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Agreement under Section 173 of the Planning and Environment Act 1987

**Subject Land: 785-805 Princes Highway Lara, and 76-156 Canterbury Road East
Lara**

Purpose of Agreement - Payment of Community Infrastructure Contribution

City of Greater Geelong

and

**Lara Farms Pty Ltd
ACN 633 620 318**

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Agreement under Section 173 of the Planning and Environment Act 1987

Dated / /

Parties

Name	City of Greater Geelong (ABN 18 374 210 672)
Address	137-149 Mercer Street Geelong Vic 3220
Short name	Council

Name	Lara Farms Pty Ltd ACN 633 620 318
Address	Level 1, 2-6 Myers Street Geelong Vic 3220
Short name	Owner

Background

- A. Council is the Responsible Authority pursuant to the Act for the administration and enforcement of the Planning Scheme, which applies to the Subject Land. Council is also the Planning Authority for Amendment C444.
- B. The Owner is or is entitled to be the registered proprietors of the Subject Land.
- C. Council is progressing Amendment C444 to the Planning Scheme which proposes to facilitate residential development in the South East Lara Residential Growth Area by:
 - C.1 rezoning land to the General Residential Zone;
 - C.2 applying the Development Plan Overlay (Schedule 48); and
 - C.3 applying the Environmental Audit Overlay.
- D. The Subject Land is within the area proposed to be affected by Amendment C444.
- E. The Owner intends to develop the Subject Land for residential purposes following the approval of Amendment C444. Before Council adopts Amendment C444, Council has requested the Owner to enter into this Agreement to facilitate the provision of a monetary contribution towards community infrastructure.

The Parties agree:

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Adjustment Index means the Australian Bureau of Statistics Producer Price Indexes, Non-Residential Building Construction Index, Victoria.

Agreement means this Deed as amended from time to time.

Amendment C444 means Amendment C444 to the Planning Scheme prepared by Council in its capacity as the Planning Authority for the purposes of the Planning Scheme.

Approval Date means the date on which a notice of approval of Amendment C444 is published under section 36 of the Act.

Building Permit means a building permit under the *Building Act 1993 (Vic)*.

Current Address means:

- (a) for Council, the address shown on page one of this Agreement, or any other address listed on Council's website; and
- (b) for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

Current Email means:

- (c) for Council, statplanning@geelongcity.vic.gov.au, or any other email address listed on Council's website; and
- (d) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Community Infrastructure Contribution means the Community Infrastructure Levy required to be paid to the Council in accordance with clause 4 and which is subject to Indexation annually on 1 July.

Dwelling has the same meaning as in the Planning Scheme and for the purposes of this Agreement also includes an independent living unit or the like.

Dwelling Development means a development of Dwellings as permitted under the Planning Scheme.

Localised Infrastructure means works, services or facilities necessitated by the subdivision or development of land including but not limited to provision of utility services such as water supply, stormwater drainage, sewerage, gas and electricity services, telecommunications infrastructure and local roads, bridges, culverts and other water crossings, any required associated traffic control measures and devices together with the associated land.

Owner means the persons or a person registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Subject Land or any part of it and includes a Mortgagee-in-possession.

Party or parties means the parties to this Agreement but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

Planning Scheme means the Greater Geelong Planning Scheme and any other planning scheme that applies to the Subject Land.

Residential Lot means a lot created as a result of the subdivision of the Subject Land, located within a residential zone pursuant to the Planning Scheme, which in the opinion of Council is of a size and dimension such that it is intended to be developed as a house lot without further subdivision.

Schedule means a schedule to this Agreement.

Subject Land means the land listed in Schedule 1 of this Agreement and any reference to the Subject Land includes any lot created by the subdivision of any lot comprising the Subject Land or any part of it.

2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. Purposes of and reasons for this Agreement

The Parties acknowledge and agree that the purpose of and reason for this Agreement is to make provision for the voluntary payment by the Owner of the Community Infrastructure Contribution.

4. Payment of Community Infrastructure Contribution

4.1 The Owner agrees that:

- 4.1.1 where the permitted development involves the subdivision of the Subject Land, a Community Infrastructure Contribution in respect of each Residential Lot must be paid to Council at a rate of \$2,200.00 per Residential Lot;
- 4.1.2 where the permitted development does not involve the subdivision of the Subject Land, then a Community Infrastructure Contribution in respect of each Dwelling must be paid to Council at a rate of \$2,200 per Dwelling;
- 4.1.3 the Community Infrastructure Contribution must be paid:
 - (a) in relation to development which involves the subdivision of the land, prior the issue of a Statement of Compliance or in accordance with clause 4.1.4; or
 - (b) where the permitted development does not include subdivision, then prior to the issue of an Occupancy Permit in respect of each Dwelling.
- 4.1.4 if for any reason the subdivision of the Subject Land does not require a Statement of Compliance for the creation of a Residential Lot, the Community Infrastructure Contribution for that Residential Lot must be paid to the Council before the creation of that Residential Lot;
- 4.1.5 the amount of the Community Infrastructure Contribution is to be indexed annually on 1 July against the Adjustment Index.

4.2 The Council agrees that:

- 4.2.1 a Community Infrastructure Contribution can only be required once for any Residential Lot; and
- 4.2.2 a Community Infrastructure Contribution can only be required once for any Dwelling.

