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Agreement

Melbourne City Council

ABN 55 370 219 287

and

Assistant Treasurer

Redevelopment of the Queen Victoria Market

2014

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
1.1 Definitions	1
1.2 Rules for interpreting this Agreement	3
1.3 Non Business Days	3
1.4 The rule about "contra proferentem"	4
1.5 Requirement on a person not a party to this Agreement	4
2. PUBLIC POLICY BENEFITS OF THE PROJECT	4
2.1 Strategic	4
2.2 Economic	4
3. COMPONENTS OF THE PROJECT TO BE DELIVERED BY MCC	5
4. COMPONENTS OF THE PROJECT TO BE DELIVERED BY THE STATE OF VICTORIA	6
5. MCC DEVELOPMENT TIMING OBLIGATIONS	6
5.1 New Franklin Street	6
5.2 Car parking	6
5.3 North Upper Market Renovation	6
5.4 Parcel A	6
5.5 Balance of MCC Components	6
6. SURRENDER OF LAND BY MCC	7
7. FRANKLIN STREET CLOSURE	7
8. PROJECT LAND	7
9. PROJECT RISKS	8
10. PROJECT WORKS	8
10.1 Delivery and funding	8
10.2 Approvals	8
11. PHASING/TIMING OF ACTIVITIES	8
12. REPORTING	8
13. VICTORIAN GOVERNMENT'S CONTRIBUTION	8
14. CO-OPERATION AND SHARING INFORMATION	9
15. GST	9
15.1 Definitions	9
15.2 GST pass on	9
15.3 Later adjustment	9
15.4 Tax invoices / adjustment notes	10
15.5 Change in the GST Law	10
15.6 Reimbursements / Indemnities	10
16. EVENTS OF DEFAULT	10
16.1 Events of Default	10
16.2 Essential terms	10
17. FORCE MAJEURE	10
17.1 Notice and suspension of obligations	10
17.2 Effort to overcome	11
17.3 Termination	11

18.	DISPUTE RESOLUTION	11
18.1	Application	11
18.2	Negotiation.....	11
18.3	Continuance of performance	12
18.4	Summary or urgent relief	12
19.	CONFIDENTIALITY	12
19.1	Use and disclosure of Confidential Information	12
19.2	Disclosures to personnel and advisers	12
19.3	Disclosures required by law	13
20.	PUBLIC ANNOUNCEMENT	13
21.	TERMINATION	13
21.1	Immediate termination.....	13
21.2	Termination after Force Majeure.....	13
21.3	Entitlement to damages	14
21.4	Payment to Assistant Treasurer	14
22.	NOTICES	14
23.	TERM	15
24.	AMENDMENT AND ASSIGNMENT.....	15
24.1	Amendment.....	15
24.2	Assignment.....	15
25.	GENERAL.....	15
25.1	Governing law.....	15
25.2	Liability for expenses	15
25.3	Giving effect to documents	16
25.4	Variation of rights.....	16
25.5	Operation of this Agreement	16
25.6	Operation of provisions	16
25.7	Inconsistency with other documents	16
25.8	Time is of the essence.....	16
25.9	Counterparts.....	16

THIS AGREEMENT is made on

11 September

2014

BETWEEN:

- (1) **Melbourne City Council** ABN 55 370 219 287 (the **MCC**); and
- (2) **The Hon Gordon Rich-Phillips MLC as Assistant Treasurer** for and on behalf of the Crown in right of the State of Victoria of Level 5, 1 Macarthur Street, Melbourne, Victoria 3001 (the **Assistant Treasurer**).

RECITALS:

- (A) The MCC is the owner of the Market, and wishes to renew the Market Precinct generally in accordance with the Business Case.
- (B) The Assistant Treasurer has agreed to deliver the State Components of the Project.
- (C) This Agreement sets out the parties' rights and obligations in respect of the key high level issues associated with the delivery of the Project.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this Agreement.

Agreement means this agreement.

Authorisation means:

- (a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Case means the "Queen Victoria Market Precinct Renewal Project Business Case" dated July 2012.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne.

Confidential Information means information that:

- (a) is made available by or on behalf of the disclosing party to the receiving party, or is otherwise obtained by or on behalf of the receiving party; and
- (b) is by its nature confidential or the receiving party knows, or ought to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this Agreement.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this Agreement, including any dispute or difference as to the formation, validity, existence or termination of this Agreement.

