_\_  
(Print Full Name)

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

\_\_\_\_\_  
(Print Full Name)

**THE COMMON SEAL** of the **SHIRE OF QUAIRADING** was affixed by authority of a resolution of Council in the presence of -

\_\_\_\_\_  
Shire President

\_\_\_\_\_  
(Print Full Name)

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

\_\_\_\_\_  
(Print Full Name)

**THE COMMON SEAL** of the **SHIRE OF TAMMIN** was affixed by authority of a resolution of Council in the presence of -

\_\_\_\_\_  
Shire President

\_\_\_\_\_  
(Print Full Name)

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

\_\_\_\_\_  
(Print Full Name)