

GREATER GEELONG CITY COUNCIL

and

GOLDEN PLAINS SHIRE COUNCIL

and

SURF COAST SHIRE COUNCIL

and

BOROUGH OF QUEENSLIFFE

**AGREEMENT TO CONTINUE GEELONG
REGIONAL LIBRARY CORPORATION**



AGREEMENT TO CONTINUE GEELONG REGIONAL LIBRARY CORPORATION
AGREEMENT dated **19 March 2009**.

BETWEEN	GREATER GEELONG CITY COUNCIL of City Hall, 30 Gheringhap Street, Geelong ('Greater Geelong')
AND	GOLDEN PLAINS SHIRE COUNCIL of 2 Pope Street, Bannockburn ('Golden Plains')
AND	SURF COAST SHIRE COUNCIL of 25 Grossman's Road, Torquay ('Surf Coast')
AND	BOROUGH OF QUEENSCLIFFE of 50 Learmonth Street, Queenscliffe ('Queenscliffe')

RECITALS

- A. The Geelong Regional Library Corporation (**the Regional Library**) was established by Greater Geelong, Golden Plains, Surf Coast and Queenscliffe on or about 27 March 1997, by agreement made under section 196 of the Act (**the Original Agreement**).
- B. Greater Geelong, Golden Plains, Surf Coast and Queenscliffe have decided to substitute this Agreement for the Original Agreement.
- C. The Regional Library will continue to service the area comprising the member Councils' municipal districts.
- D. The Regional Library will operate in accordance with the requirements of section 196 of the Act.

AGREEMENT

1 DEFINITIONS

In this agreement:

'Act' means the *Local Government Act 1989* (Vic);

'Asset' means a resource made available by a member Council to the Regional Library to assist in the latter's provision of library services, and includes real property and any item of machinery, plant, equipment, furniture or fitting;

'Board' means the governing body of the Regional Library established under clause 4.1;

'Budget' has the same meaning as in section 127 of the Act;

'Chairperson' means the chairperson of the Board;

'Chief Executive Officer' means the person appointed in accordance with the Act, who should have:

- (a) an appropriate academic library qualification; or
- (b) such other relevant qualifications as determined by the Board;

'Deputy Chairperson' means the deputy chairperson of the Board;

'General Election' means a general election held in accordance with section 31(1) of the Act;

'Library Plan' means the statement of the corporate direction of the Regional Library which includes objectives, strategies, performance indicators and any other information in compliance with section 125 of the Act;

'Local Law' means a local law made in accordance with Part 5 of the Act;

'Member Council' means a council which is a member of the Regional Library;

'Minister' means the Victorian Government Minister responsible for administering the Act;

'Original Agreement' means the agreement described in Recital A of this agreement;

'Regional Library' means the Geelong Regional Library Corporation established under the Original Agreement and continued by this agreement;

'Register of Council Assets' means the register maintained by the Regional Library of non-current or fixed assets made available for the use of the Regional Library by the member Councils;

'Senior Officer' has the same meaning as in section 3(1) of the Act; and

2. CONDITION PRECEDENT, COMMENCEMENT AND EFFECT

- 2.1 This agreement has no effect unless it is approved by the Minister in accordance with section 196(2) of the Act.
- 2.2 This agreement commences operation on the date on which the notice in accordance with section 196(2) of the Act is published in the *Victoria Government Gazette*.
- 2.3 Subject to clause 2.4, the Original Agreement ends on the day on which this agreement commences operation.
- 2.4 Any:
- (a) right accrued; or
 - (b) obligation incurred
- by reason of the Original Agreement will continue to exist notwithstanding the cessation of the Original Agreement.

3. CONTINUATION OF THE REGIONAL LIBRARY

There will continue to be constituted a regional library corporation for the purposes of section 196 of the Act by the name of Geelong Regional Library to:

- (a) provide, subject to any conditions attached to any State government library subsidies and grants to the Regional Library or the member Councils, a regional library service for part or all of the member Councils' municipal districts as determined by the Board;
- (b) make Local Laws relating to the Regional Library;
- (c) perform any other functions which are conferred on the Regional Library under this agreement or the Act, including defining overall

- policy objectives, developing strategic policy and approving a Corporate Plan and an Annual Operating Plan; and
- (d) to do all things necessary or expedient in accordance with this agreement and the Act for the carrying out of its functions.

