

Newcastle Mines Grouting Fund

Contribution Deed

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Contribution Deed

Parties

[Hunter and Central Coast Development Corporation ABN 94 688 782 063] of 6 Stewart Avenue, Newcastle West, New South Wales, 2302 (NMGF Administrator)

[INSERT] (Applicant)

Recitals

- A. The New South Wales Government has established the Newcastle Mines Grouting Fund (the "Fund") to address the critical issue of mine subsidence and its impact on property development within Mine Subsidence districts in the Newcastle central business district and to thereby enhance the Hunter's economic and social infrastructure including transport, education, water and health infrastructure to support economic growth and enhance the liveability of the Hunter region.
- B. The NMGF Administrator administers this Fund.
- C. The Applicant wishes to make an application for a contribution from the Fund to the Grouting Works.
- D. The New South Wales Government agrees to pay the Applicant the Contribution Amount to be used for the Grouting Works on the terms and conditions of this deed.

Operative Provisions

1. Definitions and Interpretation

1.1 In this deed, unless the contrary intention appears, the following terms have the following meanings:

- (a) **Act of Insolvency** means an event that occurs in any of the following circumstances:
 - (i) if the Applicant is a local council, the council is suspended or an administrator is appointed to the council under the *Local Government Act 1993* (NSW);
 - (ii) the Applicant cannot pay its debts as and when they fall due;
 - (iii) the Applicant is, or states that it is, insolvent or bankrupt; or
 - (iv) anything analogous, having a substantially similar effect to any of the events specified above happens under the law of the applicable jurisdiction.
- (b) **Actual NMGF Approved Costs** means the actual NMGF Approved Costs incurred by the Applicant in undertaking the Grouting Works and calculated in accordance with the NMGF Schedule of Prices.
- (c) **Application** means an application to the Fund for a contribution to mine subsidence remediation works.
- (d) **Application Form** means the application form approved by the NMGF Administrator for making an application for a contribution from the Fund.
- (e) **Application Criteria** means the following:
 - (i) the Project Site is located in the Newcastle City Centre as described in the Subsidence Advisory NSW, Newcastle City Centre Area Subsidence Advisory Guidelines Revision Date 6 July 2017 (as varied from time to time);

- (ii) the Applicant has not commenced mine remediation works for the relevant Project Site before the Application is granted by the NMGF Administrator;
 - (iii) the Applicant has obtained an approval from SANSW for the mine remediation strategy for the relevant Project Site;
 - (iv) the Applicant has obtained development consent for the relevant Project from the applicable Authority;
 - (v) the Applicant has provided the NMGF Administrator with all material the NMGF Administrator reasonably requests in connection with the Grouting Works including a project delivery plan and a program satisfactory to the NMGF Administrator, acting reasonably;
 - (vi) the Applicant has provided the NMGF Administrator the Estimated NMGF Approved Costs for the Project Site along with supporting evidence including:
 - (A) a detailed grouting plan prepared by a suitably qualified geotechnical engineer that sets out estimated grouting volumes; and
 - (B) the completed NMGF Schedule of Prices;
 - (vii) the Applicant agrees to comply with the NMGF Procurement Guidelines in connection with the Grouting Works; and
 - (viii) the Applicant has completed and signed the Application Form in a manner satisfactory to the NMGF Administrator, acting reasonably.
- (f) **Approval** includes any consent, authorisation, registration, filing, agreement, notification, certification, permission, licence, approval, permit, authority or exemption issued from time to time by an Authority.
- (g) **Approved Grouting Plan** means the plan of the Grouting Works approved by SANSW and as set out in **Schedule Three** to this deed.
- (h) **Authority** means any government, statutory, public or other authority or body having jurisdiction in connection with the Project.
- (i) **Business Day** means a day that is Monday to Friday (inclusive) of any week (excluding a public holiday).
- (j) **Capped NMGF Approved Costs** means the Actual NMGF Approved Costs of grouting works to be borne by the Applicant based on the Newcastle City Centre Area - Subsidence Advisory Guidelines and the NMGF Zone Rates and listed in Item 3 of **Schedule Two**.
- (k) **Contribution Amount** means the amount of the Actual NMGF Approved Costs that exceeds the Capped NMGF Approved Costs.
- (l) **Estimated NMGF Approved Costs** means the estimated upper limit of NMGF Approved Costs based on the Approved Grouting Plan and the NMGF Schedule of Prices and set out in Item 5 of **Schedule Two**.
- (m) **Grouting Sunset Date** means the date described in Item 6 of **Schedule Two**.
- (n) **Grouting Works** means the grouting works to be undertaken by the Applicant described in accordance with the Approved Grouting Plan.
- (o) **GST** has the meaning it has in the GST Act and associated imposition Acts.

