

FUNDING DEED under **STATE BICYCLE FUND**

1. Shared Use Path Improvements - Park 27 - Adjacent the Port Road & Park Terrace Intersection	\$100,000
2. River Torrens Linear Park - Shared Use Path Improvements (West of Victoria Bridge)	\$20,000
3. Hutt Road Shared Use Path Extension (detailed design)	\$20,000
	Total: \$140,000

Between

MINISTER FOR INFRASTRUCTURE AND TRANSPORT
(Minister)

And

THE COUNCIL NAMED IN THE SCHEDULE
(Council)

DEED dated the day of

PARTIES:

MINISTER FOR INFRASTRUCTURE AND TRANSPORT, a body corporate pursuant to the *Administrative Arrangements Act 1994*.....(**Minister**)

And

THE COUNCIL NAMED IN THE SCHEDULE a body corporate under the *Local Government Act 1999*.....(**Council**)

It is agreed:

1. FUNDING

- 1.1 Subject to this deed, the Minister will pay the Council up to the amount of money specified in the Schedule (**Funding**).
- 1.2 The Council must only use the Funding for the **Purpose** set out in clause 3 of the Schedule.
- 1.3 For the purposes of this deed, the **Funding Period** is the period commencing on the Start Date and, subject to funding being available, will continue until the End Date. The **Start Date** and **End Date** are set out in the Schedule.
- 1.4 The Funding is payable by way of a lump sum in accordance with the Schedule. During the Funding Period, the Council is entitled in accordance with the conditions set out in the Schedule to invoice the Minister for the payment of the Funding.
- 1.5 At the end of the Funding Period the Council must provide a report on the level of any unexpended Funding.
- 1.6 The Council must repay any part of the Funding which is unexpended at the end of the Funding Period to the Minister unless the Minister gives written approval for the Council to retain the money.
- 1.7 The Council must pay at least fifty per cent of the total cost of the works undertaken for the Purpose.

Unless otherwise agreed in writing with the Minister, if by the end of the Funding Period, the total cost of the works for the Purpose is less than double the amount of the grant (GST Exclusive) then in addition to repaying any unexpended Funding, the Council must repay to the Minister the difference between the amount of the Funding and a half of the actual cost of the works.

2. GST

- 2.1 In addition to any amounts payable by the Grantor as part of the Funding (**Base Payment**), the grantor must, if in relation to a Taxable Supply for which the grantor has received a Tax Invoice, pay to the Council an additional amount (**GST Payment**) calculated by multiplying the Base Payment by the rate at which GST is levied at the time of this deed.
- 2.2 The GST Payment is payable at the same time and subject to the same conditions as the Base Payment. "*Taxable supply*", "*GST*" and "*Tax Invoice*" have the meaning attributed under the *A New Tax System (Goods and Services Tax) Act 1999*.

3. ADMINISTRATION OF DEED

- 3.1 Any power or discretion exercisable by the Minister under this deed may be exercised by the person (**Minister's Representative**) for the time being in the position within the Department for Infrastructure and Transport (**Department**) set out in the Schedule.
- 3.2 Any power or discretion exercisable by the Council under this deed may be exercised by the person (**Council's Representative**) for the time being in the position within the Council set out in the Schedule.

4. PROVISION OF FINANCIAL INFORMATION

- 4.1 The Council must provide the Minister with appropriate and regular information, records and reports as the Minister may request from time to time about:
 - 4.1.1 the administration and financial affairs of the Council;
 - 4.1.2 the progress of and any change to the authorised scope of the Purpose;
 - 4.1.3 any significant changes to the nature and scope of the activities conducted by the Council;
 - 4.1.4 any other matter relevant to the granting of assistance;
 - 4.1.5 any other funding or financial assistance promised or received from any source other than the Minister;
 - 4.1.6 the Council's management of the Funding, including, but not limited to, the economic and efficient use of resources to achieve the outcomes of the Purpose; and
 - 4.1.7 the performance of the Council's undertakings and obligations under this deed.
- 4.2 The information provided by the Council must be sufficient for the Minister to make an informed judgement about:
 - 4.2.1 the Council's ongoing financial position and its resources and expertise in relation to the Purpose;
 - 4.2.2 the Council's performance in managing public moneys, acquiring, and using resources economically and efficiently and in achieving specified objectives in relation to the Purpose;
 - 4.2.3 the overall effectiveness of the Funding throughout the Funding Period;
 - 4.2.4 compliance with legislation and generally accepted accounting principles; and
 - 4.2.5 compliance with the Council's constitution and the conditions of this deed.
- 4.3 The Council must permit any officer authorised by the Minister:
 - 4.3.1 to enter the Council's premises and to have access to all accounting records, equipment, documents, and information in possession of the Council; and
 - 4.3.2 to interview employees of the Council on matters pertaining to the operations of the Council.