Event of Default means an event or circumstance described in clause 16.

Force Majeure Event means any event or circumstance or combination of events or circumstances comprising earthquake, Act of God, natural disaster, fire, flood, industrial action that is directed at either or both of the State of Victoria or MCC as a direct or indirect result of which a party is prevented from or delayed in performing any of its obligations under this Agreement and that is beyond the reasonable control of that party.

Franklin Street means the existing Franklin Street road, car park and roundabout as shown on Plan A, and which includes the land shown as parcel E on Plan A.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Land Act means the *Land Act 1958 (Vic)*.

Loss includes any loss, damage, liability or obligation, cost or expense (including any legal cost and expense on a solicitor and own client basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent but excluding any losses, liabilities, damages, costs, expenses, charges, fines, penalties and payments to the extent that they are indirect or consequential whether arising under contract, in tort (including negligence), at law or in equity, loss of actual or anticipated profits, loss of revenue, loss of opportunities, loss of use, cost of capital and loss or damage of property or equipment, loss of permits or any consequential loss (including losses in respect of business interruption).

Market means the Queen Victoria Market; which as at the date of this Agreement comprises the land contained in certificates of title volume 10315 folio 173 and volume 10315 folio 174, as shown on Plan C, and which is located in Melbourne, Victoria.

Market Precinct means the land which is coloured blue on the plan attached as Annexure C.

MCC Components has the meaning given in clause 3.

MCC's Senior Management Representative means Rob Adams, Director City Design (rob.adams@melbourne.vic.gov.au; T - (03) 9658 8617; F - (03) 9658 8840).

New Franklin Street means the new alignment of Franklin Street as a result of the delivery of the Project, and which includes the land shown as parcel C on Plan A.

Plan A means the plan attached as Annexure A.

Project means the renewal of the Market Precinct by the MCC generally in accordance with the Business Case.

Road Act means the *Road Management Act 2004 (Vic)*.

Senior Management Representatives means the MCC's Senior Management Representative and Department of Treasury and Finance's Assistant Director Property and Fleet.

Staging Plan means a mutually agreeable staging plan for the delivery of the MCC Components to be developed by the parties in accordance with clause 11(a), as amended or updated from time to time.

State Components has the meaning given in clause 4.

1.2 Rules for interpreting this Agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this Agreement) or agreement, or a provision of a document (including this Agreement) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this Agreement or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

1.3 Non Business Days

If the day on or by which a person must do something under this Agreement is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.4 The rule about "contra proferentem"

This Agreement is not to be interpreted against the interests of a party merely because that party proposed this Agreement or some provision of it or because that party relies on a provision of this Agreement to protect itself.

1.5 Requirement on a person not a party to this Agreement

If a provision of this Agreement requires a person that is not a party to this Agreement to do, or not to do, a thing, each party must use its reasonable efforts to ensure that the person does, or does not, do that thing.

2. PUBLIC POLICY BENEFITS OF THE PROJECT

2.1 Strategic

The parties acknowledge and agree that the following are the strategic public policy benefits associated with the Project, which are further described in the Business Case:

- (a) an increased land use diversity within the Market Precinct;
- (b) optimisation of land uses within the Market Precinct; and
- (c) improved east-west connectivity between Melbourne City and the Docklands as a result of the realignment of Franklin Street to New Franklin Street.

2.2 Economic

The parties acknowledge and agree that the following are the anticipated economic public policy benefits associated with the Project, which are further described in the Business Case:

- (a) an increase in capital investment in the Market Precinct;
- (b) growth in visitation rates to the Market Precinct;
- (c) the economic value associated with improved east-west connectivity between Melbourne City and the Docklands as a result of the realignment of Franklin Street to New Franklin Street;
- (d) population growth within the Market Precinct;
- (e) population growth in the areas surrounding the Market Precinct;
- (f) growth in employment opportunities within the Market Precinct;
- (g) growth in employment opportunities during delivery of the Project;
- (h) growth in employment opportunities in the areas surrounding the Market Precinct;
- (i) improved retail turnover of the Market Precinct and associated flow on retail spending;
- (j) growth in the total value of economic activities within the Market Precinct; and
- (k) Market Precinct development impact.

