

Multi Option Loan Facility Agreement ('Agreement')

This Agreement is made theday of2019

Between:

Treasury Corporation of Victoria A.B.N. 97 552 308 966 of Level 12, 1 Collins Street, Melbourne Victoria 3000 ('**TCV**)

and

South Gippsland Shire Council A.B.N. 67 816 770 786 of 9 Smith Street, Leongatha Victoria 3953 (the '**Council**')

under which TCV offers to the Council a loan facility (the '**Facility**') on the terms and conditions contained in this Agreement.

1. Facility

Under the Facility, TCV will provide the Council with a loan/loans being either 11 am loans or fixed interest term loans, with each drawdown being a 'loan' consistent with the loan terms and conditions referred to in or approved under the corresponding Guarantee given by the Treasurer of Victoria in respect of the Council.

Each loan provided or to be provided under the Facility will be governed by the terms of this Agreement and the relevant Confirmation (this Agreement together with all Confirmations comprise the '**Loan Documents**').

2. Payment, repayment and prepayment

The Council must repay each loan, for value on the Repayment Date, to TCV not later than close of banking business (Melbourne time) on the Repayment Date, except to the extent it is redrawn on that day as an 11 am loan.

The Council will pay interest to TCV on the Loan Amount at the Loan Rate and at the frequency specified in the relevant Confirmation. TCV acknowledges and agrees that payment of the Loan Subsidy (as defined in the Community Access Agreements) in accordance with clause 5 of the Community Access Agreements will satisfy the Council's obligation to pay interest under this clause 2 up to an amount equal to the Loan Subsidy amount paid under the Community Access Agreements. However, if any Community Access Agreement is terminated or otherwise ceases to be in effect or payment of the Loan Subsidy is not made for any reason under a Community Access Agreement, the Council must pay interest to TCV in accordance with this clause.

The Council must make all payments due under the Loan Documents without any set-off, counterclaim or condition and without any deduction or withholding for any tax or for any other reason, unless the Council is required to make a deduction or withholding by applicable law.

- (g) **Project Budget:** a copy of each Project Budget in a form agreed by TCV;
- (h) **project approvals & authorisations:** evidence that all necessary approvals and Authorisations to carry out each Project have been obtained by the Council and are in full force and effect (including certified copies of each of them);
- (i) **Financial Statements:** a copy of the most recent audited Financial Statements of the Council;
- (j) **no default:** no Event of Default has occurred and remains unremedied or will result from the provision of the loan; and
- (k) **warranties correct:** the representations and warranties of the Council set out in this Agreement are true and correct in all material respects as at the date of the relevant drawdown notice and the relevant Loan Date as though they had been made at that date in respect of the facts and circumstances then subsisting.

4. Undertakings

The Council undertakes that:

- (a) it will fully and punctually perform its obligations set out in the Loan Documents;
- (b) it will give notice to TCV as soon as it becomes aware that any breach of this Agreement or any other Loan Document or any Event of Default has occurred or may occur or any event, omission or circumstance has occurred or may occur which, with the giving of notice, passage of time or both would become an Event of Default or give rise to such a breach;
- (c) it will apply amounts drawn down under the Facility only for 'ordinary purposes' as permitted under the Local Government Act and then only for the ordinary purposes of:
 - a. financing Project Costs in respect of a Project; or
 - b. financing a loan:
 - i. that is made or is to be made on the same day as an existing loan matures;
 - ii. the aggregate amount of which is equal to or less than the maturing loan; and
 - iii. that is made or is to be made to the Council for the purpose of refinancing or continuing that maturing loan.
- (d) it will not incur or allow to remain outstanding any Financial Indebtedness in breach of the financial undertaking in clause 4(h);

- (e) it will comply with its obligations under each Community Access Agreement, including to procure the completion of each Project in accordance with the provisions of each Community Access Agreement;
- (f) it will notify TCV as soon as it becomes aware of any order made, or proposed to be made, under section 185B of the Local Government Act (or such similar section) that affects it, together with all details of that order or proposed order of which it is aware;
- (g) it will promptly provide TCV with such information as may be reasonably requested by TCV from time to time including, without limitation:
 - a. any information relating to the Secured Property;
 - b. any information relating to any Project; and
 - c. progress reports on each Project and the expenditure of Project Costs;
- (h) it will ensure that the Interest Bearing Loans and Borrowings at each Reporting Date does not exceed 60% of the Own Source Revenue; and
- (i) it will ensure that the Interest Cover Ratio at each Reporting Date is not less than 2.00:1.00.

