



Planning,
Industry &
Environment

ACCELERATED INFRASTRUCTURE FUND FUNDING AGREEMENT – ROUND 2

Department of Planning, Industry and Environment

and

[insert Council]

DRAFT

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Parties

Name	Crown in right of the State of New South Wales through the Department of Planning, Industry and Environment (the Department)
ABN	ABN 20 770 707 468
Address	4 Parramatta Square, 12 Darcy Street, Parramatta, Sydney, New South Wales, 2150

And

Name	[insert Council] a body politic of the State constituted under the <i>Local Government Act 1993</i> (the Council)
ABN	[insert ABN #]
Address	[Enter Council/Agency address here]

Background

The NSW Government established the Accelerated Infrastructure Fund to support local councils to deliver essential local infrastructure in areas experiencing high rates of growth.

Local infrastructure may include:

- Transport infrastructure
- Open space and parklands
- Stormwater infrastructure
- Multipurpose sporting and recreational facilities
- Community facilities.

The Department has agreed to provide the Funding Amount from the Accelerated Infrastructure Fund to the Council to facilitate the carrying out of the Project by the Council.

Council has agreed to use the Funding Amount together with local infrastructure contributions collected under its contribution plan(s) under section 7.11 or 7.12 of the *Environmental Planning and Assessment Act 1979* and if required, funding from other sources to carry out the Project.

The objective of this Agreement is to document the agreed outcomes for the Project including the timing for the payment of the Funding Amount and commencement of the Project. The Funding Amount will be provided to the Council as a grant.

The parties agree to provide and accept, the Funding Amount in accordance with the terms of this Agreement.

Operative Provisions

1. Definitions and Interpretation

1.1 **Dictionary:** In this Agreement, unless the contrary intention requires:

“Agreement” means this Agreement including the Schedule and Attachments

“Agreement Details” means those details in Schedule 1 and Attachment 1

“Authority” means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes a Services utility.

“Business Day” means a day that is not a Saturday, Sunday or public holiday in Sydney, NSW.

“Claim” means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs.

“Commencement Date” means the date this Agreement is executed by both parties.

“Commencement Notice” has the meaning given to the term in clause 3.5(a).

“Confidential Information” means any information and all other knowledge at any time disclosed (whether in writing or orally) to a party, or acquired by a party which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated as confidential; or
- (c) the party knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Agreement;
- (e) is in a party’s lawful possession without restriction in relation to disclosure before the date or receipt of the information from another party or a third party;
- (f) has been developed or acquired by a party independently of this Agreement; or
- (g) is required to be disclosed by law, including in accordance with a resolution of a House of Parliament.

“Conflict of interest” means an actual or perceived conflict between a person's public duty and their private or personal interest.

“Construction Contract” means one or more contract(s) executed between the Council and a third party contractor, referred to in clause 3.5, for the carrying out of the Project by that third party contractor for the Council.

“Council” means [insert Council], being a body politic of the State under section 220 of the *Local Government Act 1993* (insert ABN #).

“Department” where the context permits, includes officers, delegates, employees and agents and successors of the Department of Planning Industry and Environment (ABN 20 770 707 468);

“Existing Material” means all Material in existence prior to the commencement of this Agreement:

- (a) incorporated in;
- (b) supplied with or as part of; or
- (c) required to be supplied with, or as part of,

the Project Material.

“Funding Amount” means the Funding Amount specified in Item 3 of Schedule 1.

“GIPA Act” means the *Government Information (Public Access) Act 2009* (NSW).

“GST” means Goods and Services Tax.

“GST Law” means *A New Tax System (Goods & Services Tax) Act 1999* (Cth), related legislation and any delegated legislation made pursuant to such legislation.

“Intellectual Property” means all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets and all other rights of intellectual property as recognised by Law.

“Law” means:

- (a) the common law including principles of equity; and
- (b) the requirements and principles of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority.

“Material” means all studies, plans, diagrams, images, drawings, analysis, software, and all other information, documents and data howsoever stored or recorded including all copies and extracts of the same.

“Milestone” means a milestone or stage of completion of the Project as set out in Schedule 2.

“Project” means project description as described in Item 2 of Schedule 1.

“Project Commencement Date” means the date as specified in Item 2 of Schedule 1.