3. **COMPONENTS OF THE PROJECT TO BE DELIVERED BY MCC**

- (a) The parties acknowledge and agree that the following components of the Project must be delivered by MCC subject to, and in accordance with, this Agreement (**MCC Components**):
- (i) Market renewal:
 - (A) construction of service areas for the Market, including customer car parking and Market trader storage;
 - (B) upgrading of Market trader facilities and amenities;
 - (C) provision of a broader range of retail and hospitality offerings within the Market Precinct compared to that existing as at the date of this Agreement;
 - (D) making the Market components of the Market Precinct pedestrian only during core market trading times;
 - (E) provision of new and varied public spaces within the Market Precinct; and
 - (F) creation of new dedicated hireable spaces for community festivals and food-oriented events within the Market Precinct;
 - (ii) Franklin Street:
 - (A) realign Franklin Street to New Franklin Street, so as to create a direct east-west link from the City to Docklands from Franklin Street through to Dudley Street;
 - (iii) public space:
 - (A) conversion of the car park shown as parcel A on Plan A to a high quality public open space, which complements the Market and meets the needs of the growing Melbourne city north community;
 - (iv) Queen's Corner, being the land shown as parcel B on Plan A:
 - (A) construction of a new Queens' Corner building;
 - (B) development of a Victoria Visitor Centre in the lower levels of the Queens' Corner building; and
 - (C) development of new facilities for Market management in the upper levels of the Queen's Corner building;
 - (v) Market events shed:
 - (A) transformation of K&L shed to expand capabilities for hosting Market activities and a broad range of Melbourne's community festivals and events;
 - (vi) public realm improvements:
 - (A) upgrading of streetscapes adjoining the Market (Elizabeth, Peel, Queen, Therry and Victoria Streets) incorporating best practice urban

design, improved paving, tree planting and public transport infrastructure and connections; and

(vii) mixed use development:

(A) reconfigure the land shown as parcels D and E on Plan A to create a mixed use development site including all necessary work to prepare the land for development.

(b) The parties may agree to amend the MCC Components from time to time.

4. **COMPONENTS OF THE PROJECT TO BE DELIVERED BY THE STATE OF VICTORIA**

The parties acknowledge and agree that the following components of the Project must be delivered by the Assistant Treasurer subject to and in accordance with this Agreement (**State Components**):

(a) removal of restrictions on the land described in certificate of title volume 10315 folio 174 by way of facilitating the surrender of that land by MCC to the Crown in accordance with clause 6(b); and

(b) granting land to MCC in accordance with clause 8.

5. **MCC DEVELOPMENT TIMING OBLIGATIONS**

5.1 **New Franklin Street**

MCC must arrange for the completion of the design and construction of New Franklin Street within 5 years from the date of this Agreement.

5.2 **Car parking**

MCC must ensure that all current car spaces contained within the existing at grade car park are replaced within the Market Precinct within 5 years from the date of this Agreement.

5.3 **North Upper Market Renovation**

MCC must complete the adaptation and enhancement of Upper Market Sheds A, B and C to support market trading and incorporate facilities including storage and development of sustainable operations (including upgraded trader and cleaning facilities, waste systems, water storage, power supply etc) within 5 years from the date of this Agreement,

5.4 **Parcel A**

(a) Subject to clause 5.4(b), MCC must arrange for the completion of the design and construction of the land shown as parcel A on Plan A as public open space in accordance with the standard prescribed in clause 3(a)(iii)(A) within 8 years from the date of this Agreement.

(b) "Completion" in clause 5.4(a) means that parcel A is in a form that is capable of being used as a multi-use public space.

5.5 **Balance of MCC Components**

Subject to clauses 5.1, 5.2, 5.3 and 5.4, MCC must complete the balance of the MCC Components within 12 years from the date of this Agreement.

6. **SURRENDER OF LAND BY MCC**

- (a) Within 60 Business Days of New Franklin Street being constructed in accordance with clause 5.1, the replacement of the car parking in accordance with clause 5.2, and the completion of the North Upper Market Renovation in accordance with clause 5.3, but subject to the consent of the Governor in Council being obtained in accordance with clause 6(b), MCC as an "authority" within the meaning of section 22A(5) of the Land Act must surrender the land described in certificate of title volume 10315 folio 174 to the Crown pursuant to section 22A(1)(a) of the Land Act for no consideration.
- (b) The Assistant Treasurer must, on behalf of MCC, and within 60 Business Days of receiving a request to do so from MCC, obtain the consent of the Governor in Council to MCC's surrender to the Crown of the land described in certificate of title volume 10315 folio 174.

