

# ILUA Variation Agreement – Capital Works Program – Ballardong People ILUA

Ballardong Aboriginal Corporation  
Regional Corporation

South West Aboriginal Land & Sea Council Aboriginal Corporation  
SWALSC

State of Western Australia  
State

Minister for Aboriginal Affairs, Minister for Lands, Minister for Mines and Petroleum, Minister for Environment, Minister for Water, Conservation Commission of Western Australia, Conservation and Land Management Executive Body, Housing Authority, Marine Parks and Reserves Authority, Water Corporation, Western Australian Land Authority  
Government Parties

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# ILUA Variation Agreement – Capital Works Program

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Date

7 June 2024

Parties

**Ballardong Aboriginal Corporation ICN: 9605** of Level 2, 100 Royal Street, East Perth, Western Australia 6004 (**Regional Corporation**)

**South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832** of Level 2, 100 Royal Street, East Perth, Western Australia 6004 (**SWALSC**)

The **State of Western Australia**, acting through the **Honourable Dr Antonio De Paulo Buti MLA**, the Minister for Aboriginal Affairs of the State of Western Australia care of the Department of the Premier and Cabinet, Dumas House, 2 Havelock Street, West Perth, Western Australia 6005 (**State**)

**Minister for Aboriginal Affairs, Minister for Lands, Minister for Mines and Petroleum, Minister for Environment, Minister for Water, Conservation Commission of Western Australia, Conservation and Land Management Executive Body, Housing Authority, Marine Parks and Reserves Authority, Water Corporation, Western Australian Land Authority (Government Parties)**

## Background

- A. The Regional Corporation, SWALSC, the State and the Government Parties are parties to the ILUA.
- B. Clause 15(a) of the Settlement Terms requires the State to provide \$6,500,000 of funding to establish administrative offices for the Regional Corporations and Central Services Corporation over a two year period ending 2 years and 60 Business Days after the Trust Effective Date, being 24 June 2023. If the funding is not fully expended by that date, the State has a discretion to roll over any remaining moneys for a third year or terminate the funding.
- C. By notice to the Regional Corporation dated 28 February 2023, the State exercised its discretion to roll over the funding for a third year, to 24 June 2024.
- D. The Parties wish to roll over any funding not yet expended by 24 June 2024 for a fourth year, and to provide the State with a discretion to roll over any remaining moneys for a fifth year or terminate the funding.
- E. In the absence of an express provision in the Settlement Terms to provide the State with a discretion to roll over the funding for a further period, the Parties have entered into this Deed pursuant to clause 19.5 of the Settlement Terms.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

**Deed** means this document.

**Effective Date** means the date that is earlier of:

- (a) the date of the execution of this Deed by the State; or

- (b) the date of the execution of a Related Deed by the State.

**ILUA** means the document titled **Ballardong People Indigenous Land Use Agreement**, which was dated 8 June 2015 and entered into between SWALSC, the Representative Parties (for and on behalf of the Native Title Agreement Group), the State and the Government Parties, and to which the Regional Corporation became a party in lieu of the Representative Parties by a Deed of Novation dated 9 December 2022.

**Native Title Agreement Group** has the meaning given in the ILUA.

**Parties** means the Regional Corporation, SWALSC, the State and the Government Parties.

**Related Deed** means each of the other five ILUA variation agreements relating to extending the time frame in clause 15(a) of the Settlement Terms beyond 24 June 2024, to be entered into between the parties to Related Agreements.

**Settlement Terms** has the meaning given in the ILUA.

**Trustee** has the meaning given in the ILUA.

## 1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) any capitalised term used that is defined in the ILUA, but not specifically defined in this Deed, will have in this Deed the meaning that it bears in the ILUA;
- (c) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (d) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, a government entity and a trust;
- (e) a reference to a Party is a reference to a Party to this Deed and includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;
- (f) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) a reference to a clause is a reference to a constituent part of this Deed;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (j) **includes** in any form is not a word of limitation.

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## **2. Variation of the ILUA**

### **2.1 Capital Works Program - Extension of Time Frames**

With effect from the Effective Date, the following changes apply to clause 15(a) of the Settlement Terms:

- (a) in the first line of clause 15(a) the words "over a two year period" are replaced with the words "over a four year period";
- (b) in the fourth line of clause 15(a)(iii) the words "within 24 month" are replaced with the words "within 48 months";
- (c) in the last sentence of clause 15(a) the words "two year period" are replaced with the words "four year period"; and
- (d) in the last sentence of clause 15(a) the words "3<sup>rd</sup> year" are replaced with the words "5<sup>th</sup> year".

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## **3. Affirmation of the ILUA**

The ILUA will be read and construed subject to this Deed, and in all other respects the provisions of the ILUA are ratified and confirmed, and, subject to the variation contained in this Deed, the ILUA will continue in full force and effect.

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## **4. General**

### **4.1 Governing Law**

This Deed is governed by and must be construed according to the law applying in Western Australia.

### **4.2 Jurisdiction**

Each Party irrevocably:

- (a) submits to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 4.2(a).

### **4.3 Further acts and documents**

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give effect to this Deed.

### **4.4 Counterparts**

This Deed may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes the deed of each Party who has executed and delivered that counterpart.

#### **4.5 Expenses**

Except as otherwise provided in this Deed, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

#### **4.6 Severability**

If any part of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

#### **4.7 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this Deed:


- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

**Executed** as a deed.

**Executed** in accordance with section 99-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) on behalf of **Ballardong Aboriginal Corporation ICN: 9605** in accordance with its constitution by, or in the presence of:

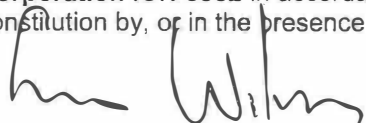
  
\_\_\_\_\_  
Director (signature)

Kevin FITZGERALD  
\_\_\_\_\_  
Director (print full name)

  
\_\_\_\_\_  
Director (signature)

MURRAY YARRAN  
\_\_\_\_\_  
Director (print full name)

**Executed** in accordance with section 99-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) on behalf of **South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832** in accordance with its constitution by, or in the presence of:

  
\_\_\_\_\_  
Director (signature)

SIMON WILKINS  
\_\_\_\_\_  
Director (print full name)

  
\_\_\_\_\_  
Director (signature)

DG EGGINGTON  
\_\_\_\_\_  
Director (print full name)



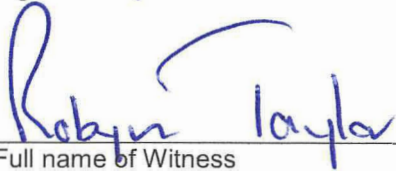
Executed for and on behalf of the **State of Western Australia** and of each of the **Government Parties** by the **Honourable Dr Antonio De Paulo Buti MLA**, the Minister for Aboriginal Affairs of the State of Western Australia in the presence of:



Honourable Dr Antonio De Paulo Buti MLA



Signature of Witness



Full name of Witness

% Dennis House  
level 5 - 2 Hawlock St  
West Perth WA 6005

Address of Witness



Occupation of Witness