In reply please quote
Ref: OPP

[date]

[authorised representative name]

[role]

[council address]

Dear [authorised representative]

**RE: Module Implementation Funding and Community Driven Implementation Action Funding – [council] – [date]**

This is a new Participation Agreement following your successful proposal in the Module Implementation Funding and Community Driven Implementation Action Funding rounds as part of the VicHealth Local Government Partnership.

To confirm you accept this, please sign and date it to return a copy to VicHealth as soon as possible. The Participation Agreement will commence on the date that VicHealth receives a correctly signed Participation Agreement.

Please contact [VH contact] on [telephone number] or [email] if you have any questions.

VicHealth looks forward to continuing working with you on this project.

Yours sincerely

Claire Taylor

Manager, Place-based Approaches

VicHealth

Participation Agreement

For funded activities related to the Memorandum of Understanding for VicHealth Local Government Partnership Program

between

The Victorian Health Promotion Foundation (VicHealth)

and

**[council]**

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The Victorian Health Promotion Foundation (ABN: 20 734 406 352)

of Level 2, 355 Spencer Street West Melbourne, VIC 3003

(VicHealth)

and

[**council**]

[ABN] [address]

(Council)

Background

1. VicHealth and the Council are parties to the MOU.
2. The parties have agreed to enter into this Participation Agreement detailing activities to be conducted as part of the Program, including funding arrangements, pursuant to clause 9 of the MOU.

Agreed terms

* 1. Definitions and Interpretation
		1. Definitions

In this agreement, unless the context otherwise requires:

**Activity** means the activity described in Schedule 1.

**Activity Work Plan** means the plan for the completion of the Activity prepared by the parties accordance with clause 4.

**Agreement** means this participation agreement including any annexures.

**Budget** means the budget for expenditure of the Funding for the purposes of conducting the Activity or performing obligations under this Agreement in accordance with clause 4.

**Deliverables** means each of the milestones detailed in Schedule 2.

**Funded Activity** means the activity/ies listed in the Funding Details contained in Schedule 1.

**Funding** means the amount to be paid to the Council in accordance with this Agreement calculated in accordance with the Payment Details contained in Schedule 2.

**Funding Instalment** has the meaning given in clause 5.1 of this Agreement.

**Harmful Industries** means the tobacco (or other smoking products), sugary drink, fast food, alcohol and gambling industries.

**MOU** means the Memorandum of Understanding for VicHealth Local Government Partnership Program [*insert date*] between the parties.

**Report** means each report to be provided by the Council as set out in clause 6 of this Agreement.

* + 1. Interpretation

In this Agreement, unless the context otherwise requires:

* + - 1. a defined word or expression in the MOU has the same meaning in this Agreement; and
			2. headings are included for convenience and do not affect the interpretation of this Agreement.
	1. Commencement and Termination

This Agreement will commence on the day it is signed by the last party and will continue until the MOU is terminated (**Termination**).

