****

189-229 Lyttleton Terrace

Bendigo VIC 3550

Australia

Telephone 61 3 5434 6000

Facsimile 61 3 5434 6200

requests@bendigo.vic.gov.au

www.bendigo.vic.gov.au

**Landscape bond agreement**

**Permit Number: ##**

**Development: ##**

**Stage: ##**

**Address: ##**

|  |
| --- |
| **Greater Bendigo City Council**  ABN 74 149 638 164  and |

|  |
| --- |
| **[##Insert legal entity for other party]**  **[##Insert ACN if company, ABN otherwise]** |

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**Landscape bond agreement**

**Permit Number: ##**

**Development: ##**

**Stage: ##**

**Address: ##**

**Date** / /

**Parties**

|  |  |
| --- | --- |
| Name | **Greater Bendigo City Council ABN 74 149 638 164** |
| Address | 189-229 Lyttleton Terrace, Bendigo VIC 3550 |
| Contact | **[##TBC]** |
| Email | **[##TBC]** |
| Short name | **City** |
|  |  |
| Name | **[##TBC]** |
| Address | **[##TBC]** |
| Contact | **[##TBC]** |
| Email | **[##TBC]** |
| Short name | **Developer** |

**Recitals**

1. The Developer is undertaking the development permitted by the Permit.
2. The conditions of the Permit require the Developer to undertake the Works and enter into an agreement with the City to provide security for the performance and maintenance of the Works.
3. The parties enter into this Agreement to secure the performance and maintenance of the Works.

**The parties agree**

# ­Definitions

In this Agreement:

## **Agreement** means this agreement, including any schedules or annexures to this agreement.

## **Approved Landscape Plan** means the landscape plan prepared by **[##consultant name]** with reference number **[##]** and approved by the City on **[##DD/MM/YYYY]**.

## **Bank Guarantee** means an unconditional undertaking issued by an authorised deposit taking institution under the *Banking Act 1959* (Cth) to pay on demand an amount equal to the required Security Deposit and/or the Maintenance Bond.

## **Business Day** means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Bendigo.

## **Commencement Date** means the date this Agreement is signed by both of the parties.

## **Completion Date** means the date set out in Item 3 of the Schedule.

## **Estimated Value of Works** means the estimated total value at the bottom of the table as specified in Item 7 of the Schedule.

## **Insolvency Event** means an event which occurs to a party when:

## an order is made that a party is wound up;

## an order is made appointing a liquidator of the party;

## the party enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors;

## the party resolves to wind itself up or otherwise dissolve itself, or gives notice of an intention to do so;

## the party takes any step to obtain protection or is granted protection from its creditors under any applicable legislation; or

## anything analogous or having a substantially similar effect to any of the events specified in this definition occurs to a party.

## **Maintenance Bond** means the amount of specified in Item 5 of the Schedule.

## **Maintenance Period** means the period described in clause 7.1.

## **Permit** means the planning permit specified in Item 1 of the Schedule.

## **Security Deposit** means the amount of specified in Item 4 of the Schedule.

## **Start Date** means the date set out in Item 2 of the Schedule.

## **Works** means the landscape works described Item 6 of the Schedule.

# Interpretation

In this Agreement, unless the contrary intention appears:

## the singular includes the plural and vice versa;

## a reference to a document or instrument, including this Agreement, includes that document or instrument as novated, altered or replaced from time to time;

## a reference to a party includes that party’s executors, administrators, successors, substitutes and permitted assigns;

## other grammatical forms of defined words or expressions have corresponding meanings;

## a recital, schedule, annexure or description of the parties forms part of this Agreement;

## if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;

## all monetary amounts are in Australian dollars;

## a party that is a trustee is bound both personally and in its capacity as trustee;

## headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this Agreement.

# Commencement

## This Agreement will commence on the Commencement Date.

# Security Deposit and Maintenance Bond

## The Developer must pay both the Security Deposit and the Maintenance Bond to the City, both in the form of a cash deposit or Bank Guarantee within 14 days of the Commencement Date (and in any case, before the commencement of the Works).

## The Developer acknowledges that both the Security Deposit and the Maintenance Bond are reasonable requirements of the City to secure the Developer’s proper completion and maintenance of the Works.