4. THE BOARD

- 4.1 There will be a Board of the Regional Library which, among other things, will be responsible for:
- (a) compliance with the provisions of the Act; and
 - (b) the implementation of this agreement.
- 4.2 The Board must consist only of the following members:
- (a) four members appointed by Greater Geelong;
 - (b) one member appointed by Golden Plains;
 - (c) one member appointed by Surf Coast; and
 - (d) one member appointed by Queenscliffe.
- 4.3 A member Council may appoint a person to act as the deputy of a member.
- 4.4 Each member or deputy appointed by Golden Plains, Surf Coast and Queenscliffe must be a councillor of that member Council. Each member or deputy appointed by Greater Geelong must be a councillor or employee of Greater Geelong, provided that not less than two members and the deputies of those members appointed by Greater Geelong must be councillors of Greater Geelong.
- 4.5 A member and deputy will hold office until:
- (a) the term of the member or deputy's appointment expires;
 - (b) the member or deputy is removed; or
 - (c) the member or deputy resigns or ceases to be a councillor or employee of a member Council.
- 4.6 A member Council may remove from office its appointed member or deputy.
- 4.7 A member Council must fill any vacancy of a member or deputy as soon as possible and notify the Board in writing of the new member or deputy.
- 4.8 The office of a member automatically becomes vacant if the member is absent for three consecutive meetings without the leave of the Board.

5. PROCEEDINGS OF THE BOARD

- 5.1 The Board must hold an ordinary meeting at least once every three months.
- 5.2 If a special meeting is called, it must be called by the Chief Executive Officer on the request of the Chairperson or any three members of the Board.
- 5.3 The Board must elect a member to be Chairperson and a member to be Deputy Chairperson of the Board, provided that only a member who is a councillor of a member Council will be eligible to be elected as Chairperson and Deputy Chairperson.

- 5.4 The election for the Chairperson and Deputy Chairperson of the Board must be held by the Board as soon as is practicable after a general election and by no later than the following 1 March. The Chairperson and the Deputy Chairperson will hold office for 12 months, unless the term of their office as a member of the Board is determined in accordance with clause 4.5 of the agreement.
- 5.5 The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson must preside at a meeting of the Board.
- 5.6 In the absence of the Chairperson and the Deputy Chairperson from a Board meeting, the remaining members of the Board may elect one of their number to preside at that meeting.
- 5.7 Notice of motion to recommend amendment of this agreement and notice of motion for the adoption or amendment of Local Laws by the Board must be given in writing to the member Councils at least one month before the meeting of the Board at which the motion is to be discussed.
- 5.8 In all its deliberations, the Board must have paramount regard to the interests of the community, and have regard to all other interests which are relevant (including the financial consequences for the member Councils arising from its deliberations). The Board must use reasonable efforts to do all things necessary to:
- (a) identify the economic and financial consequences for the Regional Library of its deliberations;
 - (b) advise the member Councils in writing of:
 - (i) the economic and financial consequences referred to in clause 5.8(a); and
 - (ii) the manner in which the economic and financial consequences referred to in clause 5.8(a) have been identified and assessed;
 - (c) obtain advice from the member Councils as to the manner in which the economic and financial consequences referred to in clause 5.8(a) may impact upon the member Councils;
 - (d) obtain advice from the member Councils as to the impact upon the member Councils of any economic and financial consequences other than those referred to in clause 5.8(a); and
 - (e) consider all the economic and financial consequences upon the member Councils.
- 5.9 Each member Council agrees to indemnify the Regional Library in respect of any liability incurred as a consequence of the operation of section 76 of the Act in relation to each of its appointed members.