Each of these undertakings continues in full force and effect from the date of this Agreement until all Outstanding Moneys due under the Loan Documents are fully and finally paid to TCV.

5. Representations and warranties

The Council represents and warrants to TCV that:

- (a) **status:**
 - a. it is a 'Council' as that term is defined in the Local Government Act; and
 - b. it is a 'participating authority' within the meaning of that term in the *Treasury Corporation of Victoria Act 1992* ('Participating Authority');
- (b) **authority:** it has full power and authority to borrow the Loan Amount and enter into and **perform** its obligations under this Agreement, all other documents relating to the Facility and each Community Access Agreement;
- (c) **authorisations:** it has taken all necessary action and all necessary Authorisations exist to authorise the execution, delivery and performance of this Agreement, all other documents relating to the Facility to which it is a party and each Community Access Agreement .
- (d) **valid execution:** this Agreement, all other documents relating to the Facility to which the Council is a party and each Community Access Agreement have been validly executed and entered into in accordance with the authorisations referred to in (b) to ensure the valid execution and delivery of them, the

validity of the performance of the obligations of the Council under them and the validity and enforceability of them;

- (e) **binding obligations:** this Agreement, all other documents relating to the Facility to which the Council is a party and each Community Access Agreement constitute its legal, valid and binding obligations and are enforceable in accordance with their terms (subject to any necessary stamping and registration);
- (f) **transaction permitted:** the execution, delivery and performance by it of this Agreement and all other documents relating to the Facility to which it is a party do not and will not violate, breach, or result in a contravention of the Constituent Legislation, its memorandum and articles of association or other constituent documents, or any law, regulation or Authorisation;
- (g) **borrowing and security limits:** the loans provided or to be provided under the Facility [together with all other financial accommodation obtained from any other person] do not and will not exceed any borrowing or security limit imposed on it (including, without limitation, any limit set out in the Local Government Act);
- (h) **no reliance:** it has not accepted this offer or requested a loan in reliance on any representation, warranty, promise or statement of TCV or of any person on behalf of TCV;
- (i) **guarantee in full force and effect:** due satisfaction of any Outstanding Moneys under the loan is guaranteed by the Government of Victoria;
- (j) **purpose:** all loans advanced under the Facility are to enable the Council to exercise the powers conferred on the Council under the Local Government Act and all other applicable legislation and will be used for a purpose permitted under clause 4(c); and
- (k) **no default:** no Event of Default has occurred which is subsisting.

The representations and warranties set out in this Agreement:

- (a) survive the Council's acceptance of this offer;
- (b) are given on the date of this Agreement and repeated on each Loan Date and each Interest Payment Date and Instalment Payment Date with respect to the facts and circumstances then existing; and
- (c) have been relied on by TCV in entering into the Loan Documents and the Council acknowledges this reliance.

6. Default

In addition to any other rights provided by law, upon the occurrence of an Event of Default, the Outstanding Moneys shall become immediately due and payable to TCV, and TCV may exercise any or all of its rights, remedies, powers or discretions under the Security Interest granted under this Agreement or pursuant to the Local Government Act, without the need for any demand or notice to be given by TCV.

An Event of Default shall occur if:

- (a) **failure to pay:** the Council fails to pay or repay any Outstanding Moneys when due and payable under a Loan Document unless that failure is caused by a technical or administrative error by a bank or financial institution in the transmission of funds and is remedied within 2 Business Days of its occurrence;
- (b) **Failure to comply with other undertakings:** the Council fails to perform or observe any other undertaking, obligation or agreement expressed or implied in any Loan Document and that failure is not remedied within 30 days of the earlier of the date the Council becomes aware of the failure or the receipt of written notice from TCV specifying the failure.
- (c) **authorisations:** the Council fails to obtain or renew when required any Authorisation necessary to enable the Council to comply with its obligations under any document entered into in relation to the Facility (including, without limitation, any Authorisation required under the Local Government Act) or any Project or any such Authorisation ceases to be in full force and effect.
- (d) **government guarantee:** for any reason the due satisfaction of any Outstanding Moneys ceases to be guaranteed by the Government of Victoria.
- (e) **participating authority:** the Council ceases to be a Participating Authority for the purposes of the *Treasury Corporation of Victoria Act 1992*.
- (f) **status:** the Council ceases to be either a statutory body constituted by an Act of the State of Victoria (or any statutory modification or re-enactment thereof) or wholly owned by the Crown in Right of the State of Victoria unless the obligations of the Council under the Loan Documents are forthwith assumed by the Crown in Right of the State of Victoria or by a successor statutory body constituted by public Act of the State of Victoria and due satisfaction of Outstanding Moneys payable by the Council as a result of, or in connection with, the Facility remains guaranteed by the Crown in Right of the State of Victoria.
- (g) **cross default:** any Financial Indebtedness of the Council aggregating to at least A\$500,000:
 - a. becomes due and payable, or becomes capable of being declared due and payable, before the scheduled date for payment; or
 - b. is not paid when due (after taking into account any applicable grace period);
- (h) **Community Access Agreement:** the State exercises a right under any Community Access Agreement to:
 - a. withhold, suspend or cancel payment of the Loan Subsidy (as that term is defined in that Community Access Agreement); or
 - b. terminate that Community Access Agreement.