## Both the Security Deposit and Maintenance Bond will be retained by the City until the Developer is eligible to have each of the Security Deposit and Maintenance Bond, or part thereof, released in accordance with this Agreement.

## Any interest earned on cash deposits is not refundable to the Developer.

## The Developer acknowledges that the Security Deposit will consist of:

### the Estimated Value of Works; plus

### 50% of the Estimated Value of Works representing loading to cover contingency costs and price increases over time.

## The Developer acknowledges that the Maintenance Bond will consist of:

### 50% of the Estimated Value of Works.

# The Works

## Upon the Commencement Date, the Developer must provide the City with evidence for the basis of the Estimated Value of Works as specified in Item 7 in the form of either:

### An Opinion of Probable Costs prepared by a qualified Landscape Architect;

### Quote(s) from the Developer’s contractor(s) engaged to undertake the Works; or

### Otherwise at the reasonable direction of the City.

## The Developer must commence the Works by the Start Date and complete the Works to the reasonable satisfaction of the City by the Completion Date.

## The Developer must undertake, and maintain for the duration of the Maintenance Period, the Works:

### at its cost;

### in accordance with this Agreement, the Permit and the Approved Landscape Plan;

### with due skill, care, competence and diligence;

### in compliance with all applicable laws; and

### otherwise in accordance with the reasonable directions of the City from time to time.

# Works inspection

## Upon completing the Works, the Developer must by written notice request that the City inspect the Works (**Works Inspection Notice**).

## The City will inspect the Works within 14 days of receiving the Works Inspection Notice and determine that either:

### the Works have been completed in accordance with this Agreement to the reasonable satisfaction of the City; or

### further work is required.

## If the Works are completed to the reasonable satisfaction of the City, the City will, within 7 days of the inspection, give written notice to that effect (**Preliminary Acceptance Notice**) and arrange the release of the Security Deposit to the Developer.

## If further work is required:

### the City will, within 7 days of the inspection, give written notice to the Developer describing outstanding items required to be completed or rectified;

### the Developer must promptly (and within 14 days) undertake further works to complete the outstanding items and, upon completion, again serve notice requesting an inspection under clause 6.1.

# Maintenance Period

## **Term of Maintenance Period**

## The Maintenance Period will commence on the date of the Preliminary Acceptance Notice and expire on the later of:

### the date that is 24 months after the date of the Preliminary Acceptance Notice; and

### the issue of a Final Acceptance Notice by the City.

## **Standard of maintenance**

### For the duration of the Maintenance Period the Developer must maintain the Works in the same or better condition as at the date of the Preliminary Acceptance Notice.

### Any plants or trees requiring replacement during the Maintenance Period must be replaced with plants or trees of a similar maturity level, unless otherwise agreed with the City.

## **Routine inspections**

### The City reserves the right to inspect the Works at any time during the Maintenance Period to ensure the Developer’s continued compliance with its maintenance obligations and will send a report if extra work is required to meet these.

## **Final inspection**

### Not earlier than 30 days before the expiry of the Maintenance Period, the Developer must by written notice request that the City inspect the Works (**Final Inspection Notice**).

### The City will inspect the Works within 14 days of receiving the Final Inspection Notice and determine that either:

#### the Works have been maintained in accordance with this Agreement to the reasonable satisfaction of the City; or

#### further maintenance work is required.

### If the Works have been maintained to the reasonable satisfaction of the City, the City will, within 7 days of the inspection, give written notice to that effect (**Final Acceptance Notice**) and arrange the release of the Maintenance Bond to the Developer.

### If further maintenance work is required:

#### the City will, within 7 days of the inspection, give written notice to the Developer describing outstanding items required to be rectified;

#### the Developer must promptly (and within 14 days) undertake further works to complete the outstanding items and, upon completion, again serve notice requesting an inspection under clause 7.4.1.

# Failure to comply

## In addition to any other rights the City may have under this Agreement, if the Developer fails to comply with any of its obligations with respect to the completion and maintenance of the Works, the City may serve written notice on the Developer setting out the non-compliance and requiring the Developer to undertake specific works or maintenance within 10 Business Days.