“Project Control Group” means the group of representatives of the Department, the Council and any other relevant agency established by those bodies to advance the design, documentation and delivery of the Project.

“Project Material” means all Material:

- (a) brought into existence as a result of or in connection with this Agreement including (without limitation) all Material brought into existence for the purposes of the Project; and
- (b) incorporated in, supplied or required to be supplied with the Material referred to in (a) above except to the extent that it is Existing Material.

“Project Plan” means Attachment 1 of this Agreement.

“Tax Invoice Requirements” means the requirements specified in Item 6 of Schedule 1.

“Term” means the duration of this Agreement, beginning on the Commencement Date and ending on the earlier of:

- (a) the date as determined by the Department and notified to the Council in writing; or
- (b) the date this Agreement is terminated in accordance with its terms.

“Unexpended Funding” means the Funding Amount paid to the Council, or any part of the Funding Amount, that is unspent.

1.2 **Interpretation:** Except where the context otherwise requires:

- (a) a singular number includes a reference to a plural number and vice versa;
- (b) any person or company will mean and include the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require;
- (c) words and expressions importing natural persons include partnerships, bodies corporate, associations and governmental and local authorities and agents;
- (d) statutes, regulations, ordinances or by-laws will be deemed for all purposes to be extended to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (e) includes” and “including” mean by way of example but without limitation;
- (f) monetary references are references to Australian currency;
- (g) where any time limit is pursuant to this Agreement falls on a Saturday, Sunday or public holiday in the State of New South Wales then that time limit will be deemed to have expired on the next Business Day;
- (h) where the parties are comprised of more than one person, each of the parties obligations will bind those persons jointly and severally and will be enforceable against them jointly and severally;
- (i) the headings used in this Agreement are for convenience only and will not affect the interpretation of this Agreement;

- (j) no rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Agreement or any part of it;
- (k) his Agreement is binding when the first party executes the Agreement; and
- (l) where there occurs a reference to the doing of anything by the Department including giving any notice, consent, direction or waiver, this may be done by any officer we duly authorise.

2. Term

- 2.1 This Agreement commences on the Commencement Date and will continue for the Term.
- 2.2 The Council must commence the Project by no later than two years after the Project Commencement Date in accordance with clause 3.5.

3. Provision of Funding Amount

3.1 Funding Amount:

- (a) The Department will provide up to the maximum of the Funding Amount to the Council, for the purposes of undertaking the Project and the Council agrees to accept the Funding Amount for the purposes of undertaking the Project, in accordance with and subject to the terms of this Agreement.
- (b) The Council agrees to:
 - (i) remain responsible for any costs that exceed the Funding Amount for the Project;
 - (ii) remain responsible for all maintenance costs arising from the Project (including any costs incurred after the Term); and
 - (iii) procure any additional funding above the Funding Amount that is necessary to carry out the Project as described in this Agreement in order to ensure the Project is delivered and maintained in accordance with this Agreement.

3.2 Payment of Funding Amount

- (a) Subject to sufficient funds being available, and compliance by the Council with this Agreement, the Department will provide, or enable the provision of, the Funding Amount to the Council as specified in Item 4 of the Agreement Details.
- (b) Prior to the Department making any payment of the Funding Amount, the Council must provide to the Department a valid tax invoice (including itemisation of the GST component) in accordance with the Tax Invoice Requirements for the Funding Amount.

3.3 Use of Funding Amount

The Council must only use the Funding Amount for the Project and not for any other purpose.

3.4 Co-operation on the Project

The Council agrees to work co-operatively with the Department and relevant NSW Government agencies in carrying out the Project.

3.5 Commencement of the Project

- (a) The Council must provide written notice to the Department to confirm that it intends to commence the Project (**Commencement Notice**). The Commencement Notice must be accompanied by a copy of each Construction Contract in place for the Project.
- (b) If further Construction Contract(s) are entered into after the Commencing Notice has been issued, the Council must provide a written notice to the Minister of that fact as soon as is practicable and provide the Department with a copy of the further Construction Contract(s).
- (c) Each Construction Contract must:
 - (i) separately identify those works comprising the Project, whether through a separate bill of quantities or separate contract;
 - (ii) identify the proposed contract value for each item of the Project;
 - (iii) identify the terms and conditions applicable to the carrying out of the Project; and
 - (iv) otherwise be on terms acceptable to the Department.