- (i) **Purpose:** in the reasonable opinion of TCV, a loan provided under the Facility or any part of it is applied for any purpose other than the purpose described in clause 4(c).
- (j) **Appointment of receiver:** a receiver or receiver and manager has been appointed in respect of the Council or any of its assets under the Local Government Act.
- (k) **Financial covenant:** any breach of clause 4(h) or 4(i) occurs.

7. Grant of Security

- (a) The Council grants a security interest in the Secured Property to TCV to secure the payment of the Secured Money to TCV. This security interests is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over the Secured Property.
- (b) Nothing in this Agreement shall be construed as an agreement or consent by TCV to subordinate the Security Interests granted under this Agreement in favour of any person.
- (c) Each Security Interest in Personal Property (as defined in the PPSA) granted under this Agreement attaches to the relevant Secured Property in accordance with the PPSA and the parties to this Agreement confirm that they have not agreed that any Security Interests in Personal Property granted under this Agreement attaches at any later time.
- (d) The Council acknowledges and agrees TCV has given value for the Security Interests granted under this Agreement by its provision of the Facility or by providing or continuing to make available any financial accommodation under or in connection with the Facility or this Agreement;
- (e) For the purposes of sub section 20(2) of the PPSA, Security Interests granted under this Agreement covers the Council's present and future interests and rights in respect of the Secured Property.
- (f) If a Control Event occurs in respect of any Secured Property then automatically:
 - a. that Secured Property is not (and immediately ceases to be) a Revolving Asset;
 - b. any floating charge over that Secured Property immediately operates as a fixed charge;
 - c. if the Secured Property is accounts or chattel paper (each as defined in the PPSA), it is transferred to TCV by way of security; and
 - d. the Council may no longer deal with the Secured Property.
- (g) If any Secured Property is not, or ceases to be, a Revolving Asset, and becomes subject to a fixed charge or transfer under this clause 7, TCV may give the Council a notice stating that, from a date specified in the notice, the Secured Property specified in the notice is a Revolving Asset, or becomes

subject to a floating charge or is transferred back to the Council. This may occur any number of times.

- (h) The Council hereby irrevocably authorises TCV, its agents, solicitors, officers, employees and service providers to:
- a. apply for and effect (in any manner TCV considers necessary or appropriate) any registration of a financing statement on the PPSA Register in connection with any Security Interest created or expressed to be created under this Agreement;
 - b. complete any document associated with this Agreement, including any financing statement or financing change statement;
 - c. recover from the Council, at TCV's absolute discretion, any costs incurred by TCV in relation to the abovementioned matters.

8. Designated Account

- (a) To the extent not prohibited by the Local Government Act, an order of a Supreme Court or any other law, if an Event of Default occurs TCV may require a Council to open and maintain a Designated Account on terms that:
- a. nominated Authorised Officers of TCV must only be signatories to the Designated Account; and
 - b. no withdrawals can be made from the Designated Account without the consent of TCV.
- (b) A Council must immediately, and until notified otherwise by TCV, deposit in the Designated Account any proceeds that the Council receives in respect of the Secured Property.