## If the Developer fails to undertake the Works or maintenance within the time required, the City may undertake those Works or maintenance. The City, at its sole discretion but acting reasonably, may use however much of the Security Deposit and/or Maintenance Deposit is required to pay for any expenses incurred by the City in doing so.

## A notice served under clause 8.1 will constitute a default notice under clause 11.2.2, if expressed to also be a notice for that purpose.

# Indemnity

## The Developer agrees to indemnify and keep indemnified the City from and against any loss, cost, damage, liability, death, injury or other detriment (including legal costs, but excluding consequential loss, special loss and economic loss) which may arise, directly or indirectly, to the extent caused or contributed to by its:

### fraud, misconduct, dishonesty or breach of any law;

### wilful or negligent act or omission;

### act or omission undertaken in excess of the limits of authority imposed on it under this Agreement; or

### any material breach by it of any provision of this Agreement, including a delay in complying with an obligation,

## except where the relevant losses are caused or contributed by the negligent or wilful act or omission of the City, its contractors, servants or agents or any other person under the control of the City.

## Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement.

## It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

# Dispute Resolution

## **General**

## If a dispute arises out of or relates to this Agreement (**Dispute**), the parties agree to endeavour in good faith to settle the dispute in accordance with this clause 10.

## **Notice and negotiation**

### A party claiming that a Dispute has arisen must notify the other party in writing of the details of the Dispute (**Dispute Notice**).

### The parties must meet within 5 Business Days of the service of the Dispute Notice and negotiate in good faith to resolve the Dispute.

## **Escalation**

### In the event that a Dispute remains unresolved following negotiation under clause 10.2.1, the parties must each nominate a senior or high-ranking representative with authority to settle the Dispute (**Senior Representative**).

### Each parties’ Senior Representatives must meet within 5 Business Days’ of the service of the Dispute Notice and negotiate in good faith to resolve the Dispute.

## **Ability to bring legal action**

## No party may begin or maintain any action (save for actions relating to urgent injunctive or interlocutory relief) relating to a Dispute until it has been discussed in accordance with this clause.

## **Continued performance**

## Each party must continue to perform its obligations under this Agreement despite the service of a Dispute Notice to the extent that such obligations do not relate to the subject matter of the Dispute referred to in the Dispute Notice.

# Default and Termination

## **General**

## Subject to clause 11.2, this Agreement will be terminated upon the earlier of:

### the written agreement of the parties; and

### the expiry of the Maintenance Period and release of the balance of the Maintenance Bond to the Developer.

## **Termination events**

## If a party:

### suffers an Insolvency Event; or

### is in breach of any material provision of this Agreement, and such breach, if remediable, is not remedied within 10 Business Days after a party has given written notice to the party in breach requiring such breach to be remedied within that period,

## then the party not in default may be notice in writing to that party terminate this Agreement.

## **Consequence of termination**

### In the event that this Agreement is terminated by the City:

#### if the Works are not completed as at the date of termination, the City will be entitled to retain the Security Deposit and the Maintenance Bond;

#### if the Works are completed but the Maintenance Period is in effect, the City will be entitled to retain whatever balance of the Security Deposit has not been released and the Maintenance Bond.

### In the event this Agreement is terminated by the Developer, the City must release to the Developer any Security Deposit and Maintenance Bond still retained which the parties agree constitutes full and final settlement of any claim the Developer may have against the City.

# Notices

## **Service of notice**

A notice or other communication required or permitted, under this Agreement, to be served on a party must be in writing and may be served:

### by posting it by prepaid post addressed to that party at the party’s current address for service; or

### by email to the party’s current email address for service.

## **Particulars for service**

### The particulars for service of each party are set out on page one of this Agreement under the heading ‘Parties’.

### Any party may change its address for service or email address for service by giving notice to the other party.

## **Time of service**

A notice or other communication is deemed served:

### if posted within Australia to an Australian address, two Business Days after posting and in any other case, seven Business Days after posting;

### if sent by email, at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000*, and

in all cases, a notice received after 5.00pm in the place of receipt or on a day that is not a Business Day is taken to be received by the recipient at 9.00am on the next Business Day.