3.6 Right to recover Funding Amount

Without limiting the Department's rights under this Agreement, the Department may by notice in writing recover part of the Funding Amount from the Council (as a debt due and payable on demand) in any of the circumstances set out in Column A in the table below, but only to the extent set out in Column B in the table below:

	Column A: Circumstance in which part of the Funding Amount may be recovered by the Department	Column B: Extent to which Funding Amount may be recovered by the Department
(a)	The Council is paid more than the Funding Amount as specified in this Agreement.	Only to the extent of the amount of overpayment.
(b)	The Council has incorrectly claimed some or all of the Funding Amount.	Only to the extent which the Funding Amount has been incorrectly paid to the Council.
(c)	The Council abandons the Project and does not resume performance of the Project within 10 Business Days after	Only to the extent of any Unexpended Funding at the date of termination of this Agreement

	receiving notice from the Department requiring it to do so.	
(d)	There is Unexpended Funding at the expiry of the Term.	Only to the extent of any Unexpended Funding at the expiry of the Term.
(e)	The Council fails to commence the Project by the time specified in clause 2.2 and in accordance with clause 3.5.	Only to the extent of any Unexpended Funding at the date of termination of this Agreement.
(f)	The Council fails to complete a Milestone by the time specified in Schedule 2 for completion.	Only to the extent that any part of the Funding Amount has been allocated (according to the Project Plan) to a Milestone which has a date of completion that is later than the date of completion for the Milestone the Council has failed to complete.
(g)	The Council commits any other breach of this Agreement and fails to remedy that breach if capable of remedy within a reasonable time following receipt of a written request from the Department (regardless of whether the Agreement is subsequently terminated).	Only to the extent that any part of the Funding Amount has been spent by the Council in breach of this Agreement.
(h)	If this Agreement is terminated for any other reason not specified above.	Only to the extent of any Unexpended Funding at the date of termination of this Agreement.
(i)	The Department, in its discretion, determines that the Project carried out ceases to be viable during the Term.	Only to the extent of any Unexpended Funding at the date of termination of this Agreement.
(j)	The Department, in its discretion, determines that the Project completed did not achieve the scope of the Project.	Only to the extent of any Unexpended Funding at the date of this determination by the Department.

3.7 **Repayment of Funding Amount**

If the Department exercises its rights in accordance with clause 3.6, the Council must refund that part of the Funding Amount specified in the notice within 20 Business Days after the date of the notice.

3.8 If any dispute arises regarding the refund of the Funding Amount, the parties must attempt to resolve the dispute in accordance with clause 15.

3.9 The Department making any payment under this Agreement does not constitute an admission that the performance of any part of the Project is in conformity with this Agreement and no payment will be deemed to release the Council from its obligations under this Agreement.

4. **Project**

4.1 **Project Plan**

- (a) The Council has prepared the Project Plan and the Department has approved the Project Plan.
- (b) The Project Plan sets out, among other matters, the works and deliverables that must be completed by the Council in connection with the Project, the scope of works and costs schedule for each component of the Project, and the Milestones for the Project.
- (c) The Recipient must carry out the Project in accordance with the Project Plan.
- (d) The Department and the Council acknowledge that the Project Plan may be varied in accordance with Schedule 3.

4.2 **Project Control Group**

The parties agree:

- (a) to establish a Project Control Group; and
- (b) that the Project Control Group may hold a meeting every month, or other such period as agreed between the parties, during the Term to:
 - (i) assess the progress of the Project;
 - (ii) identify any issues which is or may hinder the progress of the Project;
 - (iii) develop strategies to rectify any issues which is or may hinder the progress of the Project; and
 - (iv) deal with any other matter in relation to the Project which may arise from time to time.

4.3 **Project Reporting**

- (a) The Council agrees to:
 - (i) liaise with and provide information to the Department as reasonably required by the Department; and
 - (ii) comply with all of the Department's reasonable requests, directions, or reporting requirements.
- (b) The Council must provide to the Department the reports specified in Item 5 of the Agreement Details at time specified.
- (c) All reports must address the matters specified in Item 5 of the Agreement Details and be signed by a delegated officer of the Council.