5. OBLIGATIONS OF THE COUNCIL

The Council must:

- 5.1 ensure that any works undertaken towards the Purpose are undertaken in accordance with (and to the standard required by) any applicable Standards published by Austroads and Standards Australia Limited;
(all bicycle facilities must be planned, designed, and constructed in accordance with Austroads guidelines, AS 1742.9 – Manual of uniform Traffic Control Devices Part 9: Bicycle Facilities, and South Australia's Active Travel Design Guide – current version);
- 5.2 maintain accounting records of the Funding in accordance with generally accepted accounting principles;
- 5.3 ensure that any activity carried out by the Council in connection with the Council's use of the Funding complies with the laws from time to time in force in South Australia;
- 5.4 comply with its constitution;
- 5.5 comply with the reporting requirements set out in the Schedule;
- 5.6 prepare financial statements in accordance with Australian Accounting Standards at the end of the Funding Period and submit the financial statements, signed by a senior office holder of the Council, to the Minister no later than one calendar month after the expiry of the Funding Period; and
- 5.7 where requested by the Minister, provide to the Department management accounts, annual reports, financial statements and any other information or documents relevant to the Council's operations.

6. TERMINATION

- 6.1 If the Council fails to comply with this deed, the Minister may:
 - 6.1.1 require the Council to repay either the whole or a portion of the Funding (whether expended or not);
 - 6.1.2 withhold all future funding from the Council;
 - 6.1.3 pursue any legal rights or remedies which may be available to the Minister; and
 - 6.1.4 terminate or curtail any program or project conducted by the Minister of which the Purpose conducted by the Council is part.
- 6.2 The Minister may review any decision made pursuant to this clause if the Council is able to satisfy the Minister within a period of 30 days from the decision that the Council has complied with the conditions of this deed.
- 6.3 Nothing in this deed is to be taken to limit the Minister's discretion to determine whether and how any program or project of the Minister is to be conducted, except if and to the extent that the Minister gives an express undertaking in that regard.

7. INSURANCE

The Council warrants that it is a member of the Local Government Association Mutual Liability Scheme (**Scheme**) and is bound by the Scheme pursuant to section 142 and Schedule 1, Part 2 of the *Local Government Act 1999* (SA) (**Act**) and in the event that the Council ceases to be a member of the Scheme it will forthwith, pursuant to Section 142(1) of the Act and the regulations under that Act, take out and maintain insurance to cover its civil liabilities at a minimum level of cover of AUD \$50 million.

8. **ACKNOWLEDGEMENTS**

The Council acknowledges that the Funding represents a one-off contribution by the Minister towards the Purpose, and the Council agrees that any request for subsequent funding will require a new application to the Minister.

The Minister is under no obligation to agree to pay any subsequent funding to the Council.

The Council further acknowledges and agrees that the Minister will not be liable to reimburse the Council for any losses (or cost over runs) that may result from the operation of this Agreement or the carrying out of the Purpose or a Project.

9. **INDEMNITY**

The Council acknowledges and agrees that it remains at all times solely responsible for the conduct of the Purpose and any Project and it releases and indemnifies the Minister, the Commissioner of Highways and the Crown in right of the State of South Australia together with their employees, contractors and agents (**those indemnified**) from and against any loss or liability incurred or suffered by any of those indemnified as a result of any claim, suit, demand, action or proceeding brought by any person against any of those indemnified in respect of the works to carry out the Purpose and/or a Project or otherwise caused by any breach or default of the Council under this Agreement.