# General

## **Severance**

### If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

### If it is not possible to read down a provision as required by clause 13.1.1, that provision or part of it is severable without affecting the validity or enforceability of the remaining part of that provision of the other provisions of this Agreement.

## **Waiver**

A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

## **Assignment or novation**

A party must not assign or novate any right or obligation under this Agreement without the prior written consent of the other party.

## **No restriction of powers**

This Agreement does not fetter or restrict the powers or discretions of the City in relation to any powers or obligations it has under any Act, regulation, local law or by‑law that may apply to the subject matter of this Agreement or to any party to this Agreement.

## **Governing law**

## This Agreement is governed by and construed in accordance with the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the courts of the State of Victoria with respect to any dispute arising out of or in connection with this Agreement.

## **Whole agreement**

This Agreement constitutes the whole agreement between the parties and supersedes all prior representations, warranties, arrangements, understandings and agreements between the parties, relating to the subject matter of this Agreement.

## **Counterparts**

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

## **No partnership**

## Nothing in this Agreement, whether express or implied, will be read or construed so as to place the parties in the relationship of a partnership or joint venture.

**Signing Page**

**Executed as a deed**

**By the City:**

|  |  |  |
| --- | --- | --- |
| Signedfor and on behalf of **Greater Bendigo City Council ABN 74 149 638 164** by its authorised officer in the presence of: | )  )  )  ) |  |
|  |  | Signature of authorised officer |
|  |  |  |
|  |  |  |
| Signature of witness |  | Name of authorised officer (please print) |
|  |  |  |
|  |  |  |
| Name of witness (please print) |  | Date |

**By the Developer:**

**[##if individual]**

|  |  |  |
| --- | --- | --- |
| Signed, sealed and deliveredby **[##insert full name]** in the presence of: | )  ) |  |
|  |  | Signature |
|  |  |  |
| Signature of witness |  |  |
|  |  |  |
|  |  |  |
| Name of witness (please print) |  |  |

**[##if sole director company]**

|  |  |  |
| --- | --- | --- |
| Executedby **[##insert full name inc ACN]** in accordance with s 127(1) of the *Corporations Act 2001*: | )  )  ) |  |
|  |  | Signature of Sole Director/Secretary |
|  |  |  |
|  |  |  |
|  |  | Print full name |

**[##if company with two directors]**

|  |  |  |
| --- | --- | --- |
| Executedby **[##insert full name inc ACN]** in accordance with s 127(1) of the *Corporations Act 2001*: | )  )  ) |  |
|  |  |  |
|  |  |  |
|  |  |  |
| Signature of Director |  | Signature of Director/Company Secretary |
|  |  |  |
|  |  |  |
| Print full name |  | Print full name |

**[##if non-company organisation/government]**

|  |  |  |
| --- | --- | --- |
| Signedfor and on behalf of **[##insert full name inc ABN]** by its authorised officer in the presence of: | )  )  ) |  |
|  |  | Signature of authorised person |
|  |  |  |
|  |  |  |
| Signature of witness |  | Name of authorised person (please print) |
|  |  |  |
|  |  |  |
| Name of witness (please print) |  | Date |

# Schedule

|  |  |  |
| --- | --- | --- |
| **Item 1** | Permit | Planning Permit No. [##TBC] |
| **Item 2** | Start Date | [##DD/MM/YYYY] |
| **Item 3** | Completion Date | [##DD/MM/YYYY] |
| **Item 4** | Security Deposit | $[##] in total [Estimated Value of Works, plus 50% loading] |
| **Item 5** | Maintenance Bond | $[##] in total [50% of Estimated Value of Works] |
| **Item 6** | Works | The works required by condition [##TBC] of the Permit and the Approved Landscape Plan, more particularly: [##insert any required clarification/spec etc. not otherwise detailed in the Permit condition or Approved Landscape Plan] |
| **Item 7** | Estimated Value of Works | |  |  |  |  | | --- | --- | --- | --- | | **Item** | **Quantity** | **Rate $** | **Total $** | |  |  |  |  | |  |  |  |  | |  |  |  |  | |  |  |  |  | |  |  |  |  | |  |  |  |  | | **TOTAL** |  |  |  | |