5. Owner's further obligations**5.1 Notice and registration**

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

5.2 Further actions

The Owner:

- 5.2.1 must do all things necessary to give effect to this Agreement;
- 5.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with section 181 of the Act; and
- 5.2.3 agrees to do all things necessary to enable Council to do so, including:
 - (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

5.3 Council's costs to be paid

The Owner must pay to Council within 14 days' after a written request for payment, Council's reasonable costs and expenses (including reasonable legal expenses) relating to this Agreement, comprised of:

- 5.3.1 drafting, finalising, signing and recording this Agreement;
- 5.3.2 drafting, finalising and recording any amendment to this Agreement; and
- 5.3.3 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

5.4 Interest for overdue moneys

- 5.4.1 The Owner must pay to Council interest at the same rate applied under section 120 of the *Local Government Act 2020* on any amount due under this Agreement that is not paid by the due date.
- 5.4.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

5.5 Localised Infrastructure

The Parties acknowledge and agree that:

- 5.5.1 This Agreement relates only to community infrastructure and not Localised Infrastructure; and
- 5.5.2 Neither compliance with the obligations of this Agreement nor payment of the Community Infrastructure Contribution relieves the Owner of any obligation imposed by Council or a Tribunal to provide Localised Infrastructure identified in the staging and infrastructure delivery plan, which obligation may be imposed as a requirement in a planning permit for the subdivision or development of the Subject Land.

6. Agreement under Section 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made as a deed in accordance with section 173 of the Act.

7. Owner's Warranties

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

8. Successors in title

Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to:

8.1.1 give effect to this Agreement; and

8.1.2 enter into a deed agreeing to be bound by the terms of this Agreement.

9. General matters

9.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

9.1.1 personally on the other Party;

9.1.2 by leaving it at the other Party's Current Address;

9.1.3 by posting it by prepaid post addressed to the other Party at the other Party's Current Address;

9.1.4 by email to the other Party's Current Email.

9.2 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owners does not amount to a waiver of any of Council's rights or remedies under this Agreement.

9.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

9.4 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certifying any plan which subdivides the Subject Land or relating to any use or development of the Subject Land.

9.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

9.6 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

9.7 Consent to electronic execution

A party may sign this Agreement, and any variations to it, by electronic means where permitted by law. Each other party consents to that party signing by electronic means.

9.8 Counterpart if electronic execution used

The parties agree that if any party signs this Agreement under clause 9.7, then:

- 9.8.1 an electronic form of this Agreement with that party's electronic signature(s) appearing will constitute an executed counterpart; and
- 9.8.2 a print-out of this Agreement with that party's electronic signature(s) appearing will also constitute an executed counterpart.

10. GST

- 10.1 In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.
- 10.2 Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
- 10.3 If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 10.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.
- 10.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 10.3.

11. Commencement of Agreement

This Agreement commences on the Approval Date of Amendment C444.

12. Ending of Agreement

- 12.1 This Agreement ends:
- 12.1.1 with respect to a Residential Lot, when the Community Infrastructure Contribution in respect of that Residential Lot has been paid;
 - 12.1.2 with respect to any other land, once the Owner has completed, to the satisfaction of Council, all of the obligations imposed upon it under this Agreement;
 - 12.1.3 upon the abandonment of Amendment C444;
 - 12.1.4 by agreement between the Parties in accordance with section 177 of the Act; or
 - 12.1.5 otherwise in accordance with the Act.
- 12.2 If notice of a proposal to end this Agreement is required pursuant to section 178C of the Act, the parties agree that only Council and the Owner of the Subject Land or that part of the Subject Land that is the subject of the proposal to end this Agreement are required to be notified of the proposal.
- 12.3 Once this Agreement ends as to part of the Subject Land, Council will, within a reasonable time following a request from the Owner and at the cost of the Owner, execute all documents necessary to make application to the Registrar of Titles under section 183(2) of the Act to cancel the recording of this Agreement on the register as to that part of the Subject Land.
- 12.4 On completion of all the Owner's obligations under this Agreement, Council must as soon as practicable following the ending of this Agreement and at the Owner's request and at the



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Owner's cost, execute all documents necessary to make application to the Registrar of Titles under section 183(2) of the Act to cancel the recording of this Agreement on the register.

13. Acknowledgements of Council

Council agrees that it will apply any amount received under this Agreement for the purpose of providing community facilities within Council's community services planning area 14 (in accordance with the *Social Infrastructure Plan 2020-2023* as amended from time to time) or for providing sub-regional community facilities in a nearby area.



Schedule 1

LAND PARTICULARS FOR PURPOSES OF DEFINITION OF SUBJECT LAND

Street Address	Lot/Plan	Title	Owner
785-805 Princes Highway Lara Vic 3212	Lot 1 on Title Plan 156147J	VOLUME 12385 FOLIO 750	LARA FARMS PTY LTD
76-156 Canterbury Road East Lara Vic 3212	Crown Allotment 3C Section 15B Township of Lara Parish of Moranghurk.	VOLUME 09925 FOLIO 167	LARA FARMS PTY LTD



Signing Page

Signed, sealed and delivered as a Deed by the Parties

Signed by and on behalf, and with the authority, of the **City of Greater Geelong** by
 (Name),
 (Title),
 in the exercise of a power conferred by an Instrument of Delegation in the presence of:

)
)
)
).....
)
)

.....
 Witness

Executed by **Lara Farms Pty Ltd** (ACN 633 620 318) in accordance with section 127 of the *Corporations Act 2001*:

.....
 Director/company secretary

.....
 Director

.....
 Name of director/company secretary
 (BLOCK LETTERS)

.....
 Name of director
 (BLOCK LETTERS)