- (p) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (q) **NMGF Administrator's Representative** means the person nominated by the NMGF Administrator to monitor the Grouting Works on the NMGF Administrator's behalf.
- (r) **Intellectual Property Rights** includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- (s) **Item** means an item in the Reference Schedule.
- (t) **Minister** means the Minister for Planning, New South Wales.
- (u) **NMGF Approved Costs** means the cost of grouting works covered by the Fund and listed in Item 4 of **Schedule Two** calculated in accordance with the NMGF Schedule of Prices.
- (v) **NMGF Schedule of Prices** means the rates to undertake the Grouting Works set out in **Schedule One**.
- (w) **NMGF Procurement Guidelines** means the guidelines set out in **Schedule Five**.
- (x) **Non Compliant Works** has the meaning given in clause 3.6.
- (y) **Project** means the development or other works described in Item 1 of **Schedule Two**.
- (z) **Project Site** means the site of the Project described in Item 2 of **Schedule Two**.
- (aa) **Reference Schedule** means the schedule set out in **Schedule Two** to this deed.
- (bb) **SANSW** means Subsidence Advisory New South Wales and any successor entity.
- (cc) **Validation Report** means the Validation Report issued to, and endorsed by, SANSW.

1.2 Unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) this document should not be construed against the party who drafted it;
- (c) a gender includes the other genders;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (f) money amounts are stated in Australian currency unless otherwise specified;
- (g) a reference to:
 - (i) a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
 - (ii) a law includes regulations and other instruments under it and amendments or replacements of any of them;
 - (iii) a thing includes the whole and each part of it;

- (iv) a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure to this deed;
 - (v) any agreement or document is to that agreement or document as varied, amended, novated, supplemented or replaced from time to time; and
 - (vi) "include" in any form or "for example" or "such as" when introducing a list does not limit the list to those items or to items of a similar kind; and
- (h) headings, examples and notes are for guidance only and do not govern the meaning of this deed.

2. Grouting Works

- 2.1 Prior to undertaking any Grouting Works the Applicant must submit an Application to the NMGF Administrator.
- 2.2 In order to successfully make a claim for the Contribution Amount under this deed, the Applicant must satisfy the NMGF Administrator that it has met the Application Criteria.
- 2.3 The Applicant acknowledges that:
- (a) it is responsible for payment of the full amount of the Capped NMGF Approved Costs; and
 - (b) payment of all costs that do not fall into the category of NMGF Approved Costs.
- 2.4 The Applicant must carry out the Grouting Works by the Grouting Sunset Date in accordance with:
- (a) the Approved Grouting Plan;
 - (b) the requirements of SANSW and any other Authority;
 - (c) all laws;
 - (d) the requirements of this deed; and
 - (e) diligently, effectively and to a high professional standard.
- 2.5 The Applicant must give the NMGF Administrator and SANSW seven days advance notice of commencement of the proposed Grouting Works.
- 2.6 If the Applicant becomes aware that the likely Actual NMGF Approved Costs may exceed the Estimated NMGF Approved Costs, it must immediately notify the NMGF Administrator and explain the reasons why the likely Actual NMGF Approved Costs may exceed the NMGF Approved Costs. If the Applicant does not comply with this clause, the NMGF Administrator has the absolute discretion not to pay any part of the Contribution Amount that exceeds the Estimated NMGF Approved Costs.
- 2.7 The Applicant must permit reasonable access to the Project Site to the NMGF Administrator, the NMGF Administrator's Representative and SANSW and each of their employees, contractors and agents for inspections of the Grouting Works at any time during the delivery of the Grouting Works.
- 2.8 The Applicant must provide the NMGF Administrator's Representative with:
- (a) reasonable notice of when the Applicant's geotechnical engineer or other consultants will be inspecting the Grouting Works;
 - (b) an opportunity to inspect the Grouting Works at the same time as the Applicant's geotechnical engineer or other consultants;
 - (c) any information the NMGF Administrator's Representative requests relating to the Grouting Works;
 - (d) copies of all reports it provides to SANSW;

