



Funding Deed

Council has received government funding from the Funding Agency as part of the Living Regions Living Suburbs fund.

Council wishes to provide funding to the specified Organisation for the Project, in accordance with this deed and the Funding Agreement.

Words or expressions capitalised in the left hand column of the particulars below have the meaning given in the right hand column when used in this deed.

Particulars

Council	Greater Shepparton City Council ABN 59 835 329 843 of 90 Welsford Street, Shepparton, Victoria 3630.
Organisation	Shepparton Motor Museum and Collectibles Limited (trading as Museum of Vehicle Evolution) ABN 21 153 061 440 of 7725 Goulburn Valley Highway, Kialla VIC 3631.
Contact Details	<p>Council Address: 90 Welsford Street, Shepparton, Victoria 3630 Email: Colin.Kalms@shepparton.vic.gov.au</p> <p>Organisation Address: 7723 Goulburn Valley Hwy, Kialla, Victoria 3631 Email: info@sheppartonmotormuseum.com.au</p>
Funding Agency	The State of Victoria, as represented by the Department of Jobs, Precincts and Regions ABN 83 295 188 244
Funding Agreement	The Grant Agreement between Council and the Funding Agency dated ### including any variations to that agreement and directions given by the Funding Agency under that agreement.
Funded Amount (Funding)	\$900,000 (exclusive of any GST), less any amounts deducted or withheld under this deed.
Project	Construction of the Shepparton Truck & Transport Museum and Events Hub, being the construction of the Museum of Vehicle Evolution museum and undercover events space, capable of housing large scale vehicles, static displays and interactive exhibits, as well as the Loel Thompson Clothing Collection display.
Project Objectives	<ol style="list-style-type: none"> 1. Showcase the Goulburn Valley's rich history and heritage centres around trucking, transport and agriculture. 2. Provide a high quality undercover outdoor events space capable of accommodating truck and vehicle trade shows, exhibitions and displays as well as local and regional markets and other community events. 3. Increase cultural and heritage offering in Greater Shepparton to strengthen the region as a holiday/leisure destination in line with the Greater Shepparton Economic Development, Tourism and Major Events Strategy (2016) 4. Increase visitor spending and length of stay 5. Increase job opportunities in Greater Shepparton.
Project Outcomes	<p>Increased economic activity in the Greater Shepparton area, demonstrated via:</p> <ol style="list-style-type: none"> 1. Increase in visitation to the MOVE museum to 17,500 admissions in year 1 post-construction and continue to grow annually to 27,500 by year 5 post completion 2. Growth of events at the venue from 6 per annum to 12 per annum 3. Creation of two FTE positions at MOVE 4. Increase visitor spending by \$5.7 million annually 5. Support 14 direct jobs during the construction phase of the Project and a multiplier of an additional 22 jobs in the construction, hospitality and supporting industry sectors within Greater Shepparton.
Project Conditions Precedent	Funding is conditional upon the Organisation securing the following funding and demonstrating that it has sufficient funds to complete/deliver the Project:

	Contributor	Amount (GST exclusive)
	MOVE	\$700,000
	Council	\$1,250,000
	Australian Federal Government RJIP Program	\$2,500,000
	Greater Shepparton City Council (Victorian Government auspice)	\$900,000
	Total	\$5,350,000
Project Commencement Date	23 June 2020	
Project Completion Date	30 April 2022	
Key Milestones and Payment Instalments	See Annexure 1	
Key Reports	Report	Timing
	Project plan	A Project Plan, Project Management Plan or other similar plan acceptable to Council must be provided to Council prior to the Project Commencement Date to detail how the Project will be delivered and timeframes for action.
	Budget	A project budget must be provided to Council prior to the Project Commencement Date
	Status updates	Status updates, reporting on amounts spent, progress against the relocation plan must be provided to Council at least every quarter, and otherwise on request, in the form requested by Council.
	Adverse events	Any event which could reasonably be expected to delay all or part of the Project or which materially alters any representation made to Council must be promptly notified to Council once known or identified by the Organisation, in particular if the Project is delayed or inactive or may become delayed or inactive for a period of 60 days or more.
	Breaches	Any breach of this deed must be promptly notified to Council once known or identified by the Organisation.
	Outcome Report	A report and/or data on outcomes for the Project must be completed using a template acceptable to Council within one (1) year period or the sooner of the Project Completion Date and the termination of this deed.
	Final Acquittal	A final acquittal report must be completed using a template acceptable to Council, within sixty (60) days of the sooner of the completion of the Project and the termination of this deed, unless another period is agreed by the parties.
	Additional reports	Any additional information reasonably requested by Council in relation to the evaluation of the Project must be provided in a form and manner acceptable to Council.
Organisation Commitments	<p>The Organisation must:</p> <ul style="list-style-type: none"> • (Project Plan) complete a project plan in a form approved by Council, for Council's approval; • (Completion of Project) carry out and complete the Project in accordance with this deed and the Funding Agreement and the Regional Infrastructure Fund Guidelines; • (Expenditure of Grant Amount) ensure the Funding is only used for the purposes of the Project and no other purpose; • (Approvals and Permits) obtain all planning, environment, regulatory and other approvals and permits necessary to commence and complete the Project; • (Agreements with third parties) prior to delivering and/or facilitating any community event and/or small infrastructure project under the Project, enter into legally binding agreements with third parties, as relevant, and on 	