9. Statutory Powers and Notices

- (a) The powers conferred on TCV or a Receiver by law:
- a. except as specified in clause 10(b) are in addition to the Powers conferred by this Agreement;
 - b. to the extent permitted by law, may be exercised immediately after an Event of Default occurs and at any time subsequently; and
 - c. are excluded or varied only so far as they are inconsistent with the express terms of this Agreement.
- (b) To the extent the law permits:
- a. for the purposes of sections 115(1) and 115(7) of the PPSA, TCV need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) and sections 142 and 143 are excluded;

- b. for the purposes of section 115(7) of the PPSA, TCV need not comply with sections 132 and 137(3); and
 - c. the Council agrees not to exercise its rights to make any request of TCV under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (c) If TCV exercises a Power in connection with this Agreement, that exercise is taken not to be an exercise of a Power under the PPSA unless TCV states otherwise at the time of exercise. However, this clause does not apply to a Power which can only be exercised under the PPSA.
- (d) To the extent the law permits, the Council waives:
- a. its rights to receive any notice that is required by:
 - i. any provision of the PPSA (including a notice of a verification statement); or
 - ii. any other law, before TCV or Receiver exercises a Power; and
 - b. any time period that must otherwise lapse under any law before TCV or Receiver exercises a Power.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause prohibits TCV or any Receiver from giving a notice under the PPSA or any other law.

10. Application of Money Received

- (a) To the extent permitted by law, all money received by a Controller under or arising out of this Agreement created by the Council will be applied in the manner and order determined by TCV.
- (b) In applying any money towards satisfaction of the Secured Money, the Council will be credited only with money available for that purpose which is actually received by TCV and which is not later repaid by TCV on the basis that payment to TCV is or is alleged to be a preference payment or void, voidable, liable to be set aside or otherwise not properly payable to TCV. The credit will date from the time of receipt.
- (c) That money will be appropriated as between principal, interest and other amounts as the TCV determines. Any such appropriation by TCV will override any appropriation made by the Council.
- (d)

11. Other Securities Over Secured Property

- (a) TCV or any Controller may rely on the certificate of a holder of another Security Interest affecting or purporting to affect the Secured Property as to the amount and property secured by that Security Interest.
- (b) TCV or any Controller may pay or agree to pay at any time the amount certified by the holder of a Security Interest or purported Security Interest to be necessary to discharge it or some of the indebtedness secured by it or to acquire it. From the date of payment that amount will be part of the Secured Money and the Council will indemnify TCV and the Controller against that amount. This applies whether or not that Security Interest or purported Security Interest was valid or prior, equal or subsequent ranking or the property or money stated in the certificate was secured by it.

12. Protection of TCV, Controllers

To the extent permitted by law, neither TCV nor any Controller appointed under this Agreement, will be liable:

- (a) in respect of any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Power; nor
- (b) for any loss (including indirect loss) which results,

except where it arises from fraud on the part of TCV or Controller (as applicable).

13. Continuing Security

The Security Interest granted under this Agreement is a continuing security despite any settlement of account, intervening payment or anything else until a final discharge of this Agreement has been given to the Council.

14. Costs and expenses

The Council must, within 3 Business Days of a demand, pay all reasonable costs and expenses of TCV and any employee, officer, agent or contractor of TCV in relation to the enforcement of any rights under any document in relation to the Facility, including, but not limited to, any legal costs and expenses and any professional consultant's fees for any of the above on a full indemnity basis.

15. Default Interest

Interest accrues on each unpaid amount which is due and payable by the Council under or in respect of a Loan Document (including interest under this clause):

- (a) on a daily basis up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier;
- (b) both before and after judgment (as a separate and independent obligation); and

- (c) at the rate determined by TCV to be the sum of 2% per annum plus the short term borrowing rate of TCV from time to time.

The Council shall pay interest accrued under this clause on demand and on the last Business Day of each calendar quarter.

16. Indemnity

The Council indemnifies TCV against any claim, action, damage, loss, liability, cost, expense or payment which TCV pays, suffers, incurs or is liable for, in respect of any of the following:

- (a) a loan not being made for any reason including any condition precedent not being fulfilled, but excluding any default by TCV.
- (b) a direct or indirect consequence of a failure by the Council to drawdown a forward settlement loan transaction on the settlement date agreed on the trade date, except to the extent that the failure arises from the default of TCV.
- (c) the occurrence of any Event of Default or breach of a Loan Document or TCV exercising any of its rights or powers arising therefrom.

Without limiting the indemnity, the indemnity includes the amount determined by TCV as being incurred by reason of the liquidation or re-employment of deposits or other funds acquired or contracted for by TCV to fund a loan and includes, but is not limited to, loss of margin. Any amount payable to TCV under this indemnity is payable on demand.

TCV indemnifies the Council against any liability or loss arising from, and any cost, charges, or expenses incurred in connection with, any breach of this Agreement by TCV or any negligence, unauthorised conduct, fraud or dishonesty of TCV.