- (e) copies of all reports its geotechnical engineer or other consultants provide to the Applicant;
 - (f) information on a weekly basis on the progress of the Grouting Works and grouting volumes utilised for the Grouting Works; and
 - (g) information on a weekly basis of the Actual NMGF Approved Costs incurred by the Applicant to date.
- 2.9 The Applicant must use all reasonable endeavours to diligently progress the Grouting Works and any associated activities as soon as reasonably practicable from commencement and in any event within the time period that the SANSW approval of the Approved Grouting Plan remains valid.
- 2.10 The Applicant must not vary the Grouting Works without the prior written approval of the NMGF Administrator and SANSW.
- 2.11 Within seven days of the completion of the Grouting Works the Applicant must notify the NMGF Administrator if a claim for a Contribution Amount will be made, and if such a claim will be made, the Applicant must provide an estimate of the amount of that Contribution Amount in that same notice.
- 2.12 The Applicant must provide the Validation Report to the NMGF Administrator and the NMGF Administrator's Representative as soon as reasonably practicable after receiving notification from SANSW that the report has been endorsed by it.

3. Submission of a Claim for Payment of the Contribution Amount

- 3.1 On receipt of confirmation that SANSW has endorsed the Validation Report, the Applicant may submit a formal claim to the NMGF Administrator for payment of the Contribution Amount. The Applicant's Claim must include the following information:
- (a) evidence of the Actual NMGF Approved Costs of the Grouting Works in a form, and with particulars, required by the NMGF Administrator, acting reasonably;
 - (b) confirmation that the Applicant provided the notice in clause 2.6 if the Actual NMGF Approved Costs exceed the Estimated NMGF Approved Costs;
 - (c) the total Contribution Amount claimed;
 - (d) a copy of SANSW's correspondence confirming endorsement of the Validation Report;
 - (e) a copy of the Validation Report endorsed by SANSW showing that the Grouting Works have been satisfactorily completed;
 - (f) details of any part of the Grouting Works that were not successfully completed or that needed to be redone and the cost of the reworks;
 - (g) a properly completed and signed Subcontractor's Statement in the form attached to **Schedule Six**; and
 - (h) any other information reasonably requested by the NMGF Administrator
- (the "Claim").

In respect of the information in clause 3.1(a) the NMGF Administrator will require, at a minimum, detailed particulars of the costs incurred for each of the categories of NMGF Approved Costs referred to in Item 4 clauses 1.1 to 1.12 (inclusive) and evidence that the Actual NMGF Approved Costs have been calculated in accordance with the NMGF Schedule of Prices.

- 3.2 The NMGF Administrator will consider a Claim to be valid if:
- (a) the Applicant has complied with the requirements of this Deed;

- (b) the claim for the Contribution Amount only comprises NMGF Approved Costs and not other costs;
 - (c) the claim for the Contribution Amount does not include any costs associated with Non Compliant Works;
 - (d) the Applicant has provided the information and documents set out in clause 3.1 in a manner satisfactory to the NMGF Administrator, acting reasonably; and
 - (e) the Applicant has properly substantiated the Contribution Amount claimed in a manner satisfactory to the NMGF Administrator, acting reasonably.
- 3.3 After undertaking a preliminary assessment of the Claim, the NMGF Administrator may notify the Applicant that it needs additional information to properly assess the Claim. The Applicant must provide any additional information requested by the NMGF Administrator.
- 3.4 The NMGF Administrator must assess the above Claim within 15 Business Days of the later of:
- (a) the date the Applicant makes the Claim; and
 - (b) the date the Applicant provides all information required by the NMGF Administrator.
- 3.5 If the NMGF Administrator assesses the Claim as a valid claim it will issue a payment certificate to the Applicant for the Contribution Amount. The Applicant must then provide the NMGF Administrator with:
- (a) a tax invoice for the amount set out in the payment certificate along with bank account details for payment; and
 - (b) a deed of release of any further claims in the form set out in **Schedule Four**,
- If the Applicant complies with this clause, the NMGF Administrator must make payment within 30 days from the date the NMGF Administrator receives all information and documents required by this clause.
- 3.6 Notwithstanding any other provision of this deed, the NMGF Administrator will not pay costs relating to any portion of Grouting Works which:
- (a) were varied without the prior written approval of SANSW and the NMGF Administrator;
 - (b) are not approved, endorsed or validated by SANSW; or
 - (c) need to be, or were, rectified or reworked because the works are, or were, defective or unsuccessful (including, without limitation, where grout does not meet the specified strength or where a borehole fails)
- (the “**Non Compliant Works**”).
- 3.7 If the NMGF Administrator requests, the Applicant must provide the NMGF Administrator with:
- (a) a written confirmation certified as correct by a registered auditor that the Contribution Amount in the Claim is true and correct and does not include costs for any Non Compliant Works or other costs that are not NMGF Approved Costs; and
 - (b) a written confirmation certified as correct by a registered surveyor (or other relevant expert approved by the NMGF Administrator) of the quantity of grout installed during the Grouting Works.
- 3.8 The Contribution Amount is the maximum amount the NMGF Administrator will pay under this deed. The NMGF Administrator is not responsible for any costs associated with the Grouting Works, except for the Contribution Amount.