7. **FRANKLIN STREET CLOSURE**

- (a) Following completion of construction of New Franklin Street and within 60 Business Days of New Franklin Street becoming a "public road" within the meaning of the Road Act, MCC must take the necessary steps to discontinue Franklin Street as a public road.
- (b) The parties acknowledge and agree that as the land forming Franklin Street is unalienated Crown land, upon publication of the notice of discontinuance in the Government Gazette the land vests in the Crown.

8. **PROJECT LAND**

- (a) Subject to:

- (i) MCC complying with its obligations under clauses 5.1, 5.2, and 5.3; and
- (ii) MCC using its reasonable endeavours to deliver the other MCC Components in accordance with the Staging Plan; and
- (iii) MCC preparing at its cost survey plans in title plan format to the satisfaction of the Surveyor General Victoria, for the land parcels referred to in clauses 8(a)(iv), 8(a)(v), 8(a)(vi) and 8(a)(vii),

after 1 July 2015, pursuant to the Land Act the Assistant Treasurer in the name and on behalf of Her Majesty, must grant to MCC the following for no consideration:

- (iv) one Crown grant in fee simple of the land shown as parcel B on Plan A subject to the condition that the land be used solely for municipal or market (Queen Victoria Market) purposes including a visitor centre;
- (v) one Crown grant in fee simple of the land shown as parcel A on Plan A subject to the condition that the land be used solely for public open space, public events, and other uses associated with the adjoining Queen Victoria Market;
- (vi) one Crown grant in fee simple of the land shown as parcel C on Plan A designated as 'road'; and
- (vii) one unrestricted freehold title in respect of the land shown as parcels D/E on Plan A (**Development Lot**).

- (b) The boundaries of the land parcels referred to in clauses 8(a)(iv), 8(a)(v), 8(a)(vi) and 8(a)(vii), are to be determined by the survey plans prepared by MCC in accordance with clause 8(a)(iii).
- (c) The Assistant Treasurer is responsible for obtaining all Authorisations required, including any Governor in Council approval, to grant the land to MCC in accordance with this clause 8.

9. **PROJECT RISKS**

Subject to any clause of this Agreement to the contrary, the parties acknowledge and agree that all risk in the land granted to MCC under clause 8(a), and all risks associated with delivery of the Project, lie with MCC, including but not limited to risks relating to contamination, heritage, cultural heritage, archaeology, planning, construction, funding, survey, project management, community and stakeholder management, ongoing operation of the Market and compliance with the section 173 agreement burdening the land described in certificate of title volume 10315 folio 174 as at the date of this Agreement and all other issues associated with the section 173 agreement.

10. **PROJECT WORKS**

10.1 **Delivery and funding**

The parties acknowledge and agree that, subject to this Agreement, the MCC is responsible for delivering the MCC Components and funding the Project.

10.2 **Approvals**

The parties acknowledge and agree that, subject to this Agreement, the MCC is responsible for obtaining all Authorisations necessary for the delivery of the MCC Components and the Project.

11. **PHASING/TIMING OF ACTIVITIES**

- (a) The parties must work together to determine a Staging Plan, which must be annexed to, and which will form part of this Agreement, when finalised provided always that the Staging Plan must reflect the dates referred to in clauses 5.1, 5.2, 5.3, 5.4 and 5.5. The parties may agree to amend the Staging Plan from time to time.
- (b) MCC must use its reasonable endeavours to deliver the MCC Components in accordance with the Staging Plan.

12. **REPORTING**

- (a) The MCC must inform the Assistant Treasurer when an MCC Component has been completed.
- (b) The MCC must provide the Assistant Treasurer with quarterly progress reports on the status of delivery of the MCC Components. The quarterly report must be provided in the form set out in Annexure B.

13. **VICTORIAN GOVERNMENT'S CONTRIBUTION**

- (a) Any profits that MCC receives as a result of selling or developing the Development Lots must be used for the Project or ongoing management of the Market.
- (b) At all key milestones associated with the Project specified in the Staging Plan, MCC and the Assistant Treasurer must agree on an appropriate form of recognition and promotion by MCC of the contribution to the Project made by the State of Victoria.