	<p>reasonable commercial terms, to ensure that:</p> <ul style="list-style-type: none"> ○ the Funding and any portion of it is used only in accordance with this Agreement; ○ any infrastructure being built under the Project complies with all prescribed standards and that all relevant licences permits or approvals have been obtained by the Organisation or any relevant third party; and ○ the Funding Agency and/or Council, on reasonable notice, have the right to enter and inspect any relevant land and/or building for the purpose of ensuring any Project infrastructure has been built in accordance with this deed, <ul style="list-style-type: none"> • (Project Expenditure) spend at least \$2,150,000 of project expenditure on the Project by the Project Completion Date; • (Local Jobs First Policy Commitments) where applicable, comply with the Local Job First Police Commitments; • (Evaluation Capability) develop appropriate processes to capture the required data to measure the achievements of the Project Outcomes.
Risk Management Procedures	<p>The Organisation's risk management policies must be consistent with AS/NZS ISO 31000:2009 Risk Management – Principles and Guidelines.</p> <p>The Organisation must comply with the following policies:</p> <ul style="list-style-type: none"> • Funding Agency Local Jobs First Policy; • Department of Jobs, Precincts and Regions Risk Management Framework; and • Any other policy notified by Council.
Insurance	<p>As specified in the Funding Agreement, including public liability insurance of \$20 million for any one event and insurance against any loss or damage to the Project infrastructure for full replacement cost.</p>
Approved Sub-contractors	N/A
Additional Provisions	N/A

Execution

Council agrees to pay the Funded Amount to the Organisation for the delivery of the Project, and the Organisation agrees to ensure the Funded Amount is applied for the Project, on the terms of this deed (incorporating the attached terms and conditions).

THE COMMON SEAL of the **GREATER)
SHEPPARTON CITY COUNCIL** was affixed on)
this day)
of 2020 in the)
presence of the Chief Executive Officer being a)
delegated officer pursuant to Local Law No. 2 of)
the Council:)

.....
CHIEF EXECUTIVE OFFICER
Peter Harriott

EXECUTED by **SHEPPARTON MOTOR)
MUSEUM AND COLLECTIBLES LIMITED** in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by being signed by)
authorised persons:)