4.4 **Milestones**

- (a) The Council must complete to the satisfaction of the Department:
 - (i) each Milestone; and
 - (ii) each obligation or requirement imposed by each Milestone,on or before the date specified for the completion of that Milestone in Schedule 2.

5. **Project Responsibility**

5.1 The Council:

- (a) acknowledges and agrees that it is solely responsible for delivering the Project in accordance with the terms and conditions of this Funding Agreement
- (b) must ensure that it and any organisation or person engaged to carry out works in relation to the Project adhere to all regulatory requirements associated with carrying out the Project;
- (c) acknowledges and agrees that it remains fully responsible for the performance of the Project including if it subcontracts the performance of any part of the Project; and
- (d) must ensure that all contractors, subcontractors, project partners (if any) and any third party engaged to carry out works in relation to the Project:
 - (i) have appropriate skills, qualifications and experience, and hold the appropriate licences and insurances, for the work they have been engaged to perform; and
 - (ii) adhere to all regulatory requirements associated with carrying out the Project

5.2 **Record requirements:**

The Council must:

- (a) ensure that adequate financial and operational records are kept and maintained throughout the Term in relation to the Funding Amount and the Project;
- (b) retain the records referred to in clause 5.2(a) above throughout the Term and for seven (7) years after the expiry of the Term; and
- (c) upon the Department's request, arrange for the records, books of account and any other documents relating to the Funding Amount and the Project to be made available for inspection by the Department's authorised representative (including the taking of such extracts and the making of such copies as the representative considers appropriate) and assist the representative in carrying out the inspection; and
- (d) otherwise fulfil its reporting obligations under Item 5 of the Agreement details.

6. Acknowledgement

- 6.1 The Council must acknowledge the Funding Amount received from the Department for the Project in accordance with the NSW Government's Funding Acknowledgement Guidelines for recipients of NSW Government infrastructure grants (available at <https://communications.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/files/Communications-and-Engagement/fa6fd6d77a/Funding-Acknowledgement-Guidelines-for-Recipients-of-NSW-Government-Grants.pdf>).
- 6.2 The Council must, unless the Department agrees otherwise, use the NSW Government's Waratah logo as set out at <https://www.nsw.gov.au/branding/guidelines/nsw-government-logo> in conjunction with all acknowledgements of NSW Government support in accordance with the Funding Acknowledgement Guidelines.
- 6.3 The Council must provide the Department with at least 30 Business Days' notice of any proposed announcements, launches or public events relating to the Project, and provide an opportunity for a representative of the NSW Government to attend and speak at the launch or event.
- 6.4 The Department may, in its sole discretion, issue public communications on the provision of the Funding Amount to the Council and the progress of the Project. Where practicable to do so, the Department will give notice of such communications and their content to the Council.
- 6.5 If the Department determines that the Project (or any part of it) is not consistent with the purposes for which the Council was funded, and the Department gives the Council written notice of this, the Council must promptly remove the Department's acknowledgement and logo from all programs, promotional material and other printed or electronic material and publications relating to the Project and return any Unexpended Funding as at the date of the Department's notice.

7. GST

7.1 Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

7.2 Unless otherwise indicated, all consideration for any supply under this Agreement is exclusive of any GST imposed in relation to the supply.

7.3 If:

- (a) GST is imposed on a supply Council makes to the Department under this Agreement; and
- (b) the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,

the Department will pay you an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Agreement in relation to that supply.

7.4 The Council must be registered under the GST Law at the time of making any supply under this Agreement on which GST is imposed.

7.5 If the Council is not registered under clause 7.4, the Council will not be entitled to receive any additional amount as provided under clause 7.3.

7.6 If for any reason the Department pays the Council an amount under this clause 7 which is more than the GST imposed on the supply, the Council must repay the excess to the Department on demand or the Department may set off the excess against other amounts due to the Council.

7.7 Subject to this clause, any invoice rendered by the Council in connection with a supply under this Agreement must conform to the requirements for a tax invoice under the GST Law as set out in the Tax Invoice Requirements.

8. Compliance with Law

8.1 The Council agrees:

- (a) to comply with all applicable standards, Laws, policies and guidelines for the Project;
- (b) to ensure compliance by any organisation(s) or person(s) engaged to contribute to or work on the Project with all applicable standards, Laws, and policies; and
- (c) not to do anything that would cause the Department to breach its obligations under any Law.