- 3.9 Notwithstanding any other provision of this deed, the NMGF Administrator will not be liable for payment of any Contribution Amount unless the Grouting Works have been completed on or before the Grouting Sunset Date. If the NMGF Administrator has approved an Application and the Grouting Works have not been completed by the Grouting Sunset Date, the Application will lapse at that time.
- 3.10 The Applicant must comply with the NMGF Procurement Guidelines in connection with the Project. On or before the Applicant receives payment of the Contribution Amount, the Applicant must provide the NMGF Administrator with a certificate signed by the Applicant (in a form acceptable to the NMGF Administrator) stating that the Applicant has complied with the NMGF Procurement Guidelines. For the avoidance of doubt, the NMGF Administrator may determine not to pay the Contribution Amount if the NMGF Administrator becomes aware that the Applicant has not complied with this clause 3.10.

4. Record Keeping and Audit

- 4.1 The Applicant must keep full and accurate records of the conduct of the Grouting Works and retain these records for 7 years after the date the NMGF Administrator pays the Contribution Amount.
- 4.2 The Applicant must give the NMGF Administrator or its nominated person reasonable assistance to:
- (a) inspect the performance of the Grouting Works;
 - (b) audit the Applicant's records to verify the cost of the Grouting Works; and
 - (c) access and make copies of any records held by the Applicant in connection with the Grouting Works.
- 4.3 If the auditor's report discloses that the Contribution Amount is incorrect having regard to the criteria in this deed, or the auditor concludes that the Applicant has not kept adequate records to allow the auditor to make an accurate determination based on the information supplied, then, without limiting the NMGF Administrator's other rights, the Applicant must (if the NMGF Administrator demands it):
- (a) repay the Contribution Amount; and
 - (b) pay all of the NMGF Administrator's costs associated with the audit.

5. Intellectual Property

- 5.1 The Applicant must grant to the NMGF Administrator (or procure that its consultants or contractors grant to the NMGF Administrator) a permanent, irrevocable, royalty free, worldwide, non-exclusive license to use, reproduce, adapt and exploit the Intellectual Property Rights in connection with the Grouting Works for any purpose whatsoever.

6. Right to take and publish photographs

- 6.1 The Applicant must grant to the NMGF Administrator (or arrange for the grant to the NMGF Administrator of) a permanent, irrevocable, royalty free, worldwide, non-exclusive licence to use, reproduce, adapt and exploit any photographs, pictures or other images of the Project for the purpose of publishing any information in connection with the Fund.

7. Acknowledgement and Publicity

- 7.1 The Applicant must, in all publications, promotional and advertising materials, public announcements and activities in connection with the Project, acknowledge the financial and other support received from the Fund in accordance with the NMGF Administrator's reasonable directions. The NMGF Administrator will provide the Applicant with pro forma wording which must be used in any such publications.
- 7.2 The NMGF Administrator reserves the right to publicise and report on the awarding of the Contribution Amount to the Applicant including the amount of funds given to the Applicant, the title and brief description of the Project and the Grouting Works and any images of the Project.

- 7.3 The Applicant must not publish any media releases, information memorandum or advertisements that refer to the Fund, the Minister, the NMGF Administrator or the Contribution Amount without the NMGF Administrator's consent, not to be unreasonably withheld.
- 7.4 The Applicant must give the NMGF Administrator reasonable advance notice of any significant promotional event in connection with the Project and comply with the NMGF Administrator's directions in connection with that promotional event. These directions may include allowing the Minister and/or any other person nominated by the Minister to speak at, or play any role in, the relevant promotional event.
- 7.5 The Applicant must incorporate signage at the Project Site approved by the NMGF Administrator, acting reasonably, that acknowledges the State Government's contribution to the Project.