.....
Director

.....
*Director/company secretary
*Delete whichever is inapplicable

.....
Full Name

.....
Full Name

Date of Execution

1 Delivery of the Project

- 1.1 From the Project Commencement Date until the Project Completion Date, the Organisation must carry on and complete the Project:
- 1.1.1 in accordance with applicable laws and any applicable guidelines, policies and procedures notified by Council or the Funding Agreement; and
 - 1.1.2 using a standard of care, skill and diligence that would be reasonably expected from an organisation such as the Organisation,
- so as to achieve the Project Objectives and Project Outcomes, in a timely and efficient manner and satisfy all of Council's obligations under the Funding Agreement, as if:
- 1.1.3 the Organisation was named in the Funding Agreement as the recipient of the funding; and
 - 1.1.4 Council's obligations to the Funding Agency, were obligations of the Organisation,
- except that Council will continue to be entitled to receive the funding under the Funding Agreement, subject to the terms of this deed and the obligation to direct Funding to the Organisation.
- 1.2 Without limiting clause 1.1, the Organisation must:
- 1.2.1 comply with all relevant laws;
 - 1.2.2 satisfy or cause to be satisfied all representations made by Council to the Funding Agency in connection with the Project;
 - 1.2.3 maintain the policies of insurance prescribed under the Funding Agreement ;
 - 1.2.4 not do or omit or cause any act or thing which causes or contributes to a breach of the Funding Agreement by Council;
 - 1.2.5 ensure that payments and instalments can be claimed by Council under the Funding Agreement, as soon as practicable;
 - 1.2.6 promptly notify Council of anything reasonably likely to adversely affect the undertaking of the Project, management of the Funding or anything else that may affect Council's compliance with the Funding Agreement and provide regular updates as the status of the issue as required by Council including in relation to, without limitation;
 - (a) any complaints, feedback or open disclosures received in respect of the Project; or
 - (b) third party claims made against the Organisation in respect of the Project; and
 - 1.2.7 maintain, so far as is practicable, a working environment for employees, contractors and members of the public that is safe and without risk to health, including without limitation, ensure that contractors engaged in connection with the Project are registered or accredited so as to ensure compliance with occupational health and safety laws and to protect any volunteers working on the site of the Project; and
 - 1.2.8 fulfil each of the Organisation Commitments.

2 Conditions Precedent

Prior to the Project Commencement Date, the Organisation must:

- 2.1 procure the performance of the Project Conditions Precedent to the satisfaction of Council; and
- 2.2 demonstrate that it has sufficient funds to complete/deliver the Project and to achieve the Project Objectives and Project Outcomes to the satisfaction of Council.

3 Rights Reserved

- 3.1 If an obligation conferred on Council under the Funding Agreement cannot be delegated to or performed by the Organisation, Council may perform all or part of the relevant obligation, in which case, the cost or expense incurred by Council may be deducted by Council from the Funding Amount .
- 3.2 Council reserves the right to do anything Council believes necessary or desirable in relation to complying with any of its obligations under the Funding Agreement which the Organisation has failed to do, or is not required to do.

4 Necessary Approvals

If in connection with the Project the Organisation does anything which if done by Council would have required Council to obtain a consent or approval under the Funding Agreement, the consent or approval must be procured by the Organisation, to Council's reasonable satisfaction.

5 Project Governance

- 5.1 The Organisation must establish a steering committee, working party or other similar group acceptable to Council to manage the Project. The activities and terms of reference of the governance structure must accord with Council's directions. A Funding Agency and Council representative must be invited to attend and be part of this governance group (although Council is not obliged to participate).
- 5.2 Without limiting clause 5.1, the steering committee must meet quarterly to assess and review the progress and status of the Project.

6 Occupational Health and Safety

The Organisation must:

- 6.1 ensure that the Project is conducted in a manner which is safe and without risk to health;
- 6.2 ensure that it complies with all relevant obligations under the *Occupational Health and Safety Act 2004* (Vic) and any other laws applicable to the Project; and
- 6.3 upon request, provide to Council an occupational health and safety management plan demonstrating its compliance with its obligations under this clause.

7 Reporting

- 7.1 The Organisation must:
 - 7.1.1 ensure that Council's reporting obligations under the Funding Agreement in respect of the Project are satisfied by the due date for performance (time being of the essence). Without limitation, the Organisation must provide the Key Reports;
 - 7.1.2 complete reports on a template or system prescribed by the Funding Agency, including through an applicable online system notified to the Organisation by Council;

- 7.1.3 liaise with and provide assistance and information to Council and the Funding Agency as reasonably required in relation to the Project; and
- 7.1.4 comply with Council's and the Funding Agency's reasonable requests, directions and monitoring requirements in relation to the Project.
- 7.2 At Council's request, reports, including the Key Reports, must be prepared by or certified by an auditor engaged by the Organisation, in a form and manner required by Council.