8.2 The Council must hold all rights, permissions, approvals and consents required to conduct and carry out the Project and otherwise fulfil its obligations under this Agreement.

8.3 The Council must obtain all necessary statutory approvals in relation to the Project, and the Department may at its sole discretion suspend payment of any part of the Funding Amount until it is provided with evidence that the Council has obtained all such statutory approvals.

9. **Indemnity and release**

9.1 The Council hereby indemnifies and keeps indemnified the Department from and against any liability or loss (including reasonable legal costs and expenses), which is suffered or incurred by the Department associated with or relating to the use of the Funding Amount and/or the carrying out of the Project by the Council.

9.2 The liability of the Council to indemnify the Department under this Agreement shall be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of the Department caused or contributed to the liability or loss.

9.3 The indemnity contained in this clause is a continuing obligation of the Council separate and independent of any other responsibility of the Council and will continue beyond the Term.

9.4 The Council agrees to release and discharge the Department from any action, proceedings, Claim or demand which, but for this provision, might be brought against or made upon the Department.

10. **Confidentiality**

10.1 Subject to clause 10.2, each party must keep the Confidential Information of each other party in confidence and not disclose the Confidential Information to any person without the other party's prior written consent.

10.2 A party may disclose the Confidential Information of another party to their personnel and legal and professional advisors provided they ensure that the recipient of that Confidential Information:

(a) keeps the Confidential Information confidential; and

(b) does not use the Confidential Information except for the purposes of this Agreement.

10.3 Either party may disclose the Confidential Information of the other if so required by law or a court of competent jurisdiction.

10.4 The Council acknowledges that the Department may disclose certain information in relation to the Agreement (including Confidential Information), in accordance with the Department's obligations under the GIPA Act including making certain information about the Agreement publicly available in any disclosure log of contracts that the Department is required to maintain under the GIPA Act.

11. Insurance

- 11.1 The Council must take out and maintain during the Term all appropriate insurance policies including, but not limited to:
- (a) workers' compensation insurance as required by law for all personnel involved in the delivery of the Project;
 - (b) public liability insurance to the value of not less than \$20 million in respect of each and every occurrence and unlimited in the aggregate for any one period of cover; and
 - (c) insurance over all assets used in connection with the Project funded or partly funded by the Funding Amount, for their full replacement value.
- 11.2 On request by the Department, the Council must provide a copy of valid and current certificates of currency for each or any of the policies described in clause 11.1.
- 11.3 If the Council is a self-insurer and is covered by the Treasury Managed Fund, then clause 11.1 does not apply and the Council can rely on the Treasury Managed Fund coverage.
- 11.4 The Council must not do, permit or suffer any act, matter or thing or omission whereby any of the policy referred to in this clause may be vitiated, rendered void or voidable.

12. Changes

- 12.1 Unless provided in Schedule 3 this Agreement or any of the matters outlined in Schedules or Attachments to this Agreement must not be varied except by a later written document executed by all parties.

13. Termination

- 13.1 The Department may by giving the Council 20 days written notice terminate this Agreement if any one or more of the following occurs:
- (a) The Council fails to commence the Project by the time specified in clause 2.2 and in accordance with clause 3.5;
 - (b) The Council abandons the Project and does not resume performance of the Project within 10 Business Days after receiving notice from the Department requiring it to do so;
 - (c) The Council fails to complete a Milestone by the time specified in Schedule 2 for completion.
 - (d) The Council breaches any other clause of this Agreement in a manner that, in the Department's reasonable opinion, is not capable of remedy;
 - (e) The Council breaches any other clause of this Agreement that in the Department's reasonable opinion is capable of remedy and the Council has failed to comply with a notice from the Department to remedy the breach within the reasonable period for remedy specified in that notice;
 - (f) The Department, in its discretion, determines that the Project carried out ceases to be viable during the Term; or

- (g) The Department determines that the Council is unable to proceed with the performance of its obligations under this Agreement by reason of a pandemic, war, strikes, riot or civil commotion (whether war be declared or not) or any other circumstance whatsoever beyond the Council's control.