8. Default and Termination

- 8.1 The NMGF Administrator may terminate this deed by giving the Applicant written notice if:
- (a) an Act of Insolvency occurs;
 - (b) the Applicant does not complete the Grouting Works by the Grouting Sunset Date;
 - (c) the approval by SANSW of the Approved Grouting Plan lapses or is withdrawn; or
 - (d) the Applicant does not comply with a term of this deed and does not remedy it within 45 days of the date the NMGF Administrator gives the Applicant notice to remedy the breach.
- 8.2 Without limiting the NMGF Administrator's other rights, if this deed is terminated under clause 8.1 then the NMGF Administrator is not required to pay the Applicant any of the Contribution Amount.

9. Assumption of Risk

- 9.1 The Applicant undertakes the Grouting Works entirely at its own risk. The NMGF Administrator does not accept any risk associated with the Grouting Works. The Applicant is fully responsible for the Grouting Works and for ensuring compliance with the requirements of this deed and will not be relieved of this responsibility because of any:
- (a) involvement by the NMGF Administrator or a third party in connection with the Grouting Works;
 - (b) inspection of the Grouting Works by the NMGF Administrator or its employees or contractors;
 - (c) payment of the Contribution Amount under this deed; or
 - (d) subcontracting all or part of the Grouting Works to a third party.
- 9.2 The NMGF Administrator does not accept any responsibility whatsoever in respect of the Grouting Works, or their sufficiency, all of which are subject to oversight by SANSW.
- 9.3 The NMGF Administrator is only involved in the Grouting Works in its capacity as the administrator of the Fund responsible for delivering the Contribution Amount.

10. Work, Health and Safety

- 10.1 For the avoidance of doubt, the NMGF Administrator or the Minister each is not responsible for work, health and safety matters in connection with the Project. The Applicant is entirely responsible for compliance with all work, health and safety laws in connection with the Project.

11. Release and Indemnity

- 11.1 The Applicant is liable for and unconditionally and irrevocably indemnifies the NMGF Administrator and its employees, contractors and agents against all actions, demands, liability, loss, damage or

costs (including legal fees on a full indemnity basis) incurred or suffered directly or indirectly by the NMGF Administrator or its employees, contractors and agents in connection with:

- (a) the Applicant's breach of this deed;
- (b) breach by the Applicant of any laws including, without limitation, work, health and safety matters;
- (c) breach by the Applicant of any third party Intellectual Property Rights;
- (d) any act or omission by the Applicant or its employees, contractors or agents; or
- (e) the Project and the Grouting Works

except to the extent the action, demand, liability, loss, damage or cost was caused or contributed to by the NMGF Administrator's breach of this deed or the negligent act or omission of the NMGF Administrator or its employees or agents whilst at the Project Site.

- 11.2 Each indemnity is independent from the Applicant's other obligations and continues during this deed and after it expires or is terminated. The NMGF Administrator may enforce an indemnity before incurring an expense. The Applicant must pay amounts owed to the NMGF Administrator under the indemnity on demand.
- 11.3 The Applicant releases the NMGF Administrator and any committee members of the Fund and agrees that they are not liable for any action, demand, liability, loss, damage or costs suffered or incurred directly or indirectly by the Applicant in connection with the Project or the Grouting Works, howsoever caused.

12. Dispute Resolution

- 12.1 This clause applies if there is a dispute between the parties under this deed.
- 12.2 If either party considers the parties are in dispute that party must serve a notice of dispute on the other party particularising the dispute in reasonable detail (the "**Notice of Dispute**").
- 12.3 Within 14 days of the service of the Notice of Dispute the general manager of the Applicant (or such other person in an equivalent position) must meet with the Chief Operating Officer of the NMGF Administrator to try and resolve the dispute.
- 12.4 If the parties do not agree within 7 days of the above meeting (or any further period agreed to in writing by them) as to:
 - (a) the dispute resolution technique and procedures to be adopted;
 - (b) the timetable for steps in those procedures; and
 - (c) the selection and compensation of the independent person required for such technique,the parties must mediate the dispute in accordance with the Mediation Rules of the Resolution Institute (as varied from time to time). The parties must also request the Chair of the Resolution Institute or the Chair's nominee to select the mediator and determine the mediator's remuneration.
- 12.5 Each party must equally pay the costs of the mediator and the mediator must be jointly engaged by the parties.
- 12.6 If the dispute is not resolved within a further 30 days from appointment of the mediator then either party may commence Court proceedings in relation to the dispute.
- 12.7 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 12 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 12 for any purpose other than in an attempt to settle the dispute.