14. **CO-OPERATION AND SHARING INFORMATION**

From the date of this Agreement, each party must co-operate with the other party in good faith and exchange information which needs to be exchanged to enable the parties to comply with the terms of this Agreement.

15. **GST**

15.1 **Definitions**

(a) In this clause 15:

GST includes:

- (i) any additional tax, penalty, fine, interest or other charge relating to GST; and
- (ii) an amount an entity is notionally liable to pay as GST or an amount which is treated as GST under the GST Law.

GST Law means the same as "GST law" means in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

(b) Interpretation

Terms defined in the GST Law have the same meaning in this clause unless the context otherwise requires.

15.2 **GST pass on**

If GST is or will be payable on a supply made under or in connection with this Agreement, to the extent that the consideration otherwise provided for that supply under this Agreement is not stated to include an amount in respect of GST on the supply:

- (a) the consideration otherwise provided for that supply under this Agreement is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within seven days of receiving a written demand from the supplier.

15.3 **Later adjustment**

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier within 14 days of becoming aware of the adjustment event:

- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving seven days written notice; or
- (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Commissioner of Taxation; and
- (c) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the recipient within 28 days of the adjustment event except

where the recipient is required to issue an adjustment note or tax invoice in relation to the supply.

15.4 Tax invoices / adjustment notes

The right of the supplier to recover any amount in respect of GST under this Agreement on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient except where the recipient is required to issue the tax invoice or adjustment note.

15.5 Change in the GST Law

If the GST Law changes after the date of this Agreement to change the amount of GST on a supply, any consideration that expressly includes GST must be adjusted to reflect the change in the GST Law.

15.6 Reimbursements / Indemnities

- (a) Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this Agreement must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.
- (b) The parties each indemnify the other against all GST, and losses, liabilities and expenses (including legal liabilities on a full indemnity basis) that the other incurs (directly or indirectly) as a result of a breach of a warranty or other provision in this Agreement relating to GST.

16. EVENTS OF DEFAULT

16.1 Events of Default

It is an Event of Default if either party fails to comply with an essential term of this Agreement.

16.2 Essential terms

- (a) Each of the following obligations under this Agreement is an essential term of this Agreement:
 - (i) regarding the MCC's obligations under clauses 5.1 (New Franklin Street), 5.2 (Car parking), 5.3 (North Upper Market Renovation), 5.4 (Parcel A), 5.5 (Balance of MCC Components), 6(a) (Surrender of Land by MCC), and 7 (Franklin Street Closure);
 - (ii) regarding a material failure by MCC to deliver the MCC Components in accordance with the Staging Plan; and
 - (iii) regarding the Assistant Treasurer's obligations under clauses 6(b) (Surrender of Land by MCC) and, 8 (Project Land).

17. FORCE MAJEURE

17.1 Notice and suspension of obligations

If a party to this Agreement is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must immediately give the other prompt notice of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it; and
- (b) the obligations under this Agreement of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

17.2 **Effort to overcome**

A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a party to settle any industrial dispute in any way that it considers inappropriate.

17.3 **Termination**

- (a) If a Force Majeure Event continues for more than 60 Business Days, either party may terminate this Agreement by giving at least 30 Business Days notice to the other party.
- (b) In the event of termination under paragraph (a), neither party is liable to the other except to the extent of rights or obligations which accrued before the termination.

18. **DISPUTE RESOLUTION**

18.1 **Application**

Any Dispute must be determined in accordance with the procedure in this clause 18.

18.2 **Negotiation**

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Senior Management Representatives for resolution. The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 18.2;
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this Agreement;
 - (bb) acts or omissions of any person, relevant to the Dispute;

- (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 10 Business Days of the Referring Party giving the Dispute Notice (**Resolution Period**), the Senior Management Representative from each of the parties to the Dispute must meet at least once to attempt to resolve the Dispute. The parties must not delegate the function of the Senior Management Representative to any other person.
- (c) The Senior Management Representatives may meet more than once to resolve a Dispute. The Senior Management Representatives may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.
- (d) Each party warrants that their Senior Management Representative has full authority to resolve any Dispute.

18.3 **Continuance of performance**

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement.

18.4 **Summary or urgent relief**

Nothing in this clause 18 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute in the courts.