10. **AUDIT**

The Minister may direct the Council to arrange for the financial accounts relating to the Funding to be audited at the Council's expense. The Minister may specify the minimum qualifications to be held by a person appointed to conduct the audit.

11. **ASSIGNMENT**

The Council must not assign, novate, or encumber any of its rights or obligations under this deed.

12. **PUBLICITY**

The Council must not make or permit a public announcement or media release to be made about any aspect of this deed without first obtaining the Minister's consent.

13. **CONSENT**

If the Council requires the Minister's consent under this deed, the Minister may, in its absolute discretion, give or withhold its consent and if giving consent, the Minister may impose any condition on that consent that it considers appropriate. The Minister's consent will not be effective unless it is in writing and signed.

14. **ENTIRE DEED**

This deed incorporates any attached schedules and annexures. This deed contains the entire agreement between the parties with respect to its subject matter and supersedes

any prior agreement, understanding or representation of the parties on the subject matter.

15. **PROPER LAW**

The laws in force in South Australia apply to this deed.

16. **JURISDICTION OF COURTS**

The courts of South Australia have non-exclusive jurisdiction to determine any proceeding in relation to this deed. Any proceeding brought in a Federal Court must be instituted in (and remain with) the Adelaide Registry of that Federal Court.

17. **COMPLIANCE WITH LAWS**

The Council must comply with the laws in force in South Australia in the course of performing its obligations under this deed.

18. **NOTICES**

A notice is properly given or served if the party delivers it by hand, posts it or transmits it by electronic mail or facsimile, to the address of the Representative of the other party. A notice is taken to be received:

- 18.1 if sent by post, at the time it would have been delivered in the ordinary course of the post to the address to which it was sent;
- 18.2 if sent by electronic mail, only in the event that the sender receives confirmation that the e-mail has been successfully transmitted to the correct e-mail address; or
- 18.3 if delivered by hand, the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service.

19. **PERFORMANCE AND FUTURE PROPOSALS**

The satisfactory completion of the works for the Purpose and on-going compliance with reporting obligations, may be taken into account as a factor in assessing any future applications by the Council for funding under the State Bicycle Fund.

20. **WAIVER**

Any waiver of any provision of this deed is ineffective unless it is in writing and signed by the party waiving its rights. A waiver by either party in respect of a breach of a provision of this deed by the other party is not a waiver in respect of any other breach of that or any other provision. The failure of either party to enforce any of the provisions of this deed at any time must not be interpreted as a waiver of that provision.

21. **VARIATION**

Any variation of this deed must be in writing and signed by each party (or its Representative).

Any request by the Council for agreement to vary the Funding or the Purpose must be accompanied by sufficient details explaining the reasons for the requested variation to enable the Minister to have regard to its merits.

22. **READING DOWN AND SEVERANCE**

In the event that any provision (or portion of any provision) of this deed is held to be unenforceable or invalid by a Court of competent jurisdiction, the validity and

enforceability of the remaining provisions (or portions of such provisions) of this deed shall not be adversely affected.

The offending provision or part of a provision shall be read down to the extent necessary to give it legal effect or shall be severed if it cannot be read down, and the remaining part and provisions of this deed shall remain in full force and effect.

23. AUDITOR GENERAL

Nothing in this deed derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (South Australia). Without limiting this clause, the Council acknowledges the Auditor General's obligations and powers under sections 32 and 34 of the *Public Finance and Audit Act 1987* (South Australia).

24. PUBLIC DISCLOSURE

The Minister may disclose this deed and/or information relating to this deed in both printed or electronic form and either generally to the public or to a particular person as a result of a specific request. Nothing in this clause derogates from the Council's obligations under any provision of this deed or the provisions of the *Freedom of Information Act, 1991*.

25. ADDITIONAL CONDITIONS

The additional conditions set out in the Schedule (if any) form part of this deed.