12.8 Despite the existence of a dispute, both parties must continue to perform their obligations under this deed.

13. Subcontracting

13.1 The Applicant is fully responsible for the performance of its obligations under this deed even if it decides to subcontract all or part of the Grouting Works.

13.2 The Applicant is fully responsible for ensuring that any contractor delivering the Grouting Works will be experienced in such works, and that the contractor will implement efficient and safe work practises.

14. Taxes, Duties and Government Charges

14.1 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this deed must be paid by the Applicant.

14.2 Without limiting clause 14.1, the Applicant must pay GST on the goods, services and other supplies made under this deed to the extent they are taxable supplies within the meaning of the GST Act.

14.3 To the extent any Contribution Amount is a taxable supply within the meaning of the GST Act, the Contribution Amount to be paid or provided under or in connection with this deed is inclusive of GST. In relation to any GST payable under clause 14.2, the Applicant must issue the NMGF Administrator with a tax invoice in accordance with the GST Act. For the avoidance of doubt, no payments will be due and payable under clause 14.2 or any other clause of this deed until a valid tax invoice is provided by the supplier to the recipient of the supply.

15. Notices

15.1 Any notice or other communication to or by a party under this deed:

- (a) may be given by personal service, post or email;
- (b) must be in writing, legible and in English;
- (c) in the case of a corporation, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the *Corporations Act 2001* (Cth); and
- (d) is deemed to be given by the sender and received by the addressee:
 - (i) if delivered in person, when delivered to the addressee;
 - (ii) if posted, 2 Business Days (or 6 Business Days, if addressed outside Australia) after the date of posting to the addressee whether delivered or not; or
 - (iii) if sent by email, one hour after the email is recorded as being sent by the device from which the sender sent that email, unless the sender knows or could reasonably be expected to know that an email system has failed and as a result, the email was not received,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

The addresses and details for delivery of notices are as follows, as amended by notice to the other party from time to time:

[Drafting Note: For completion by the Applicant.]

Hunter and Central Coast Development Corporation

Address: 6 Stewart Avenue, Newcastle West, New South Wales, 2302

Email: info@hccdc.nsw.gov.au

Attention: NMGF Manager

[Insert]

Address: [Insert]

Email: [Insert]

Attention: [Insert]

16. General

- 16.1 **Variation:** No variation of this deed is of any force or effect unless confirmed in writing and signed by an authorised officer of the NMGF Administrator.
- 16.2 **Waiver:** The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right conferred on that party by this deed does not operate as a waiver of that power or right, nor does any single exercise of that power or right preclude any other or further exercise of it.
- 16.3 **Counterparts:** If this deed consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.
- 16.4 **Legal Costs and Expenses:** Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this deed and other documents referred to in it, unless expressly stated otherwise.
- 16.5 **Entire Agreement:** This deed constitutes the sole and entire agreement between the parties in respect of the subject matter of this deed.
- 16.6 **Severance:** If any provision of this deed is invalid or unenforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid provision are and continue to be valid and enforceable in accordance with their terms.
- 16.7 **Further Assurance:** Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and acts necessary to carry out and give full effect to this deed and the rights and obligations of the parties under it.
- 16.8 **NMGF Administrator Contractors:** Where the NMGF Administrator is entitled to do something under this deed it may appoint a contractor to do that thing on its behalf.
- 16.9 **Governing law and jurisdiction:** This deed is governed by, and is to be construed in accordance with, the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any court hearing appeals from those courts.
- 16.10 **Assignment by the Applicant:** If the Applicant sells the Project Site it may assign the rights and obligations under this deed to the purchaser of the Project Site. If it assigns this deed to the purchaser of the Project Site it must promptly notify the NMGF Administrator.

Executed as a deed.

EXECUTION PAGE

Date: [INSERT DATE]

EXECUTED for and on behalf of HUNTER AND
CENTRAL COAST DEVELOPMENT CORPORATION
ABN 94 688 782 063 by [HCCDC CEO], without
assuming any personal liability and in the presence
of:

.....
Signature of witness

.....
Signature of [HCCDC CEO]

.....
Name of witness *(please print)*

[Drafting Note: Use this execution clause for a multi-director company.]