19. **CONFIDENTIALITY**

19.1 **Use and disclosure of Confidential Information**

A party (the **Recipient**) which acquires Confidential Information of another party (the **Discloser**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Agreement; or
- (b) disclose any of the Confidential Information except in accordance with clauses 19.2 or 19.3.

19.2 **Disclosures to personnel and advisers**

- (a) The Recipient may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the Recipient to perform its obligations or to exercise its rights under this Agreement; and
 - (ii) prior to disclosure, the Recipient informs the person of the Recipient's obligations in relation to the Confidential Information under this Agreement and obtains an undertaking from the person to comply with those obligations.
- (b) The Recipient must ensure that any person to whom Confidential Information is disclosed under paragraph (a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under paragraph (a).

19.3 **Disclosures required by law**

- (a) Subject to paragraph (b), the Recipient may disclose Confidential Information that the Recipient is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body.
- (b) If the Recipient is required to make a disclosure under paragraph (a), the Recipient must:
 - (i) to the extent possible, notify the Discloser immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable directions from the Discloser to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

20. **PUBLIC ANNOUNCEMENT**

The parties must use their respective reasonable endeavours to ensure that no party directly or indirectly makes a public announcement about or comments on the redevelopment of the Market, the Project or the contents of this Agreement, including any discussion between the parties, except as required by law, without the prior written consent of the other party.

21. **TERMINATION**

21.1 **Immediate termination**

Without affecting any other rights which may have accrued to the non-defaulting party, a party may terminate this Agreement immediately by notice to the other party if the other party commits an Event of Default.

21.2 **Termination after Force Majeure**

Either party may terminate this Agreement if permitted, and in the manner specified, by clause 17.

21.3 Entitlement to damages

- (a) If either party:
 - (i) repudiates this Agreement;
 - (ii) breaches an essential term of this Agreement; or
 - (iii) commits a fundamental breach of this Agreement,that party must compensate the other party for any Loss suffered or incurred by the other party as a consequence of the repudiation or breach.
- (b) The compensation payable by the party under clause 21.3(a) extends to any Loss suffered or incurred by the other party during the term of this Agreement, and the period after termination of this Agreement.

21.4 Payment to Assistant Treasurer

- (a) Subject to clause 21.4(b), without limiting any other rights of the Assistant Treasurer, the parties agree that if MCC does not complete the construction of the land shown as parcel A on Plan A as public open space within 8 years from the date of this Agreement in accordance with clause 5.4, MCC shall be obliged to pay to the Assistant Treasurer within 30 days of a demand of the Assistant Treasurer for such payment, the sum of \$10,000,000 plus GST. The parties agree that the sum of \$10,000,000 plus GST is a genuine pre-estimate of the Assistant Treasurer's loss in the event that MCC does not comply with its obligations under clause 5.4.
- (b) For purposes of this clause, "completion" of parcel A has the same meaning as in clause 5.4(b).

22. NOTICES

- (a) A notice, consent or other communication under this Agreement is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, fax or email.
- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
 - (i) if it is delivered, when it has been left at the addressee's address;
 - (ii) if it is sent by mail, three Business Days after it is posted;
 - (iii) if it is sent by fax, when the addressee actually receives it in full and in legible form; and
- (c) if it is sent in electronic form when the sender receives confirmation on its server that the message has been transmitted:
 - (i) if it is transmitted by 5.00 pm (Melbourne time) on a Business Day – on that Business Day; or
 - (ii) if it is transmitted after 5.00 pm (Melbourne time) on the Business Day, or on a day that is not a Business Day – on the next Business Day.
- (d) A person's addresses and fax number are those set out below, or as the person notifies the sender:

MCC

Address: GPO Box 1603, Melbourne VIC 3001
Email Address: rob.adams@melbourne.vic.gov.au
Fax number: (03) 9658 8840
Attention: Rob Adams, Director City Design

Assistant Treasurer

Address: Level 5, 1 Treasury Place, East Melbourne VIC 3000
Email Address: mark.french@dtf.vic.gov.au; peter.jackel@dtf.vic.gov.au
Attention: Mark French and Peter Jackel

23. **TERM**

The rights and obligations under this Agreement begin on the date of this Agreement and end on the earlier of:

- (a) the date of termination under clause 21; and
- (b) completion of the Project.