6. CHIEF EXECUTIVE OFFICER

- 6.1 The Board must appoint a Chief Executive Officer of the Regional Library.
- 6.2 In addition to any responsibilities imposed on a Chief Executive Officer under the Act, the Chief Executive Officer will be responsible to the Board for the finances and administration of the Regional Library including:
- (a) the implementation of the Library Plan and Budget;
 - (b) delivery of the whole of the regional library service;

- (c) administrative support for the Board; and
- (d) any other duties specified by the Board.

7. EQUITY AND OPERATION COSTS

- 7.1 Each member Council agrees to make available to the Regional Library the assets set out in the Statement of Council Assets executed by the member Councils and the Chief Executive Officer. Such Statement of Council Assets must:
- (a) identify which member Council has made available which asset;
 - (b) provide for the terms on which the asset has been made available; and
 - (c) be updated annually by 31 March.
- 7.2 Each member Council agrees that it has transferred to the Regional Library the assets set out in the Statement of Regional Library Assets in Schedule 1.
- 7.3 Each member Council agrees that:
- (a) if during, the term of this agreement, a member Council wishes to transfer assets to the Regional Library the assets to be transferred must be set out in a Further Statement of Regional Library Assets executed by the member Councils; and
 - (b) once the Further Statement of Regional Library Assets has been executed by the member Councils and the Chief Executive Officer, the assets listed in the Statement are to be treated as though they were listed in Schedule 1, from the date of the that further Statement.
- 7.4 The Chief Executive Officer must maintain a register of the assets owned by the Regional Library.
- 7.5 A member Council must, unless otherwise agreed by the other member Councils or provided for in this agreement, give notice to every other member Council and the Chief Executive Officer of any intention to withdraw assets from the use of the Regional Library on a date which is:
- (a) 30 June; and
 - (b) not less than 15 months from the date on which the notice of its intention is given.
- 7.6 The Regional Library must, unless otherwise agreed by the member Councils, be responsible for the maintenance, repair, replacement and operating costs of assets owned by the Regional Library.
- 7.7 The Regional Library must, unless otherwise agreed by the member Councils, be responsible for the maintenance, repair, replacement and operating costs of the assets:
- (a) transferred to the Regional Library; or
 - (b) made available for the use of the Regional Library.
- 7.8 The Regional Library must, unless otherwise agreed by the member Councils and subject to clauses 7.6 and 7.7. be responsible for its own operating costs.
- 7.9 The annual Budget must apportion the costs of operation of the Library Service as follows:

- (a) the direct costs incurred at each point of service and mobile libraries must be borne by the member Councils in whose municipal district the service is delivered;
- (b) costs other than those costs referred to in clause 7.9(a) and clause 7.9(c) must be apportioned such that each member Council is liable to pay the same percentage of these costs as usage of each member Council's points of service and mobile library (if any) bears to the usage of all points of service and mobile libraries operated by the Regional Library, such:
 - (i) usage being calculated by combining the number of loans made by and visits to the points of service and mobile libraries; and
 - (ii) formula and its rationale being set out in each draft Budget prepared in accordance with clause 9.1;
- (c) the cost of providing, maintaining and furnishing suitable static or mobile premises for the delivery of the service within the municipal district of each member Council must be borne by the member Council in whose municipal district the service is provided unless otherwise agreed by the Regional Library; and
- (d) in the event that any member Council objects to the sum assessed as its contribution under clause 7 then such objection will be a dispute to be determined in accordance with clause 14.

8. STRATEGIC PLANNING

- 8.1 The Chief Executive Officer must by 31 March following a general election provide each member Council with a copy of the Regional Library's proposed Library Plan prepared in accordance with section 125 of the Act.
- 8.2 The Regional Library must adopt a Library Plan by the date specified in the Act.

9. ANNUAL BUDGET

- 9.1 The Chief Executive Officer must by 1 March each year provide each member Council with a copy of the Regional Library's proposed annual Budget prepared in accordance with section 127 of the Act.
- 9.2 The proposed annual Budget must include:
 - (a) the amount of funds currently held by the Regional Library;
 - (b) the amount of each member Councils' proposed financial contribution to the Regional Library for the financial year commencing 1 July; and
 - (c) the amount of funds to be received from any other source by the Regional Library in the financial year commencing 1 July.
- 9.3 The Regional Library must adopt its annual Budget by the date specified in the Act.

10. ANNUAL FINANCIAL CONTRIBUTION

- 10.1 The amount to be contributed to the Regional Library by each member Council during each financial year will be the sum of:
- (a) the amount specified in the Regional Library's adopted annual Budget;
 - (b) all State Government library subsidies and grants received by the member Council for library services; and
 - (c) funds received by the member Council from any other source for library services.
- 10.2 Each member Council's financial contribution to the Regional Library must be paid in quarterly instalments on the first day of July, October, January and April each year.
- 10.3 The first instalment must be the same amount paid by the member Council in the previous quarter and the second installment will include any adjustment to ensure the two installments together equal half the amount to be paid by that member Council for that financial year.
- 10.4 All:
- (a) State Government library subsidies and grants must be paid to the Regional Library within one month of receipt of the monies by a member Council; and
 - (b) other contributions under clause 10.1 must be paid to the Regional Library within one month or receipt of the monies by the member Council.
- 10.5 In addition to the contributions payable under this clause, a member Council must be responsible for the Regional Library's costs in providing any additional service or resources requested by the member Council and such costs are to be paid within 30 days of the member Council receiving an invoice from the Regional Library.
- 10.6 Interest must be paid on any amount payable under clause 10.1 and 10.5 which is not received by the Chief Executive Officer within 30 days of the due date at the rate fixed by the Governor in Council for the purposes of section 172 of the Act and calculated monthly from the date the amount became due until the date it is received by the Chief Executive Officer.

11. ANNUAL REPORTING AND ACCOUNTS

- 11.1 The Chief Executive Officer must, within three months of the end of each financial year, provide each member Council with a copy of the Regional Library's annual report prepared in accordance with section 126 of the Act.
- 11.2 The books of accounts and all other financial records of the Regional Library will be available for inspection at all reasonable times by any councillor or, or person authorised by, a member Council, or, by any person authorised by the Head of the Department responsible for administering State Government library subsidies and grants from which the Regional Library or the member Councils receive funds.
- 11.3 The Regional Library must provide the Chief Executive Officer of each member Council with quarterly financial reports which include an operating statement reporting the Regional Library's performance to budget and other performance indicators, within one month of the end of the quarter.

12. ENTRY AND EXIT OF MEMBER COUNCILS

- 12.1 A Council which is not a member Council to this agreement may, by supplementary agreement with the member Councils, be admitted as a party to this agreement and, subject to the provisions of the supplementary agreement, will have the same rights, duties and obligations of the member Councils under this agreement.
- 12.2 A member Council must, unless otherwise agreed by the other member Councils or provided for in this agreement, give to the other member Councils and the Chief Executive Officer notice of any intention to withdraw from this agreement on a date which is:
- (a) 30 June; and
 - (b) not less than 15 months from the date on which the notice is given.
- 12.3 A member Council which withdraws from this agreement will be entitled to a portion of the net assets of the Regional Library as at the date of its withdrawal from the agreement, less an amount which the Board agrees represents the costs to the Regional Library of the withdrawal.
- 12.4 The portion of net assets to which a member Council is entitled under clause 12.3:
- (a) must be calculated according to the greater of:
 - (i) the value of the assets as disclosed by the relevant audited financial statements; or
 - (ii) the market value of the assets, as determined by an independent valuer;
 - (b) must be in the same proportion as its financial contribution to the Regional Library bears to all the member Councils' financial contributions to the Regional Library over the duration of the Original Agreement and this agreement; and
 - (c) may be taken in such combination of property and cash as agreed between a member Council and the Board, and, if it is agreed that a member Council is entitled to library materials, the cost of removing them must be paid for by the member Council.
- 12.5 A member Council which withdraws from this agreement will be liable for a portion of the liabilities, including contingent liabilities, of the Regional Library as at the date of its withdrawal from the agreement.
- 12.6 The portion of the liabilities and contingent liabilities to which a member Council is liable under clause 12.5:
- (a) must be calculated according to the liabilities and contingent liabilities as disclosed by the relevant audited financial statements and reports, and any notes attached to them; and
 - (b) must be in the same proportion as its financial contribution to the Regional Library bears to all the member Councils' financial contributions to the Regional Library over the duration of the Original Agreement and this agreement.

13. DISSOLUTION OF REGIONAL LIBRARY

- 13.1 Subject to section 197G of the Act, the Regional Library may be dissolved by agreement of at least two thirds of the member Councils to this agreement including those admitted as a member Council by supplementary agreement.
- 13.2 If the Regional Library is dissolved under this clause:
- (a) each member Council will be entitled to a portion of the Regional Library's assets in the same proportion as its financial contribution to the Regional Library bears to all the member Councils' financial contributions to the Regional Library over the duration of the Original Agreement and this agreement; and
 - (b) each member Council will be liable for a portion of the liabilities and contingent liabilities of the Regional Library in the same proportion as its financial contribution to the Regional library bears to all the member Councils' financial contributions to the Regional Library over the duration of the Original Agreement and this agreement.

14. DISPUTE RESOLUTION

- 14.1 If any dispute arises in relation to the Regional Library or this agreement:
- (a) the dispute will be determined as a dispute under the *Commercial Arbitration Act 1984* (Vic); and
 - (b) the arbitrator's decision will be final and binding on the member Councils.
- 14.2 The member Councils to the arbitration will:
- (a) be responsible for their own arbitration costs; and
 - (b) unless otherwise determined by the arbitrator, share the arbitrator's costs equally.

15. REVIEW

The member Councils will, together with the Board, review the operation of this agreement at least once in every five years.

16. FURTHER ACTION

Each member Council must:

- (a) use reasonable efforts to do all things necessary or desirable to give full effect to this agreement; and
- (b) refrain from doing anything that might hinder performance of this agreement.

17. ASSIGNMENT

A member Council must not assign this agreement or any right under this agreement.

18. ENTIRE AGREEMENT

Subject to clause 2.4, this agreement:

- (a) constitutes the entire agreement between the member Council as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the member Councils and any prior condition, warranty, indemnity or representation imposed, given or made by a member Council.

19. WAIVER

The failure of a member Council at any time to require performance of any obligation under this agreement is not a waiver of that member Council's right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that member Council acknowledges in writing that the failure is a waiver; and
- (b) at any other time to require performance of that or any other obligation under this agreement.

20. GOVERNING LAW AND JURISDICTION

20.1 This agreement is governed by the law applicable in Victoria.

20.2 Each member Council submits to the exclusive jurisdiction of the courts of Victoria.

21. NOTICE

21.1 A member Council giving notice or notifying under this agreement must do so in writing:

- (a) directed to the recipient's address specified in this clause, as varied by any notice; and
- (b) hand delivered or sent by prepaid post or facsimile to that address.

The member Councils' addresses and facsimile numbers are:

Greater Geelong City Council:

Address City Hall, 30 Gheringhap Street, Geelong Victoria 3220
Facsimile no 03 5227 0258

Golden Plains Shire Council:

Address 2 Pope Street, Bannockburn Victoria 3331
Facsimile no 03 5281 1208

Surf Coast Shire Council:

Address: 25 Grossman's Road, Torquay Victoria 3228
Facsimile no 03 526 4527

Borough of Queenscliffe:

Address 50 Learmonth Street, Queenscliffe Victoria 3225

Facsimile no 03 528 3115

21.2 A notice given in accordance with clause 21.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, 3 days after the date of posting; and
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight Business Hours after that transmission, the recipient informs the sender that it has not received the entire notice.

21.3 A member Council must give notice in writing of any changes to its address or facsimile number recorded in clause 21.1.

22. SEVERABILITY

22.1 The member Councils agree that a construction of this agreement that results in all provisions being enforceable is to be preferred to a construction that does not so result.

22.2 If, despite the application of clause 22.1, a provision of this agreement is illegal or unenforceable:

- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
- (b) in any other case, the whole provision is severed, and the remainder of this agreement continues in force.

23. MODIFICATIONS

23.1 This agreement may only be altered or modified:

- (a) in writing signed by all the member Councils;
- (b) if the alteration or modification is approved by the Minister by a notice published in the Victoria Government Gazette.

23.2 The transfer of assets to or the making available of additional assets for the use of the Regional Library pursuant to clause 7.3 (a) will not constitute an amendment to this agreement.

24. INTERPRETATION

In this agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this agreement;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;

- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this agreement and a reference to this agreement includes any schedules and annexure;
- (e) a reference to a document or agreement, including this agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to a member Council includes its administrators and successors;
- (g) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- (h) a reference to any legislation or statutory instrument or regulation is construed in accordance with the Interpretation of Legislation Act 1984 (Vic).

EXECUTED as an agreement

**THE COMMON SEAL of GREATER
GEELONG CITY COUNCIL** was affixed
hereto in the presence of:

)
)
)



.....
Mayor (signature)

.....
Mayor (name)

.....
Chief Executive Officer (signature)

.....
Chief Executive Officer (name)

**THE COMMON SEAL of GOLDEN
PLAINS SHIRE COUNCIL** was affixed
hereto in the presence of:

)
)
)

.....
Chief Executive Officer (signature)

.....
Chief Executive Officer (name)


.....
Witness (signature)

.....
Witness (name)



THE COMMON SEAL of **SURF COAST SHIRE COUNCIL** was hereunto affixed in accordance with instrument of delegation dated 4 July 2006 in the presence of:





.....
Chief Executive Officer (signature)

MARK DAVIES
.....
Chief Executive Officer (name)

THE COMMON SEAL of the **BOROUGH OF QUEENSLIFFE** was hereto affixed in the presence of:

)
)
)


.....
Mayor (signature)

PATRICIA E SEMMENS
.....
Mayor (name)


.....
Councillor (signature)

STEPHEN LEE
.....
Councillor (name)


.....
Chief Executive Officer (signature)

LEONARD JENNER
.....
Chief Executive Officer (name)



Schedule 1

Statement of Council Assets

Schedule 2

Statement of Regional Library Assets (Attachments)



SCHEDULES

SCHEDULE 1

Statement of Council assets

SCHEDULE 2

Statement of Regional Library Assets

SCHEDULE 1 STATEMENT OF COUNCIL ASSETS

Each Council agrees to provide the following assets for the use of the Regional Library

LAND & BUILDINGS

- Greater Geelong City
 - Belmont Library 163 High Street
 - Chilwell Library 51 Russell Street
 - Corio Library Cnr Cox Road & Moa Street
 - Geelong City Library 49 Lt Malop Street
 - Geelong West Library 153B Pakington Street
 - Grovedale Library 45-49 Heyers Road
 - Highton Library Roslyn Road
 - Ocean Grove Library Cnr Presidents Ave & The Avenue
- Golden Plains Shire
 - Nil
- Borough of Queenscliffe
 - Queenscliff Library 55 Hesse Street
- Surf Coast Shire
 - Nil

LEASEHOLD PROPERTY

- Greater Geelong City
 - Drysdale Library 18 – 20 Hancock Street
 - Newcomb Library Centro, Cnr Bellarine Hwy & Wilson's Road
- Golden Plains Shire
 - Nil
- Borough of Queenscliffe
 - Nil
- Surf Coast Shire
 - Torquay Library Surf City Plaza, Beach Road

JOINT ACCESS PROPERTIES

- Greater Geelong City
Barwon Heads Community Library Golf Links Road
- Colden Plains Shire
Nil
- Borough of Queenscliffe
Nil
- Surf Coast Shire
Nil

PLANT

- Greater Geelong City
Nil
- Golden Plains Shire
Nil
- Borough of Queenscliffe
Nil
- Surf Coast Shire
Mobile Library Prime Mover & Trailer

OTHER ITEMS

- Greater Geelong City
As per Attachment 1 – Library Assets
- Golden Plains Shire
Nil
- Borough of Queenscliffe
As per Attachment 1 – Library Assets
- Surf Coast Shire
As per Attachment 1 – Library Assets