8 Access to and Inspection of Records

The Organisation must:

- 8.1 give Council and its nominees access to premises at which records and materials associated with this deed, the Project and/or the Funding Agreement are stored or work under the Project is undertaken;
- 8.2 allow Council and its nominees to inspect and copy materials that are in the Organisation's possession or control, for the purposes associated with this deed or the Funding Agreement or any review of performance under this deed or the Funding Agreement;
- 8.3 without limiting the terms of the Funding Agreement, allow rights of audit and inspection and access under the Funding Agreement to be exercised by the Funding Agency and its nominees against the Organisation on the same terms and conditions as the Funding Agency and its nominees are entitled under the Funding Agreement; and
- 8.4 provide all assistance reasonably requested by Council in respect of any inquiry into or concerning the Project or the Funded Amount.

9 Preservation of Records

Records and materials created or maintained by the Organisation as incident of this deed and/or the Project, must be:

- 9.1 maintained by the Organisation for the duration of the Project and for at least 7 years after the Project Completion Date; and
- 9.2 available for inspection and copying by Council and its nominees on reasonable notice (records to be made available at the Organisation's cost and expense).

10 Conflicts of Interest and Probity

The Organisation must comply with any reasonable written requirements of the Funding Agency or Council in relation to conflicts of interest and probity arising from or in connection with the Project or the Funding Agreement.

11 Payment and Use of Funding

- 11.1 The Organisation must provide Council with any payment claim forms and supporting documentation, as well as any prescribed reports, required by Council to claim the Funded Amount from the Funding Agency.
- 11.2 Subject to:
 - 11.2.1 Council receiving the Funding from the Funding Agency under the Funding Agreement;
 - 11.2.2 the Organisation issuing a valid tax invoice under clause 16 to Council prior to each Payment Instalment for the value of the quarterly period's Funding;

- 11.2.3 the Organisation complying with the terms of this deed and the Funding Agreement to Council's reasonable satisfaction;
- 11.2.4 any suspension, deduction or retention provided for in this deed; and
- 11.2.5 the Organisation having fulfilled its obligations under this deed, including satisfaction of any Payment Milestones, to Council's reasonable satisfaction,

Council will promptly pay each Payment Instalment of the Funded Amount to the Organisation, upon satisfaction of the relevant stage of the Project.

- 11.3 The Organisation warrants and covenants that the Funding received under this deed will be used and applied:
 - 11.3.1 directly to and for the purposes prescribed in the Funding Agreement, to achieve the Project Objectives and Project Outcomes;
 - 11.3.2 not for any ongoing operational costs; and
 - 11.3.3 in accordance with any directions or requirements of Council notified at the time a payment is made,

and for no other purpose.
- 11.4 The Organisation must ensure that the Funded Amount is held in an account in the Organisation's name and which the Organisation controls, with an authorised deposit-taking institution authorised to carry on banking business in Australia.

12 Project Budget and Project Overruns

- 12.1 Prior to the Project Commencement Date, the Organisation must develop an appropriate budget for the full implementation of the Project, for Council's approval, having regard to the terms of the Funding Agreement.
- 12.2 The Organisation must meet any Project cost over-runs or funding shortfalls, including any engagement of sub-contractors where the cost or liability to be incurred exceeds the Funding provided to the Organisation for the delivery of the Project, to achieve satisfactory completion of the Project, by the Project Completion Date.

13 Audit

- 13.1 The Organisation must, within its accounting systems, account for the Funding and all Project expenditure separately from other funds of the Organisation.
- 13.2 The Organisation must keep or cause to be kept proper accounts in accordance with generally accepted accounting principles and as required by law.
- 13.3 Council and the Funding Agency will be entitled to audit all Project expenditure, and for that purpose, the Organisation must:
 - 13.3.1 comply with any Council or Funding Agency request to permit access to and inspecting and copying of, its accounts by Council or the Funding Agency or a nominee of Council or the Funding Agency;
 - 13.3.2 assist Council or the Funding Agency in the conduct of the audit, including by answering any enquiries; and
 - 13.3.3 permit Council or the Funding Agency to inspect the Project site and Project assets.