17. Financial reporting and cooperation

- (a) The Council must provide to TCV within 120 days of the end of each of its Financial Years:
 - (i) copies of its audited Financial Statements for that Financial Year;
 - (ii) a copy of its Annual Budget for the next Financial Year; and
 - (iii) a compliance certificate in the form of Appendix Two to this Agreement confirming compliance with the financial undertakings under clauses 4(h) and (i) (setting out all calculations in reasonable detail) signed by an Authorised Officer of the Council.
- (b) The Council must permit TCV and its representatives, consultants and agents, on reasonable prior written notice to the Council, to visit the head office of the Council and meet with the Council to discuss the affairs, financial condition and operations of the Council.

18. Notices

Any notice or other communication in relation to the Facility:

- (a) must be legible, signed by a duly authorised officer of the sender and addressed as follows (or as otherwise specified in writing from time to time).

if to TCV: Treasury Corporation of Victoria
 Level 12, 1 Collins Street, Melbourne, Victoria 3000
 Telephone No: (03) 9651 4800
 Facsimile No: (03) 9651 4880
 Email: treasuryclientservices@tcv.vic.gov.au
w.whitford@tcv.vic.gov.au
 Attention: Managing Director.

if to the Council:

South Gippsland Shire Council
 Telephone No: (03) 5662 9200
 Facsimile No: (03) 5662 3754
 Email: council@southgippsland.vic.gov.au
stuarts@southgippsland.vic.gov.au
stephanie.pettau@southgippsland.vic.gov.au
 Attention: **Manager Finance**

- (b) shall be regarded as being given by the sender and received by the addressee:
- (i) when delivered in person to the addressee;
 - (ii) 3 Business Days from and including the date of postage when sent by post;
 - (iii) when received by the addressee (whether or not legibly) by facsimile transmission, but if receipt is on a day which is not a Business Day, or is after 4.00 pm (addressee's time), it is regarded as received at 9.00 am on the following Business Day; and
 - (iv) in the case of email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

19. Governing Law and Jurisdiction

- (a) This Agreement and each Confirmation are governed by the laws of Victoria and of the Commonwealth of Australia applying there and the Council and TCV irrevocably submit to the exclusive jurisdiction of the courts of Victoria.
- (b) To the extent permitted by law, so are all related matters, including any non-contractual matters, and any security interest (as defined by the PPSA) under it.

20. Miscellaneous

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the following Business Day, unless otherwise agreed by the Council and TCV. A Business Day is a weekday on which banks are open in Melbourne.

Any provision of or the application of any provision of, this Agreement which is:

- (a) prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

With the written agreement of both parties this Agreement may be amended from time to time.

21. Payments

All payments in relation to the Facility shall be in Australian Dollars.

Unless TCV directs otherwise, all payments by the Council to TCV in relation to the Facility shall be made to:

- (a) Bank: Westpac Banking Corporation

Branch: 360 Collins Street, Melbourne, Victoria 3000

Account Name: Treasury Corporation of Victoria

BSB #: 033-222

Account #: 222005

- (b) All payments by TCV to or for the Council in relation to the Facility shall be made to:

Bank: Commonwealth Bank

Branch: 42/44 McCartin Street, Leongatha Victoria 3953

Account Name: South Gippsland Shire Council General Account

BSB #: 063 518

Account #: 10046312

22. GST

- (a) If GST is payable by TCV on a Taxable Supply made under, by reference to or in connection with this Agreement, the Council must also pay the GST Amount as additional Consideration.

- (b) The GST Amount is payable on the earlier of:
 - a. the first date on which all or part of the Consideration for the Taxable Supply is provided.
 - b. the date 5 Business Days after the date on which an Invoice is issued in relation to the Taxable Supply.
- (c) Where under this Agreement the Council is required to reimburse or indemnify another party for any cost, expense or other liability, the calculation of that cost, expense or other liability must exclude the amount of any Input Tax Credit that that other party determines that it is entitled to claim.

23. Recording of Conversations

Each party:

- (a) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or in connection with any transaction or potential transaction between the parties to this Agreement;
- (b) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel; and
- (c) agrees that recordings may be submitted in proceedings to resolve any dispute between the parties.