EXECUTED by [COMPANY NAME] ACN [] in
accordance with section 127 of the *Corporations
Act 2001* (Cth) by being signed by the following
officers:

.....
Signature of director

.....
Signature of director/company secretary

.....
Name of director
(please print)

.....
Name of director/company secretary *(please print)*

[Drafting Note: Use this execution clause for a sole director/secretary company.]

EXECUTED by [COMPANY NAME] ACN [] in
accordance with section 127 of the *Corporations
Act 2001* (Cth) by being signed by:

.....
Signature of sole director and sole company
secretary

.....
Name of sole director and sole company secretary
(please print)

SCHEDULE ONE: NMGF SCHEDULE OF PRICES

SCHEDULE TWO: REFERENCE SCHEDULE

| | | |
|----------------|--------------------------------------|---|
| Item 1: | Project | [Insert description of the relevant Project] |
| Item 2: | Project Site | [Insert Lot and DP and address of site] |
| Item 3: | Capped NMGF Approved Costs | [Insert the Capped NMGF Approved Costs - Note the NMGF Administrator pays Actual NMGF Approved Costs above the Capped NMGF Approved Costs] |
| Item 4: | NMGF Approved Costs | <p>NMGF Approved Costs comprise the following types of costs only:</p> <ol style="list-style-type: none"> 1.1. Grout sampling and testing for trial program and production grout; 1.2. Grout hole drilling through soil and rock, including casing to mine level; 1.3. Supply and inject infill grout; 1.4. Supply and inject void filling grout; 1.5. Verification hole drilling (boring) through soil and rock, including casing to core level; 1.6. Verification hole drilling (coring) through soil, grout, and rock; 1.7. Provide full time borehole camera and operator; 1.8. Provide borehole sonar and operator for grout holes and verification holes; 1.9. Downhole geophysics and deviation for grout holes and verification holes; 1.10. Survey location of grout holes and verification holes; 1.11. Necessary supervision of the works; 1.12. Completion of Validation Report, including all necessary liaison with the NMGF Administrator and SANSW. <p>For the avoidance of doubt, other costs which are not NMGF Approved Costs include, without limitation, the following:</p> <ol style="list-style-type: none"> 1.13. All preliminaries and establishment; 1.14. Utility clearance; 1.15. Site fencing; 1.16. Traffic management including traffic control, signs, pedestrian management as required; 1.17. Water management including for drilling water and groundwater dispersed by injected grout; 1.18. Offsite disposal of water and other waste; and 1.19. All other works required for the satisfactory completion of the Grouting Works but not described elsewhere in the NMGF Schedule of Prices. |
| Item 5: | Estimated NMGF Approved Costs | [Insert] |
| Item 6: | Grouting Sunset Date | [Insert sunset date for Grouting works to be completed] |

SCHEDULE THREE: APPROVED GROUTING PLAN

SCHEDULE FOUR: DEED OF RELEASE

SCHEDULE FIVE: NMGF PROCUREMENT GUIDELINES

1. The Applicant must ensure it and its contractors and agents comply with all aspects of the *New South Wales Industrial Relations Guidelines: Building and Construction Procurement July 2013 updated September 2017* (as varied or updated from time to time) (the **Guidelines**).
2. The Applicant must allow the NMGF Administrator or its employees, contractors or agents to:
 - (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) inspect and copy any record relevant to the Project; or
 - (c) interview any person,to the extent the NMGF Administrator considers necessary to ensure the Applicant is complying with the Guidelines.
3. The Applicant must ensure that it and its contractors allow the NMGF Administrator authorised personnel to monitor and investigate compliance with the Guidelines including by ensuring they have access to sites, documents and personnel (as required).
4. The Applicant must ensure that it obtains value for money from any contractors undertaking the Grouting Works. The Applicant must put in place procurement processes to ensure it obtains value for money.
5. The Applicant must seek to improve procurement outcomes in relation to the Grouting Works through enhanced competition.
6. The Applicant must ensure that any procurement processes it undertakes is at all times fair, ethical, transparent and probity rich. The Applicant must ensure it does not engage in conduct which is dishonest, unfair, unconscionable, corrupt or otherwise illegal.

SCHEDULE SIX: SUBCONTRACTOR'S STATEMENT