14 Cessation or Suspension of Payments

Council may, from time to time, cancel or suspend or reduce all or part of the payments of the Funded Amount and/or the Payment Instalments if any one or more of the following occur:

- 14.1 the Organisation fails or neglects to perform or observe any of the terms and conditions contained in this deed and the default continues for 7 days after written notice by or on behalf of Council calling on the Organisation to remedy such default;
- 14.2 if the Organisation fails to meet the Key Milestones or Project Objectives or Project Outcomes, or in Council's reasonable opinion it is not likely that the Key Milestones or Project Objectives or Project Outcomes will be met;
- 14.3 there is a material change in the structure, type, composition or control of the Organisation;
- 14.4 if the Organisation stops payment of its debts, is insolvent or is deemed to be insolvent under the *Corporations Act 2001* (Cth) or without the prior written consent of Council ceases or threatens to cease to carry on the whole or a major portion of its business;
- 14.5 if any governmental or other licence, permit, authorisation, consent or exemption required to enable the Organisation to carry out activities in connection with the Project, is withdrawn or modified in a manner unacceptable to the Council or is not duly granted or received when applied for;
- 14.6 if it becomes unlawful for the Organisation to perform any of its obligations arising in relation to this deed, the Funding Agreement or any approval for the Organisation to do so is withdrawn, suspended or varied;
- 14.7 if there is a cancellation or suspension or reduction of the Funding Agreement or payments made under the Funding Agreement;
- 14.8 if there are claims between the Organisation and Council in connection with this deed; or
- 14.9 if Council is not satisfied with the progress or status of the Project.

15 Repayment

- 15.1 If on the expiry or any early termination of this Agreement, any Funded Amount:
 - 15.1.1 remains unspent or the Organisation is not otherwise contractually obliged to pay an amount to a third party in relation to the Project (**Committed**); or
 - 15.1.2 cannot be shown to the reasonable satisfaction of Council to have been spent or Committed,

Council may by written notice to the Organisation require the Organisation to repay that part of the Funded Amount, and the Organisation must repay to Council the amount specified in the notice, within 28 days of the date of the notice.

- 15.2 If the Funding Agency or Council determines that all or part of the Funded Amount has been used, spent or committed by the Organisation other than in accordance with this deed or the Funding Agreement, Council may require repayment of the relevant amount by the Organisation, and the Organisation must immediately pay to Council (without deduction) the amount notified by Council.
- 15.3 If the Funding Agency determines that all or part of the Funded Amount must be returned or refunded by Council to the Funding Agency under the Funding Agreement, then Council will require repayment of the relevant amount by the Organisation, and the Organisation must immediately pay to Council (without deduction) the amount notified by the Funding Agency.

16 GST

- 16.1 Any sum payable or consideration to be provided under this deed includes any amount on account of GST, unless it is specifically stated to be GST exclusive.
- 16.2 If a supply under this deed is subject to GST, the GST amount must be separately itemised in a complying tax invoice and subject to the provision of a tax invoice, paid to the supplier at the same time as payment for the supply occurs.
- 16.3 If a party is entitled to reimbursement or indemnified under this deed, the amount to be reimbursed or indemnified does not include any amount for GST for which that party is entitled to any input tax credit.
- 16.4 The Organisation must comply with the requirements to provide an adjustment note in relation to any part of the Funding that relates to the acquisitions made by the Organisation on behalf of Council.
- 16.5 The Organisation and Council warrant that they are registered for GST in accordance with the GST Law. If either party ceases to be registered for GST it will immediately notify the other party.

17 Organisation to Meet Own Costs

The Organisation must pay all fees, charges and costs incurred in the performance of its obligations under this deed, except as expressly stated otherwise in this deed.

18 Sub-contracting

- 18.1 The Organisation may sub-contract approved elements of the Project to the Approved Sub-contractors, without Council's prior written approval.
- 18.2 The *Organisation* must obtain Council's prior written approval to sub-contract elements of the Project if:
 - 18.2.1 the value of the sub-contracted work exceeds a sum notified by Council;
 - 18.2.2 the nature of the work has not been prescribed by Council as work the Organisation must directly undertake;
 - 18.2.3 the sub-contractor evidences insurance cover equivalent to that to be maintained by the Organisation under this deed; and
 - 18.2.4 the sub-contract includes provisions that enable the Organisation to comply with the Organisation's obligations under this deed.
- 18.3 Sub-contracting does not relieve the Organisation from any liability or obligation under this deed, including the Organisation's work health and safety obligations.
- 18.4 The Organisation must ensure that each sub-contractor complies with the terms of this deed.
- 18.5 The Organisation will be responsible for the acts and omissions of any sub-contractor, or any of the sub-contractor's personnel, as if they were the acts or omissions of the Organisation.
- 18.6 The Organisation warrants that any sub-contractor that performs part of the Project will:
 - 18.6.1 hold all appropriate qualifications and registrations;
 - 18.6.2 have obtained and passed any relevant suitability checks; and
 - 18.6.3 are suitably skilled to undertake the Project.