24. Application of this Agreement to all loans

- (a) Each party agrees that every loan or advance made by TCV to the Council which is, or is described in its Confirmation as being, a loan or advance to the Council is governed by the terms of this Agreement (and not any other agreement) unless the parties expressly agree in writing that this clause is not to apply.
- (b) This clause applies whether or not the parties refer to this Agreement in the Confirmation for a loan transaction or when entering into a loan transaction.
- (c) The definitions and provisions contained in this Agreement are by this clause taken to be incorporated into each Confirmation. In the event of any inconsistency between those definitions and provisions and the confirmation, the Confirmation prevails. Each Confirmation supplements, forms part of, and is subject to, this Agreement, as amended and supplemented from time to time.
- (d) **'Confirmation'** means the documents and other confirming evidence exchanged between the parties or otherwise effective for the purpose of confirming or evidencing a loan transaction (including, without limitation, the details of the Loan Amount or principal amount, Loan Date, Interest Payment Date, Instalment Payment Dates and amounts, Repayment Date and Loan Rate).

25. Interpretation

In this Agreement:

- (a) a '**borrowing limit**' refers to any limitation on the amount which the Council may borrow or otherwise raise that is imposed on the Council from time to time by the Local Government Act or any other applicable statute, regulation, Order in Council, law, Authorisation or any directive from any Minister of the Crown including a Declaration and Approval of the Treasurer or a Minister under any relevant enactment.
- (b) '**Annual Budget**' means, in relation to any Financial Year, a budget for that Financial Year (including a balance sheet, income statement and a statement of cash flows) which is accepted in writing by TCV;
- (c) '**Authorisation**' means any delegation, proclamation, appointment, consent, registration, filing agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Governmental Agency; or any consent or authorisation regarded as given by a Governmental Agency due to the expiration of the period specified by or under a statute or the Constituent Legislation within which the Government Agency should have acted if it wished to proscribe or limit anything already lodged, registered or notified under that statute.
- (d) '**Business Day**' means a day on which banks are open for business in Melbourne excluding a Saturday, Sunday or public holiday.
- (e) '**Community Access Agreement**' means each agreement described as a "Community Access Loan Subsidy Agreement" entered into (or to be entered into) between the State of Victoria through the Department of Jobs, Precincts and Regions (or any successor department) and the Council concerning a Project and ongoing community access to that Project.
- (f) '**Confirmation**' has the meaning given in Clause 24(d).
- (g) '**Consideration**' has the meaning given by the GST Law.
- (h) '**Constituent Legislation**' means any statute, regulation, Order in Council or other legislative instrument under or pursuant to which the Council is constituted or has powers or duties conferred on it and any instrument thereunder .
- (i) '**Control Event**' means, in respect of any Secured Property that is, or would have been, a Revolving Asset:
 - a. if TCV gives a notice to the Council that the Secured Property is not a Revolving Asset, provided that TCV may only give a notice if TCV reasonably considers that it is necessary to do so to protect its rights under this Agreement; or
 - b. if an Event of Default has occurred.

- (j) **'Controller'** means a Receiver or an equivalent person appointed under or in respect of this Agreement or a **controller** as defined in section 9 of the Corporations Act.
- (k) **'Corporations Act'** means the *Corporations Act 2001* (Cth).
- (l) **'Designated Account'** means a bank account opened by the Council at a bank and branch approved by TCV.
- (m) **'EBITDA'** means, in respect of a period, the net profit of the Council for that period (including all forms of donations, grants, cash and cash equivalent bequests, but excluding non-cash developer contributions) before interest, Taxes, depreciation and amortisation for the relevant period and before significant items.
- (n) **'Financial Statements'** means each of the following financial statements and information in relation to the Council prepared for its Financial Year:
- a. an income statement;
 - b. a balance sheet; and
 - c. a statement of cash flows,
together with any notes to those documents and any accompanying reports, statements, declarations and other documents or information.
- (o) **'Financial Year'** means any 12 month period ending on 30 June.
- (p) **'Financial Indebtedness'** means any indebtedness, present or future, actual or contingent, in respect of money borrowed or raised or any financial accommodation whatever, including, without limitation, under or in respect of:
- a. a Guarantee, a negotiable or other financial instrument, or a discounting arrangement;
 - b. an interest, gold or currency exchange, hedge or other arrangement of any kind, including, without limitation, a swap, option, futures contract or exchange or purchase agreement;
 - c. the current value and dividend (whether or not declared, and whether or not there are sufficient profits or other money for payment) of a redeemable preference share or a share that is the subject of a Guarantee;
 - d. a lease that under current accounting practice would be required to be capitalised on the balance sheet of the lessee or hirer;
 - e. a factoring or securitisation of receivables;
 - f. the deferred purchase price (for more than 90 days) of an asset or service; or