24. **AMENDMENT AND ASSIGNMENT**

24.1 **Amendment**

This Agreement can only be amended or replaced by another document executed by the parties.

24.2 **Assignment**

A party may only assign, encumber, declare a trust over or otherwise deal with its rights under this Agreement with the written consent of each other party.

25. **GENERAL**

25.1 **Governing law**

- (a) This Agreement is governed by the laws of the State of Victoria.
- (b) Each party submits to the jurisdiction of the courts of that State and of any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement.

25.2 **Liability for expenses**

The MCC must indemnify the Assistant Treasurer against, and must pay the Assistant Treasurer on demand the amount of all reasonable expenses incurred by the Assistant Treasurer and the State of Victoria in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of this Agreement;
- (b) the transactions that this Agreement contemplates;
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Agreement,

including legal expenses on a full indemnity basis and expenses incurred in engaging consultants.

25.3 Giving effect to documents

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Agreement.

25.4 Variation of rights

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this Agreement. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this Agreement.

25.5 Operation of this Agreement

- (a) Subject to paragraph (b), this Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

25.6 Operation of provisions

Clauses 1 (Interpretation), 9 (Project Risks), 13(a) (Victorian Government's Contribution), 17.3(b) (Force Majeure Event), 18 (Dispute Resolution), 19 (Confidentiality), 20 (Public Announcement), 21.3 (Entitlement to damages), 22 (Notices) and 25 (General) survive the expiry or termination of this Agreement.

25.7 Inconsistency with other documents

If this Agreement is inconsistent with any other document or agreement between the parties, this Agreement prevails to the extent of the inconsistency.

25.8 Time is of the essence

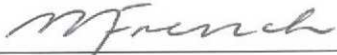
Time is of the essence in respect of this Agreement.

25.9 Counterparts

This Agreement may be executed in counterparts. Delivery of a counterpart of this Agreement by email attachment or fax constitutes an effective mode of delivery.

EXECUTED as an agreement.