* 1. Purpose of Funding and no further funding
		+ 1. The Funding is provided for the Funded Activity to support the Purpose of the MOU.
			2. Nothing in this Agreement is to be construed as creating any obligation, commitment or undertaking by VicHealth to provide additional funding or assistance beyond that provided for in this Agreement.
	2. Funded Activity
		1. Performance
			1. The Council must carry out the Activity:
				1. within any timeframes detailed in Schedule 1 ;
				2. in accordance with this Agreement (including the Budget, and the Activity Work Plan);
				3. diligently, effectively, to a high professional standard and using all due care and skill;
				4. separate from and without connection to any Harmful Industries; and
				5. using properly qualified and suitably trained and experienced personnel.
			2. The Council must (and must ensure that its personnel involved in the activity will) comply with:
				1. all laws applicable to the conduct of the Activity (including by maintaining any necessary licences, permits or approvals);
				2. all reasonable directions issued by VicHealth.
		2. Activity Work Plan and Budget
			1. An Activity Work Plan and Budget must be provided to VicHealth as soon as possible after executing this Agreement, and not later than 20 Business Days after executions.
			2. The Activity Work Plan must:
				1. include the Budget for how the Funding will be spent;
				2. detail how the Activity will be delivered;
				3. include time frame for key actions; and
				4. be approved by VicHealth in accordance with clause 4.2(d).
			3. VicHealth will make all reasonable efforts to review the submitted draft Activity Work Plan and Budget under clause 4.2(a) within 10 Business Days of receipt, and after such review may either:
				1. give the Council a notice requiring it to make changes and resubmit the draft by the date specified in the notice; or
				2. give the Council a notice that the Activity Work Plan and Budget is in final form.
			4. The parties will follow the steps in clause 4.2(c) until the Budget and Activity Work Plan are in final form.
		3. Compliance with Budget
			1. Funding must be expended only for the purposes of carrying out the Activity in accordance with this Agreement and the Budget.
			2. The Council may expend the Funding on any separate category of expenditure item within the Budget, as reasonably necessary in order to meet the Activity Work Plan.
			3. Changes to any items in the Budget must be approved in writing by VicHealth before being actioned.
		4. Delay and suspension
			1. The Council must take all reasonable steps to minimise delay in completion of the Activity.
			2. If the Council becomes aware that it will be delayed in progressing or completing the Activity in accordance with this Agreement and the Activity Work Plan, the Council must immediately notify VicHealth in writing of the cause, nature and estimated length of the delay including all steps that will be taken to contain the delay.
			3. On receipt of a notice of delay, VicHealth may at its option:
				1. notify the Council in writing of a proposed period of extension to complete the Activity and related proposed variations to this Agreement;
				2. notify the Council in writing of a proposed reduction in the scope of the Activity and any proposed reduction to the Funding to complete the reduced Activity and related proposed variations to this Agreement;
				3. notify the Council in writing of a proposed period of suspension of the Activity and related proposed variations to this Agreement;
				4. terminate this Agreement or take such other steps as are available under this Agreement.
			4. The Council acknowledges that in the event that this Agreement is terminated then VicHealth may engage a third party to complete the Activity.
			5. If the Council agrees to a reduction or suspension of the Activity pursuant to clause 4.4(c)(ii) or 4.4(c)(iii), VicHealth will not be liable to pay compensation for loss of any benefits that would have been conferred on the Council had the suspension not occurred.
	3. Payment of Funding
		1. Payment
			1. Subject to and in accordance with the terms of this Agreement, VicHealth will advance to the Council the Funding, in the instalments detailed in Schedule 2 (**Funding Instalment**), subject to the Council meeting any required Deliverables.
			2. Each Funding instalment will be paid within thirty 30 days of receipt by VicHealth of each of the Deliverables set out below in form and substance satisfactory to VMIA.
			3. Unless otherwise agreed in writing, Funding will be paid by electronic transfer to the Council's nominated bank account and will issue You with a remittance advice for Your records.
			4. The Council must:
				1. ensure that the Grant Funds are held in an account in the Council's name, and which the Council solely control, with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia;
				2. ensure that two signatories, who have authority to do so, are required to operate the account; and
				3. identify the receipt and expenditure of the Funding separately within accounting Records so that at all times the Funding is identifiable and ascertainable.
			5. Any interest earned on the Funding may only be used for the purpose of carrying out the Activity (unless VicHealth specifically agree otherwise in writing).
		2. Withholding and set-off
			1. If VicHealth considers that the Council has failed to comply with obligations under this Agreement, VicHealth may withhold or suspend any payment of the Funding in whole or in part until the Council complies with such obligations.
			2. VicHealth may set-off any amount the Council owed to VicHealth under this Agreement or under any other Participation Agreement with VicHealth against any Funding payable to the Council under this Agreement.
			3. Notwithstanding any withholding, suspending or set-off under clauses 5.2(a) or 5.2(b), the Council must continue to carry out the Activity and perform any obligations under this Agreement, unless otherwise agreed by the parties in writing.
		3. Invoicing

The Council is not required to issue any invoices under this Agreement unless expressly stated otherwise.

* + 1. Taxes, duties and government charges
			1. Subject to this clause 5.4, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Grant Agreement must be borne by the Council.
			2. The provisions of this clause 5.4 in respect of GST apply.
			3. Funding paid under this Agreement includes GST for supplies provided by the Council to VicHealth accordance with this Agreement which are Taxable Supplies.
			4. The Funding payable by VicHealth under this Agreement must not include any amount which represents GST paid by the Council on its own inputs and for which an input tax credit is available to the Council.
			5. Any refund paid to VicHealth under this Agreement must be inclusive of GST and must be accompanied by an Adjustment Note under the GST Act relating to Taxable Supplies.
		2. Audit
			1. VicHealth will be entitled to audit all Funding expenditure and for that purpose the Council must:
				1. permit access to, inspection and copying of its Accounts by VicHealth or any person duly authorised by VicHealth; and
				2. assist VicHealth in the conduct of the audit, including by answering any enquiries by VicHealth.
			2. The Council must, if required, provide the Auditor General of Victoria with access to its Accounts.
	1. Reports

The Council must prepare and provide:

* + - 1. each of the Reports at the times specified in Schedule 1; and
			2. such other information as VicHealth may request from time to time in relation to the Program, the activities and the expenditure of the Funding.
	1. Subcontracting
		+ 1. The Council must not sub‑contract any of its obligations in relation to this Agreement without the prior written consent of VicHealth (which may be given conditionally or withheld in its absolute discretion).
			2. The Council will not, as a result of any sub‑contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub‑contractor as though they were the actions of the Council itself.
	2. Conflict of interest
		+ 1. The Council must ensure its employees, agents and contractors do not, hold any office or property, be involved in any business, trade or calling, or have any obligations under any contract whereby, directly or indirectly, duties or interests are or might be created (or appear to be created) in conflict with the Council's duties and interests under this Agreement.
			2. The Council must promptly notify VicHealth of any matter which may give rise to a breach of clause 8.
	3. Insurance
		+ 1. The Council must maintain each of the Required Insurances, if any, described in Schedule 1.
			2. Upon request, the Council must provide VicHealth (within 10 Business Days), satisfactory evidence that it has maintained its obligation to insure (or maintained equivalent protection).
	4. Termination and refund of Funding
		+ 1. Where VicHealth is of the opinion that the Council:
				1. has failed to fulfil or has breached any of its obligations under this Agreement or the MOU;
				2. has not or is unlikely to perform or complete any Deliverables in the manner contemplated in this Agreement; or
				3. has engaged or may engage in any conduct which affects or may adversely affect the goodwill or reputation of the Program, VicHealth, a Participating Council, or the State;