- g. an obligation to deliver goods or other property or services paid for in advance by a financier or in relation to any other financing transaction.
- (q) '**General Rates**' has the meaning given to that term in the Local Government Act.
- (r) '**Governmental Agency**' means any government, government business enterprise or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, Council, tribunal, agency or entity, or Government Minister (but not the Council).
- (s) '**GST**' means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.
- (t) '**GST Amount**' means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.
- (u) '**GST Group**' has the meaning given by the GST Law.
- (v) '**GST Law**' has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
- (w) '**Guarantee**' means any guarantee, indemnity, letter of credit, legally binding letter of comfort, suretyship or other assurance against loss.
- (x) '**Input Tax Credit**' has the meaning given by the GST Law and a reference to an Input Tax Credit to which a party is entitled includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- (y) '**Instalment Payment Date**' means, in respect of a Loan, each such date specified in the relevant Confirmation for that Loan.
- (z) '**Interest Bearing Loans and Borrowings**' means, on any date, all interest bearing loans and borrowings of the Council as shown by the latest Financial Statements for the 12 month period ending on that date.
- (aa) '**Interest Cover Ratio**' means at any date the ratio of A:B where:
- a. 'A' equals EBITDA for the 12 month period ending on that date; and
 - b. 'B' equals the Total Interest Expense for the 12 month period ending on that date.
- (bb) '**Interest Payment Date**' means, in respect of a Loan, each such date specified in the relevant Confirmation for that Loan.
- (cc) '**Invoice**' has the meaning given by the GST Law.
- (dd) '**Loan Amount**' means, in respect of a Loan, the amount specified in the Confirmation relating to that Loan.

- (ee) **'Loan Date'** means, for a Loan, the date of drawdown specified in the relevant Confirmation for that Loan.
- (ff) **'Loan Rate'** means, for a Loan, the rate of interest specified in the Confirmation relating to that Loan.
- (gg) **'Local Government Act'** means the *Local Government Act 1989* (Vic)
- (hh) **'Outstanding Moneys'** means all debts and monetary liabilities of the Council to TCV which arise under or in connection with the Loan Documents and in any capacity, irrespective of whether the debts or liabilities are present or future, are actual, prospective, contingent or otherwise, are at any time ascertained or unascertained, are owed or incurred on any account whatsoever or comprise any combination of the foregoing.
- (ii) **'Own Source Revenue'** means, on any date, the total revenue for the Council as shown by the latest Financial Statements (but excluding government grants, contributions for capital works and the value of assets received from developers) for the 12 month period ending on that date.
- (jj) **'Power'** means a power, right, authority, discretion or remedy which is conferred on TCV or any Controller.
- (kk) **'PPSA'** means the Personal Property Securities Act 2009 (Cth).
- (ll) **'Project'** means any sports infrastructure for which the Treasurer of Victoria has provided or, from time to time, provides a Guarantee in favour of TCV to enable TCV to assist the Council with financing that sports infrastructure, and which is more particularly described in a Community Access Agreement.
- (mm) **'Project Costs'** means:
- a. all capital costs and expenses incurred or to be incurred by the Council in constructing a Project; and
 - b. any other costs or expenses incurred or to be incurred by the Council which are directly attributable to a Project,
- in each case, as identified (and limited to the amounts stated) in the Project Budget.
- (nn) **'Project Budget'** means the budget for a Project (including an outline of cash flows for that Project) approved by the Council and TCV.
- (oo) **'Receiver'** means a receiver or receiver and manager, and where there is more than one person appointed as the Receiver, a reference to the Receiver includes each such person.
- (pp) **'Repayment Date'** means, in respect of a Loan, each loan repayment or maturity date specified in the Confirmation relating to that Loan.
- (qq) **'Reporting Date'** means 30 June and 31 December in each year.