19 Council's Maximum Liability

To the extent permitted by law:

- 19.1 Council's aggregate liability to the Organisation arising out of all claims brought by or on behalf of the Organisation for loss or liability suffered or incurred by the Organisation in connection with this deed or the Project is limited to the Funding received by Council under the Funding Agreement and payable to the Organisation under this deed; and
- 19.2 Council is not liable for any indirect or consequential loss, damage, costs or expenses awarded against, or incurred by, the Organisation under, or as a result of this deed or the Project, including without limitation, loss of revenue or profits, loss of goodwill, loss of information or failure to realise anticipated benefits or savings.

20 Risk Management

- 20.1 The Organisation must manage Project risk consistently with any Risk Management Procedures.
- 20.2 If requested by Council or the Funding Agency, the chief executive officer or a board member of the Organisation must include in the final report a statutory declaration that the Organisation's risk management processes for carrying out the Project were consistent with the Risk Management Procedures.

21 Confidentiality

- 21.1 In this deed, confidential information means information or data, whether or not in a material form, that is confidential to a party or should reasonably be considered confidential. It does not include information that is already in the public domain, unless the reason it is in the public domain is as a result of a breach of this deed.
- 21.2 Council may disclose information to the Funding Agency about the content of this deed and the Project, including to fulfil its obligations under the *Local Government Act 1989* (Vic).
- 21.3 Each party agrees to treat all confidential information as confidential and not to disclose it to any third party without the prior written consent of the other party, except in the following circumstances:
 - 21.3.1 where the disclosure is required by Law or by this deed;
 - 21.3.2 where the disclosure is reasonably required by any persons performing their obligations under this deed;
 - 21.3.3 any disclosure to that party's own professional advisers, or its insurer;
 - 21.3.4 for the purposes of reporting to the Victorian or Commonwealth Governments;
 - 21.3.5 if required for the purposes of the *Local Government Act 1989*; or
 - 21.3.6 if requested by the Auditor-General, the Ombudsman, or the Minister responsible for the portfolio under which the Project is funded.
- 21.4 Subject to clause 21.3, Council will ensure that any third party to which it discloses confidential information is made aware of the confidential nature of the confidential information.

22 Funding Acknowledgements, Publicity and Communications Plan

- 22.1 Any publicity concerning the Project, including public announcements, are to be as agreed between Council and the Organisation from time to time.

- 22.2 Council and the Organisation must agree in good faith on a communications plan which identifies, without limitation, the various milestones where media will be appropriate or required. The agreed communications plan must be adhered to.
- 22.3 The funding contribution of the Funding Agency for the Project must be acknowledged, recognised and promoted by the Organisation in accordance with the Funding Agency's *Guidelines for Victorian Government Advertising and Communications* under the Funding Agreement (a copy of which is annexed to this deed) and the directions of Council. Without limitation, the Organisation must display signage and use messages prescribed under the Funding Agreement and clause 22.2 in connection with the Project and if required under the Funding Agreement or this deed, allow the Funding Agency and Council and/or their nominees to attend and speak at public functions, announcements or openings concerning the Project.
- 22.4 The Organisation acknowledges that unless expressly provided for under this deed or expressly agreed in writing by Council on a case-by-case basis, the Organisation is not entitled to promote its association with Council or use the trade marks or logos of Council.

23 Evidence of Compliance

At the request of Council, the Organisation must evidence compliance with its obligations under this deed, to Council's satisfaction.