VicHealth may, in its absolute discretion:

* + - * 1. withhold, suspend or cancel payment of any future Funding Instalments;
				2. seek a refund of the whole or part of the Funding previously paid; and/or
				3. by written notice immediately terminate this Agreement.
			1. Upon termination, any amount of the Funding not expended or legally committed for expenditure by the Council in accordance with this Agreement for the Purpose, must be refunded to VicHealth within of 7 days of the date of termination, unless otherwise approved in writing by VicHealth.
			2. For the avoidance of doubt, termination of the MOU under clause 15.3 of the MOU will terminate this Agreement.
	1. General
		1. Variation

This Agreement including the schedules, may be amended or replaced by agreement of the parties, and the parties agree that any amendments or replacements to the schedules can be made via an exchange of emails between them.

* + 1. Counterparts

This Agreement may be executed in any number of counterparts, including by way of electronic execution. All executed counterparts are taken to constitute one document.

* + 1. Costs

Each party must pay its costs in relation to the preparation, negotiation and execution of this Agreement.

Signing page

**Executed as an Agreement**

|  |  |
| --- | --- |
| Signed for and on behalf of **Victorian Health Promotion Foundation (ABN 20 734 406 352)** by its duly authorised representative: | Signedas authorised representative for **[council] (ABN)**. By signing this Agreement the signatory warrants that the signatory is duly authorised to sign this Agreement on behalf of [council]. |
| **{{Sig\_es\_:signer3:signature}}** Signature  | **{{Sig\_es\_:signer4:signature}}** Signature  |
| **{{\*N\_es\_:signer3:fullname }}** Name | **{{\*N\_es\_:signer4:fullname }}** Name |
| **{{\*Ttl\_es\_:signer3:title }}** Title**{{Dte\_es\_:signer3:date}}** | **{{\*Ttl\_es\_:signer4:title }}** Title**{{Dte\_es\_:signer4:date}}** |
|  |  |
|  Date |  Date |

**{{\*[]\_es\_:signer4:check box}}** By ticking this box you acknowledge

* that you are an authorised signatory for **{{\*Cmpy\_es\_:signer4:company }}**
* that you have read and understood the terms of this Agreement and
* that by signing this Agreement you bind **{{\*Cmpy\_es\_:signer4:company }}**
to the terms of this Agreement.

Approved by **{{Int\_es\_:signer2:initials}} Date {{Dte\_es\_:signer2:date}}**

Approved by **{{Int\_es\_:signer1:initials}} Date {{Dte\_es\_:signer1:date}}**

1. Funding Details

|  |  |
| --- | --- |
| **Activity**: | Module Implementation Funding (MIF) 2023Module: Impact stream: **Action:** Community Driven Implementation Action Funding (CDIAF) 2023Module: Impact stream: **Action:**  |
| **Activity Outcomes:** | Module Implementation Funding (MIF) 2023[insert minimum deliverables]Community Driven Implementation Action Funding (CDIAF) 2023[insert minimum deliverables] |
| **Activity Timeframes:** | Project delivery by end of your agreement with VicHealth, according to Project workplan agreed by Council and VicHealth |
| **Reports:** | * A progress/annual report on the progress of annual project plan and the completion of key project deliverables.
*
* A Final project completed report will be required at the completion of the project, outlining key insights and recommendations captured through the pilot project.
*
* The completion of key project deliverables, including module impact stream minimum deliverables will be in a project plan report and in a form and substance satisfactory to VicHealth.

in a form and substance satisfactory to VicHealth.  |
| **Required Insurances:** | * + - 1. public liability insurance of at least $10,000,000 per event for the term of this Agreement and for 7 years following that period (regardless of any expiration or termination); and
			2. professional indemnity insurance of at least $5,000,000 per event for the term of this Agreement and for 7 years following that period (regardless of any expiration or termination)
			3. Certificate of Currency for Workers Compensation (WorkCover)
 |

1. Payment Details

|  |  |  |
| --- | --- | --- |
| ***Milestone Deliverables***  | ***Due Date***  | ***Payment amount (excluding GST)***  |
| Signed Participation Agreement  | 23 May 2023   | “$ ”  |
| Provide your final program report that includes your completed evaluation and how you have completed the minimum deliverables of your nominated module/s outlined in your MOU  | [end of your MOU agreement]  |  |
| **Total**  |   | $(Exclusive of GST) |