- (rr) **'Revolving Asset'** means any Secured Property which is money (including money withdrawn or transferred to a third party from an account of the Council with a bank or other financial institution) and in relation to which no Control Event has occurred, subject to clauses 7(g) and 7(h).
- (ss) **'Secured Money'** means all Outstanding Moneys and including without limitation amounts:
- a. which now or in the future are owing or payable (actually or contingently) by the Council to TCV;
 - b. which, having now or in the future become owing or payable (actually or contingently) by the Council to TCV, cease to be owing under any law relating to bankruptcy or insolvency and remain unpaid by the Council;
 - c. that now or in the future there is a prospect may become owing or payable (actually or contingently) by the Council to TCV, for any reason including moneys and damages payable by the Council, alone, jointly or severally with any other person, or by the Council in its own right or capacity; or
 - d. which can be debited by TCV to the account of the Council with TCV for the purposes of this Agreement.
- (tt) **'Secured Property'** means the General Rates of the Council and all proceeds from the sale or any other dealings with those assets or income (including any proceeds within the meaning of that term in the PPSA).
- (uu) **'Security Interest'** means any:
- a. security interest as defined in section 12(1) or section 12(2) of the PPSA;
 - b. security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement;
 - c. right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
 - d. right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
 - e. third party right or interest or any right arising as a consequence of the enforcement of a judgment,
- or any agreement to create any of them or allow them to exist.
- (vv) **'State'** means the State of Victoria.
- (ww) **'Supreme Court'** means the Supreme Court of Victoria.

- (xx) **'Tax'** includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding that is levied or imposed by a Governmental Agency, and any related interest, penalty, charge, fee or other amount, except if imposed on the overall net income of TCV.
- (yy) **'Taxable Supply'** has the meaning given by the GST Law excluding reference to section 84-5 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (zz) **'Total Interest Expense'** means all interest expense relating to Interest Bearing Loans and Borrowings accrued by the Council as shown by the latest Financial Statements (including with respect to the facilities under this Agreement) including any outgoings in the nature of interest (including line fees) but excluding:
 - a. capitalised interest; and
 - b. establishment or upfront fees.

Executed by the parties as an agreement.

Signed for

SOUTH GIPPSLAND SHIRE COUNCIL
by its authorised signatories
dated :



.....
Name:	Name:
Title:	Title:
Date:	Date:

Signed for

TREASURY CORPORATION OF VICTORIA
by its attorneys under Power of Attorney
dated 21 May 2019 :

.....
Attorney:	Attorney:
Name: Mark W. Engeman	Name: Peter Wyatt
Title: Deputy Managing Director	Title: Chief Financial Officer
Date: 5.9.2019	Date: 5/9/19

APPENDIX ONE

Notice of Drawing

To: Treasury Corporation of Victoria (TCV)
A.B.N. 97 552 308 966
Level 12
1 Collins Street
MELBOURNE VIC 3000
Attention: Managing Director

Email: treasuryclientservices@tcv.vic.gov.au

From: [insert name of Council](the Council)]

We refer to the Multi-Option Loan Facility Loan Agreement dated [insert date] (the **Agreement**) between the Council and TCV.

We confirm our telephone request for the following drawing under the Agreement.

Loan Amount: [insert amount]
Loan Date: [insert drawing date]
Loan Repayment Date: [insert maturity date]

It is hereby certified, for the purposes of clause 3 of the Agreement that:

- (a) the Council will not, by reason of this drawing exceed any relevant borrowing limit applicable to it;
- (b) all terms and conditions of the approval of the Treasurer of Victoria for the Council to obtain financial accommodation have been complied with;
- (c) no Event of Default has occurred and remains unremedied or will result from the provision of this drawing; and
- (d) the representations and warranties set out in the Agreement are true and correct in all material respects as of the date of this notice and as of the Loan Date.

Definitions in the Agreement apply when used in this Notice

For and on behalf of

[Insert Name of Council]

By: Signature: [insert signature]

Name: [Insert name of Authorised Officer]
Title: [insert title of Authorised Officer]

Dated:

APPENDIX TWO
Compliance certificate

To: Treasury Corporation of Victoria (TCV)
A.B.N. 97 552 308 966
Level 12
1 Collins Street
MELBOURNE VIC 3000
Attention: Managing Director

Email: treasuryclientservices@tcv.vic.gov.au

From: [insert name of Council](the Council)]

We refer to the Multi-Option Loan Facility Loan Agreement dated [insert date] (the **Agreement**) between the Council and TCV. Definitions in the Agreement apply when used in this Compliance Certificate.

I, [Insert name of Authorised Officer], am an Authorised Officer of the Council and hereby certify as follows:

- (a) the financial undertakings contained in clauses 4(h) and (i) of the Agreement are complied with and have been complied with since the date of the last compliance certificate provided to you. The computations and financial and other information necessary to establish compliance are set out in the annexure to this certificate; and
- (b) no Event of Default has occurred and remains unremedied.

For and on behalf of

[Insert Name of Council]

By: Signature: [insert signature]

Name: [Insert name of Authorised Officer]

Title: [insert title of Authorised Officer]

Dated: