

PROJECT AGREEMENT FOR THE ORANGE CITY PIPELINE

Council of
Australian
Governments

An agreement between:

- the Commonwealth of Australia; and
- New South Wales.

The output of this project will be the construction of a water pipeline from the Macquarie River to the city of Orange.

Project Agreement for the Orange City Pipeline

INTERGOVERNMENTAL AGREEMENT ON FEDERAL FINANCIAL RELATIONS

PRELIMINARIES

1. This Project Agreement (the Agreement) is created subject to the provisions of the Intergovernmental Agreement on Federal Financial Relations (IGA FFR) and should be read in conjunction with that Agreement and its Schedules, which provide information in relation to performance reporting and payment arrangements under the IGA FFR.
2. This Agreement will support the delivery of a water pipeline from the Macquarie River to Orange to provide water security for the city. The project involves construction of infrastructure with the capacity to transfer up to 12ML/day of water from the Macquarie River to the Orange City Council's Suma Park Dam. This connection will provide a reliable additional supply of water to reduce ongoing demand on the existing limited potable supply.
3. This Agreement constitutes the entire agreement for this project, noting the Project Management Plan to be developed by New South Wales will provide further detail on project activities consistent with agreed milestones.

PART 1 – FORMALITIES

Parties to this Agreement

4. This Agreement is between the Commonwealth of Australia (the Commonwealth) and New South Wales (the State).

Term of the Agreement

5. This Agreement replaces the Implementation Plan for the Orange City Pipeline under the *National Partnership Agreement on Water for the Future* dated 17 February 2011. It will commence as soon as the Commonwealth and the State sign the Agreement and will expire on 30 June 2015 or on completion of the project, including acceptance of final performance reporting and processing of final payments against milestones, unless terminated earlier or extended as agreed in writing by the Parties.

PART 2 – PROJECT OUTPUT

6. The output of this Agreement will be:
 - (a) construction of a water pipeline from the Macquarie River to Orange to provide water security for the city, including construction of infrastructure with the capacity to transfer up to 12ML/day of water from the Macquarie River to the Orange City Council's Suma Park Dam.

PART 3 – ROLES AND RESPONSIBILITIES OF EACH PARTY

Role of the Commonwealth

7. The Commonwealth will be responsible for:
 - (a) monitoring and assessing achievement against milestones in the delivery of the Orange City Pipeline under this Agreement to ensure the output is delivered within the agreed timeframe;
 - (b) providing a consequent financial contribution to the State to support the implementation of this Agreement;
 - (c) in accordance with the *Fair Work (Building Industry) Act 2012*, ensuring that financial contributions to a building project or projects as defined under the *Fair Work (Building Industry – Accreditation Scheme) Regulations 2005*, are only made where a builder or builders accredited under the Australian Government Building and Construction Occupational Health and Safety Accreditation Scheme is contracted;
 - (d) ensuring that compliance with the National Code of Practice for the Construction Industry and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry is a condition of Australian Government funding; and
 - (e) at its option, participating as an observer (via telephone or in person) at all meetings of the Project Management Committee to be established in accordance with clause 9(b) of this Agreement.

Role of the State

8. The State will be responsible for:
 - (a) coordinating with the Commonwealth and Orange City Council on the execution of this Agreement (noting Orange City Council is the Participating Authority);
 - (b) on-forwarding Commonwealth funding to Orange City Council provided through this Agreement;
 - (c) ensuring Orange City Council completes the project in a timely and professional manner, including provision of reports through the State to the Commonwealth, in accordance with this Agreement;
 - (d) ensuring that only a builder or builders accredited under the Australian Government Building and Construction Occupational Health and Safety Accreditation Scheme is contracted, and providing the necessary assurances to the Commonwealth;
 - (e) ensuring that compliance with the Building Code 2013 is made a condition of tender for all contractors and subcontractors who tender for the work, and providing the necessary assurances to the Commonwealth; and
 - (f) meeting all conditions including providing reports in accordance with this Agreement.

9. Additionally, the State will be responsible for:
- (a) entering into an agreement with the Orange City Council as a financial project partner, to ensure security of shared financial commitments outlined in this Agreement plus ongoing operation and maintenance of the assets concerned;
 - (b) establishing a Project Management Committee (the Committee) to monitor and oversee the implementation of the project; and
 - (c) ensuring Orange City Council has in place a detailed Project Management Plan including, but not limited to, strategies for procurement, communication, stakeholder management, planning and environmental approvals and risk assessment/minimisation. The Project Management Plan is to be reviewed and updated routinely, including to incorporate conditions arising from any approvals under the Commonwealth *Environmental Protection and Biodiversity Act 1999*.

Role of the Participating Authority

10. Orange City Council will be responsible for:
- (a) *providing a financial contribution* to support the implementation of this Agreement;
 - (b) working with the State in ensuring completion of the project in a timely and professional manner in accordance with this Agreement;
 - (c) ensuring all conditions including provision of reports, in accordance with this Agreement, are met and provided to the Commonwealth through the State in a timely manner;
 - (d) ensuring that only a builder or builders accredited under the Australian Government Building and Construction Occupational Health and Safety Accreditation Scheme is contracted, and providing the necessary assurances to the Commonwealth; and
 - (e) ensuring that compliance with the Building Code 2013 is made a condition of tender for all contractors and subcontractors who tender for the work, and providing the necessary assurances to the Commonwealth;
11. Additionally, the Orange City Council agrees:
- (a) to allow, at all reasonable times, appropriate Commonwealth representatives access to all sites where project works are being or have been undertaken;
 - (b) that the Commonwealth will be consulted on the nature and content of major events, announcements, promotional material or publicity relating to the activity under this Implementation Plan and roles of the Commonwealth, State and Orange City Council will be acknowledged and recognised appropriately; and
 - (c) to have in place a detailed Project Management Plan for the project as set out in Paragraph 9 of this Agreement.

Shared roles

12. The Parties will meet the requirements of Schedule E, Clause 26 of the Intergovernmental Agreement on Federal Financial Relations, by ensuring that prior agreement is reached on the nature and content of any events, announcements, promotional material or publicity relating to

activities under this Agreement, and that the roles of both Parties will be acknowledged and recognised appropriately.

PART 4 – PROJECT MILESTONES, REPORTING AND PAYMENTS

13. Table 1 summarises the milestones for the project, relevant reporting dates and payments expected to be made, once a report certifying that milestones have been met is received and accepted by the Commonwealth.
14. Project milestones will be identified and agreed to by the Parties in the Project Management Plan required under Paragraph 9 of this Agreement. The Project Management Plan is a flexible document that may be varied by the Project Management Committee.

Table 1: Milestones, reporting and payment summary

Milestone Number	Progress Report date	Milestone	Payment
1	14 April 2011 (completed)	Execution of an agreement between the State and Orange City Council for this Orange City Pipeline project	\$2,000,000
2	15 August 2013 (completed)	<p>Demonstration the project will provide acceptable levels of benefit as set out in the Orange City Water Security Project Costed Proposal Information Requirements</p> <p>Completion of an Environmental Impact Statement.</p> <p>Completion of preliminary investigation, preliminary design and detailed design and documentation.</p> <ul style="list-style-type: none"> • Planning approvals and land matters <ul style="list-style-type: none"> ○ Submission of required approvals ○ Stakeholder consultations undertaken ○ All land matters, other than compulsory acquisition, have been completed and all compulsory acquisition matters are in train. Review and settlement of agreements and approvals. 	\$3,000,000
3	13 March 2014	Achievement of milestone activities in accordance with the Project Management Plan	\$2,000,000

Milestone Number	Progress Report date	Milestone	Payment
4	23 May 2014	Achievement of milestone activities in accordance with the Project Management Plan	\$6,000,000
5	13 November 2014	Achievement of milestone activities in accordance with the Project Management Plan	\$3,000,000
6	12 February 2015	Project completion including: <ul style="list-style-type: none"> • Achievement of all activities in accordance with the Project Management Plan. • Commissioning of all works. 	\$3,000,000
7	22 May 2015	Submission of Final Project report to the satisfaction of the Commonwealth	\$1,000,000

Reporting arrangements

15. The State will provide performance reports in accordance with Table 1 during the operation of the Agreement. Each performance report is to contain the following information:
 - (a) a description of actual performance of the project in the period to date against the project milestone(s), including a statement as to whether the project is proceeding in accordance with the milestone(s) and, if it is not, an explanation as to why and the action the State proposes to take to address the matter(s);
 - (b) details of any matter(s) that have arisen which could adversely impact on the delivery of the output, and how the State proposes to resolve this/these matter(s);
 - (c) promotional activities undertaken in relation to, and media coverage of, the project during the reporting period and any promotional opportunities expected to arise during the next reporting period; and
 - (d) a description of the work to be undertaken to complete the remaining project milestone(s).

16. The State will also prepare a final Project Report within 90 days of the completion of the Project (or upon termination of this Agreement). It is to be a stand-alone document that can be used for public information dissemination purposes. The final Project Report will:
 - (a) describe the conduct, benefits and outcomes of the project as a whole;
 - (b) evaluate the project, including assessing the extent to which the objective has been achieved and explaining why any aspects were not achieved;
 - (c) provide a plan for the ongoing operation, monitoring and evaluation of the infrastructure arising from the project; and

- (d) include a discussion of any other matters relating to the project, limited to the minimum necessary for the effective assessment of performance and agreed between the Commonwealth and the State, at least 60 days before it is due.

PART 5 – FINANCIAL ARRANGEMENTS

17. The Commonwealth will provide a total financial contribution to the State of up to \$20.0 million in respect of this Agreement, payable in accordance with the milestones set out in Table 1. All payments are GST exclusive.
18. The Commonwealth's funding contribution will not be reduced where the State secures funding from other activity partners through innovative and collaborative partnerships.
19. The Commonwealth's, the State's and the Participating Authority's estimated financial contributions to the operation of this Agreement, including through National Partnership payments to the State paid in accordance with *Schedule D – Payment Arrangements* of the Intergovernmental Agreement on Federal Financial Relations, are shown in Table 2.

Table 2: Estimated financial contributions (\$ million)

Financial Year	2010-11	2011-12	2012-13	2013-14	2014-15	Total
Estimated total FY budget	5.83	0.00	0.00	29.97	11.2	47.00
Less estimated National Partnership Payments	2.00	0.00	0.00	11.00	7.00	20.00
Balance of non-Commonwealth contributions						
-- New South Wales	2.95	0.00	0.00	15.25	0.00	18.20
-- Orange City Council	0.88	0.00	0.00	3.72	4.20	8.80

20. Having regard to the agreed estimated costs of the project specified in this Agreement, the State will not be required to pay a refund to the Commonwealth if the actual cost of the project is less than the agreed estimated cost of the project. Similarly, the State bears all risk should the costs of the project exceed the agreed estimated costs. The Parties acknowledge this arrangement provides the maximum incentive for the State to deliver the project cost effectively and efficiently.

PART 6 – GOVERNANCE ARRANGEMENTS

Enforceability of the Agreement

21. The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, that does not lessen the Parties' commitment to this Agreement.

Variation of the Agreement

22. The Agreement may be amended at any time by agreement in writing by both Parties.

23. Either Party may terminate this Agreement by providing 30 days notice in writing. Where this Agreement is terminated, the Commonwealth's liability to make payments to the State is limited to payments associated with project milestones achieved by the State by the date of effect of termination of this Agreement. Such progress is to be detailed in a report to the Commonwealth within 30 days of termination.

Delegations

24. The Commonwealth Minister may delegate the assessment of performance against milestones and the authorisation of related project payments to senior Commonwealth officials, having regard to the financial and policy risks associated with those payments.

Dispute resolution

25. Either Party may give notice to the other Party of a dispute under this Agreement.
26. Officials of both Parties will attempt to resolve any dispute in the first instance.
27. If a dispute cannot be resolved by officials, it may be escalated to the relevant Ministers.
28. If a dispute cannot be resolved by the relevant Ministers, it may be referred by either Party to relevant First Ministers for consideration.

NOTICE OF DETAILS FOR THIS PROJECT

29. A notice relating to this project, rather than the Agreement generally, is to be in writing and dealt with as follows:

- (a) if given by the State to the Commonwealth:

Assistant Secretary
On-Farm and Urban Water Programs Branch
Department of the Environment
GPO Box 787
CANBERRA ACT 2600

or

- (b) if given by the Commonwealth to the State:

Director Urban Water
NSW Office of Water
GPO Box 3889
SYDNEY NSW 2001

The Parties have confirmed their commitment to this Agreement as follows:

**Signed for and on behalf of the Commonwealth
of Australia by**



Senator the Hon Simon Birmingham
Parliamentary Secretary to the Minister for the
Environment

Date: 10/12/13

**Signed for and on behalf of the State of
New South Wales by**



The Honourable Katrina Hodgkinson MP
Minister for Primary Industries

Date: 21.11.13