24 Dispute Resolution

- 24.1 Council's and the Organisation's appointed representatives for the purposes of this deed must promptly enter into good faith discussions to resolve any dispute concerning this deed.
- 24.2 If Council or the Organisation believes that a dispute cannot be resolved through informal discussions, either party must initiate the following formal dispute resolution process before commencing any legal proceedings in respect of the dispute:
- 24.2.1 the party claiming that a dispute has arisen must provide the other party with written particulars of the dispute, incorporating reasonable particulars of the matter in dispute and detail of what, in the opinion of the notifying party, need occur for the dispute to be resolved (**Dispute Notice**);
- 24.2.2 within 14 days after receipt of the Dispute Notice the parties must appoint and convene a meeting between senior officers to discuss and try and resolve the dispute, with any agreed outcome to be final and binding;
- 24.2.3 if the dispute is not resolved within 21 days after receipt of the Dispute Notice, either party may within 7 days after that date request that the dispute be referred to mediation (**Mediation Notice**);
- 24.2.4 if a Mediation Notice is issued, a mediator is to be appointed by agreement or failing agreement within 7 days after receipt of the Mediation Notice, either party may request the president for the time being of the Law Institute of Victoria or their delegate to nominate a mediator who is independent of the parties;
- 24.2.5 the parties must participate in a mediation with the nominated mediator as soon as reasonably practicable, at an agreed venue, or failing agreement, at a venue directed by the mediator, with a review to resolving the dispute in good faith, with the rules for mediation as follows:
- (a) complete confidentiality will be preserved in respect of the mediation and any documents and information used at or in relation to the mediation, which cannot be used by a receiving party in any legal proceedings;
- (b) all discussion will be without prejudice and each party may be legally represented if they so wish;

- (c) the mediator may only co-opt other expert assistance with the agreement of the parties; and
 - (d) each party must bear their respective costs of the mediation, provided that the mediator's fee, fees for mediation rooms and costs of shared equipment facilities and services of the mediation must be shared equally; and
- 24.2.6 if the dispute is not resolved within 14 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.
- 24.3 The dispute resolution procedures do not:
- 24.3.1 deny a party the right to seek urgent injunctive or interlocutory relief from an appropriate court where failure to obtain such relief would cause irreparable damage to that party; or
 - 24.3.2 apply to events giving rise to a determination under or termination of this deed or the suspension or reduction of payments to the Organisation, where such events are clearly specified in this deed and there is no legitimate dispute as to the interpretation of their meaning or factors giving rise to such events.
- 24.4 Despite the existence of a dispute Council and the Organisation must continue to perform their obligations under this deed.

25 Indemnity

The Organisation must indemnify, keep indemnified and hold harmless Council and its councillors, employees and agents from and against all claims, losses and liabilities (including, without limitation, all legal costs on a full indemnity basis) consequent upon, occasioned by or arising from:

- 25.1 its performance, purported performance or non-performance of its obligations under this deed;
- 25.2 its negligent acts or omissions;
- 25.3 wilful misconduct or illegal acts or omissions of the Organisation or the officers, members, employees, agents or contractors of the Organisation; or
- 25.4 Council having to repay or refund all or part of the Funding to the Funding Agency, as a result of the acts or omissions of the Organisation.

26 Relationship Between the Parties

The parties acknowledge and agree that the legal relationship between Council and the Organisation is that of independent contractors, and that none of the Organisation's personnel will for any purpose be regarded as an officer, employee, partner or agent of Council. Nothing in this deed or in the transactions contemplated by it will create or be deemed to create a relationship of partnership or agency between Council and the Organisation.

27 Local Government Act

Nothing contained in this deed limits, waives or derogates Council's rights and obligations under the *Local Government Act 1989* (Vic) or any prior agreement or deed between Council and the Organisation and to the extent that:

- 27.1 a part of this deed is inconsistent with such rights and obligations; or
- 27.2 the performance of an obligation by Council under this deed is subject to Council following a procedure under the Act,

Council's obligations are to be read down and construed accordingly or read subject to Council satisfying that procedure

28 Costs

The Organisation and Council must each pay their own costs of an incidental to the negotiation, preparation and execution of this deed and any documents necessary or required in connection with this deed.

29 Further Assurances

Each party must use all reasonable efforts to do all things necessary and desirable to give effect to this deed and refrain from doing anything that might hinder the performance of this deed.