**SIGNED by GORDON RICH-PHILLIPS
MLC, ASSISTANT TREASURER** in the
presence of:



Signature of witness

MARK FRENCH

Name

**SIGNED for MELBOURNE CITY
COUNCIL** by its duly authorised delegate,
in the presence of:

X 

Signature of witness

X FERN WATSON

Name



Signature of party

**For and on behalf of
the Assistant Treasurer**

David Roche
Assistant Director, Land and Property,
VicFleet and Accommodation

X 

Signature of delegate

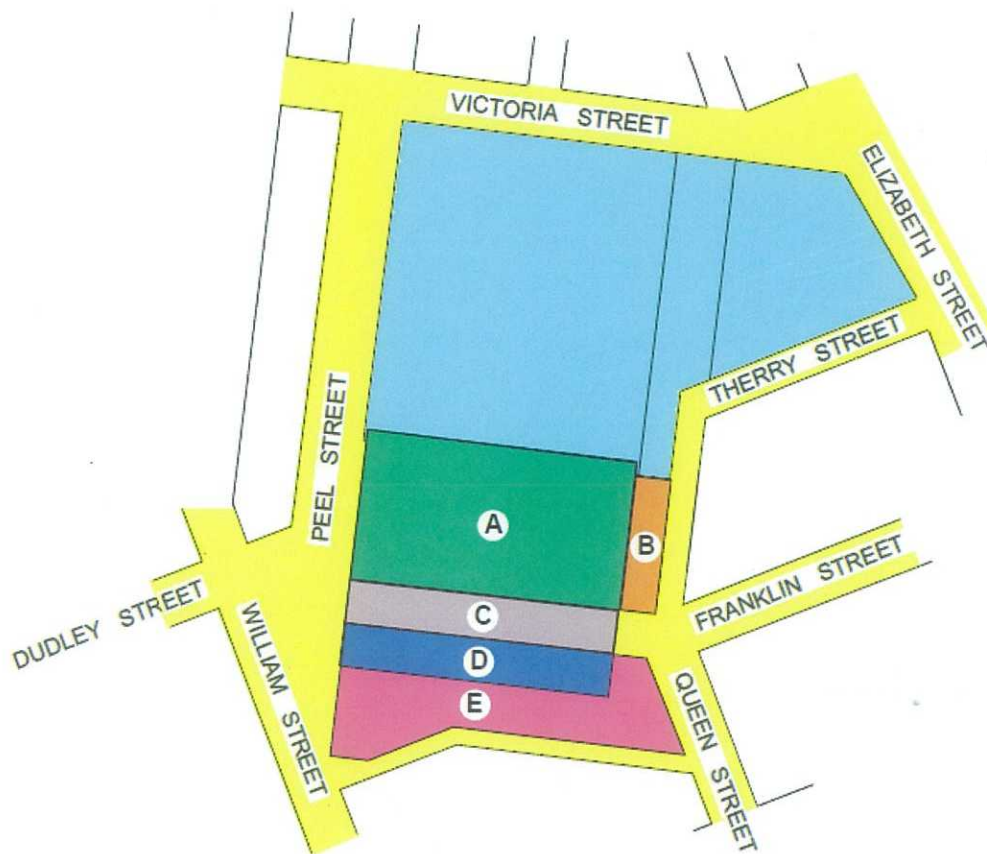
~~Kathy Alexander~~ MARTIN CUTLER

Name

ACTING CEO.

ANNEXURE A

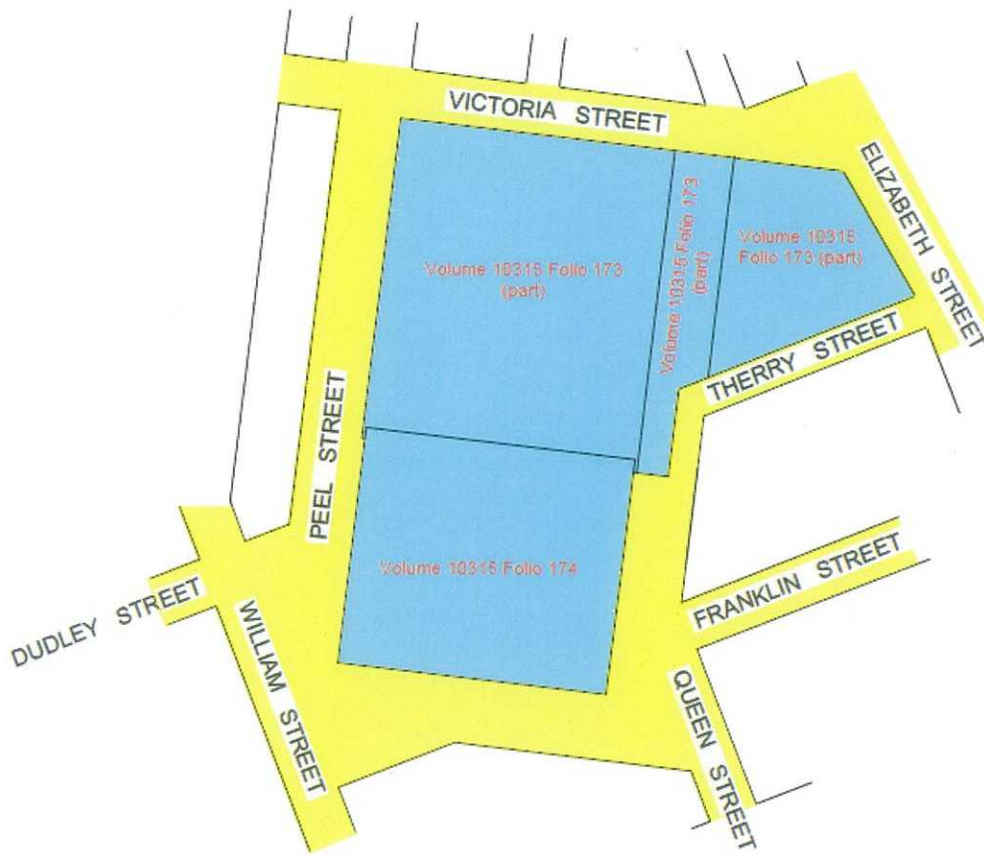
PLAN A



ANNEXURE B
FORM OF QUARTERLY REPORT

- (a) Design
- (b) Contributions
- (c) Overall progress vs plan
- (d) Planned progress in next period
- (e) Financial Status
- (f) Issues

ANNEXURE C
MARKET PRECINCT



ANNEXURE D
STAGING PLAN

In accordance with clause 11(a) of this Agreement, the Staging Plan will form part of this Agreement once it has been finalised.