**THE COMMON SEAL of the
MINISTER FOR INFRASTRUCTURE
AND TRANSPORT**

**THE COMMON SEAL of the
COUNCIL NAMED IN THE SCHEDULE**

.....
(print name above)

(Affix Seal above)

SCHEDULE**1. THE COUNCIL**

Legal Name: City of Adelaide
Trading Name: City of Adelaide
Site Address: 25 Pirie St, Adelaide SA 5000
Postal Address: 25 Pirie St, Adelaide SA 5000
ABN: 20 903 762 572

2. REPRESENTATIVES**Minister's Representative**

Name: Mr Daniel Osborne
Position: Manager, Transport Planning
Address: Level 7, 83 Pirie Street,
ADELAIDE SA 5000
Telephone: 7133 2576
E-mail: Daniel.Osborne@sa.gov.au

Council's Representative

Name: Mr Mark Goudge
Position: Associate Director, Infrastructure
Address: 25 Pirie St, Adelaide SA 5000
Telephone: 8203 7110
E-mail: M.Goudge@cityofadelaide.com.au

3. PURPOSE

The Funding is provided for the Purpose of the Council undertaking (within the Funding Period) the **Projects** described below (and in the proposal and plans attached to this deed) in accordance with (and to the standard required by) any applicable Standards published by Austroads and Standards Australia Limited.

Description of Projects

Shared Use Path Improvements – Park 27 – Adjacent the Port Road & Park Terrace Intersection – Upgrade 75 metres of the River Torrens Linear Trail, Adelaide (adjacent the Port Road / Park Terrace intersection) to widen to 4.5 metres, add lighting and upgrade fencing (\$100,000).

River Torrens Linear Park - Shared Use Path Improvements (West of Victoria Bridge) – Undertake detailed design for a 115-metre section of the River Torrens Linear Trail, Adelaide to widen the path to 3.5 metres and upgrade the lighting and fencing (\$20,000).

Hutt Road Shared Use Path Extension (detailed design) – Undertake detailed design for a shared use path along Hutt Road, Adelaide to extend the recently constructed path from the Park Lands Trail to Greenhill Road (\$20,000).

4. FUNDING PERIOD

Start Date: 01 July 2024
End Date: 31 December 2025

5. **FUNDING**

Amount (AUD): \$140,000 (GST exclusive)

6. **MANNER & CONDITIONS OF PAYMENT**

Limit on payments

The Funding of \$140,000 (GST exclusive) is the maximum total amount the Minister may be liable to pay the Council under this deed.

Invoice

The Minister is **not** obligated to pay an invoice unless properly rendered. An invoice is properly rendered if it:

- (a) is issued in respect of a payment for which the Council is entitled to invoice for under this deed;
- (b) quotes the relevant purchase order number allocated by the Minister;
- (c) reflects the correct amount for payment under this deed; and
- (d) is a valid Tax Invoice in accordance with GST Law.

Payment Term

Provided that the total amount of the Funding has not been (or will be) exceeded, the Minister must pay the amount of a properly rendered invoice for the Funding within 30 days of receiving the Council's invoice.

7. **ADDITIONAL REPORTING REQUIREMENTS**

Report (Title)	Frequency (By when)	Requirements (Information and applicable standard)
Project Report	31 August 2025 and 30 November 2025 or 7 days from request.	• The progress of the Project and scheduling of works. • Updated Expenditure forecasts during the term of the funding period • The management of the Funding (i.e., break down of expenditure of the Funding). • Any changes to the authorised scope of the Project. • Any significant changes to the nature and scope of the activities conducted by the Council. • Any operational matters requested from time to time by the Minister for inclusion in the Project Report.
Financial Statements (As referred to in clause 5)	Within 30 days from the expiry of the Funding Period.	Financial Statements prepared in accordance with Australian Accounting Standards setting out in detail the Council's expenditure of the Funding (with invoices attached from any contractors engaged for the Purpose) and signed by a senior office holder of the Council.

8. **SPECIAL CONDITIONS****Alteration to DIT Roads or other Assets**

If the Project requires any traffic management, alteration to (or effect on) a road or other asset that is under the care, control, and management of (or is otherwise the responsibility of) the Commissioner of Highways or is the responsibility of the Department for Infrastructure and Transport (**DIT**), the Council must seek the written approval of the appropriate DIT Regional Manager prior to commencing any work.

Traffic Control Devices

The installation of Traffic Control Devices must comply with the requirements outlined in the Manual of Legal Responsibilities and Technical Requirements for Traffic Control devices – Part 2 – Code of Technical Requirement (current version).