30 Notices

A party must give written legal notices to the other party in person or by sending to the address set out under the contact details in the particulars or such other address nominated by a party for the receipt of notices.

31 Assignment

The Organisation must not assign any right under this deed without the prior written consent of Council.

32 Counterparts

This deed may be executed in any number of counterparts and all the counterparts together constitute one and the same instrument.

33 Alteration

This deed may only be altered in writing signed by the parties.

34 Waiver

34.1 Any waiver of any right or a breach of this deed is not deemed to be a waiver of any subsequent right or breach of the same or different nature.

34.2 MOVE agrees to comply with the conditions of any approval, consent or waiver given by Council.

35 Survival

Clauses 7 to 10, 15, 19 to 25, 27, 30, 33, 34 and 37 survive termination or expiry of this deed.

36 Additional Provisions

This deed is subject to any additional provisions in the particulars. If there is an inconsistency between an additional provision and another provision of this deed, the additional provision prevails.

37 Governing Law

This Deed is governed by and construed in accordance with the laws of Victoria.

38 Interpretation

In this deed, unless the contrary intention appears:

38.1 the singular includes the plural and vice versa;

- 38.2 words importing one gender include other genders;
- 38.3 a reference to a document or instrument, including this deed, includes that document or instrument as novated, altered or replaced from time to time;
- 38.4 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 38.5 other grammatical forms of defined words or expressions have corresponding meanings;
- 38.6 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 38.7 a recital, schedule, annexure or description of the parties forms part of this deed; and
- 38.8 a reference to an authority, institution, association or body that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity.

Annexure 1

Key Milestones

Milestone	Deliverable	Demonstrating deliverable is complete	Due Date	Payment amount (ex GST)
Milestone 1	Tax Invoice	Provision of a valid tax invoice	30 July 2020	\$0
	Statutory Declaration	Provision of a statutory declaration in a form approved by Council, confirming that the Organisation is ready to proceed with the Project and that the Organisation will incur project expenditure of at least \$2,150,000 on the Project.		
	Funding	Evidence that the Organisation has secured funding from other sources for the Project as outlined in the Project Conditions Precedent.		
	Project Control Group	Evidence that the steering committee has been established and that a Funding Agency representative has been invited to participate.		
Milestone 2	Project Report	A Project Report in the form requested by Council	30 July 2020	\$400,000
	Statutory Declaration	A statutory declaration in a form approved by Council confirming that the Organisation has incurred Project Expenditure of at least \$1,100,000 on the Project.		
	Approvals	Evidence that the Organisation has obtained all planning, environment, regulatory and other approvals and permits necessary to commence the Project		
	Local Jobs First Policy Certification Letter	Where applicable, a copy of the certification provided by the implementation of the Local Jobs First Policy.		
	Benefits Management Plan	Provide a plan that details the Organisation's approach to achieving all Project Milestones and Project Outcomes; and provide detail on the processes in place to capture required data to measure the achievements of the Project Outcomes.		
	Sign	Photographic evidence that a sign has been erected in accordance		

		with the requirements of clause 20 and as notified by Council.		
	Inspection	Inspection of the Project Site by the Funding Agency and/or Council, where requested by either the Funding Agency or Council.		
Milestone 3	Project Status Report	a Project Status Report in a form approved by Council	29 January 2021	\$300,000
	Statutory Declaration	Provision of a statutory declaration in a form approved by Council confirming that the Organisation has incurred project expenditure of \$1,675,000		
	Construction	Evidence of 50% completion of construction		
	Inspection	Inspection of the Project Site by the Funding Agency and/or Council, where requested by either the Funding Agency or Council.		
Milestone 4	Audit Opinion – Project expenditure	An audit opinion in a form approved by Council evidencing at least \$2,150,000 of project expenditure on the Project	30 April 2021	\$200,000
	Completion Report	A Completion Report in a form approved by Council		
	Organisation Commitments	Evidence that each of the Organisation Commitments relating to the Completion of the Project and Evaluation Capability have been satisfied.		
	Construction	Evidence of 100% completion of construction and certificate of occupation		
	Inspection	Inspection of the Project Site by the Funding Agency and/or Council, where requested by either the Funding Agency or Council.		
Milestone 5	Outcome report	An outcome report in a form approved by Council	1 year after project completion	\$0