13.2 The Council agrees, on receipt of a notice of termination to return to the Department any part of the Funding Amount in accordance with clause 3.7 or deal with any such part of the Funding Amount as directed by the Department.

14. Obligations when this Agreement ends

14.1 Rights and remedies not prejudiced

Any termination of this Agreement by the Department is without prejudice to any accrued rights or remedies of the Department.

14.2 Clauses that survive termination

Clauses 3, 9, 10, 15, 17 and this clause 14 and any other provision of this Agreement which by its nature should survive termination will survive termination, expiry or repudiation of this Agreement.

15. Dispute Resolution

15.1 The parties must attempt to settle any dispute in relation to this Agreement in accordance with the following provisions, before resorting to court proceedings or other dispute resolution process.

- (a) a party claiming that a dispute has arisen, must give written notice of the dispute to the other party. On receipt of this notice the parties must within 14 days of receipt seek to resolve the dispute.
- (b) if the dispute is not resolved within this 14 day period or within such further period as the parties agree in writing then the dispute is to be referred to the Australian Dispute Centre (**ADC**) for mediation.
- (c) the mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation, 2019 which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (d) if the dispute is not settled within 28 days (or such other period as agreed to in writing between the parties) after appointment of the mediator, or if no mediator is appointed within 28 days of the referral of the dispute to mediation, the parties may pursue any other procedure available at law for the resolution of the dispute.
- (e) nothing in this clause will prevent either party from seeking urgent interlocutory relief.

16. Notices

16.1 The parties must inform each other within 7 days of any changes to its contact details set out in Item 1 of the Agreement Details.

- 16.2 A notice under this Agreement must be:
- (a) in writing, directed to the Representative of the other party as set out in Item 1 of the Agreement Details; and
 - (b) forwarded to the address or the email address of that Representative as set out in Item 1 of the Agreement Details.
- 16.3 A notice under this Agreement will be deemed to be served:
- (a) in the case of delivery in person – when delivered to each party’s address for service and a signature received as evidence of delivery;
 - (b) in the case of delivery by post – within three (3) Business Days of posting;
 - (c) in the case of delivery by email – on receipt of confirmation by the sender that the recipient has received the email.
- 16.4 Notwithstanding the provisions of this clause, if delivery or receipt of a communication is on a day which is not a Business Day in the place to which the communication is sent or is later than 5pm (local time in that place) it will be deemed to have been duly given or made at 9am (local time in that place) on the next Business Day in that place.

17. Intellectual Property

17.1 Licence Rights in Project Material

- (a) Subject to this clause 17.1, Intellectual Property in Project Material vests or will vest in the Council. Nothing in this clause affects the ownership of Intellectual Property in any Existing Material incorporated into the Project Material.
- (b) The Council grants to (or will procure for) the Department a permanent, irrevocable, royalty-free, worldwide, non-exclusive, transferable licence in perpetuity (including a right of sublicence) to use, reproduce, exploit, communicate, adapt and distribute the Project Material for any purpose.
- (c) In addition to the rights granted by the Council to the Department, the Council agrees that the licence granted in clause 17.1(b) includes a right for the Department to licence the Project Material to the public under an Open Access Licence.

17.2 IP Warranty

The Council warrants that:

- (a) it is entitled; or
- (b) it will be entitled at the relevant time,

to deal with the Intellectual Property in the Project Material in the manner provided for in this clause 17.

17.3 Further Assistance

The Council agrees, on request by the Department, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 17.

18. General

- 18.1 **Entire agreement:** This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter of this Agreement. Any prior arrangements, representations or undertakings as to the subject matter of this Agreement are superseded.
- 18.2 **Non-waiver:** No failure or delay by a party in exercising any right, power or remedy under this Agreement and no course of dealing or grant by a party to the other party of any time or other consideration, will operate as a waiver of the breach or a default by a party. Any waiver by a party of a breach of this Agreement will not be construed as a waiver of any further breach of the same or any other provision.
- 18.3 **Conflict of interest:** The Council warrants that at the date of this Agreement, no Conflict of Interest exists or is likely to arise in relation to execution of this Agreement or its subject matter. The Council undertakes to notify the Department, in writing, immediately upon becoming aware of the existence, or possibility, of a Conflict of Interest and agrees to comply with any reasonable directions of the Department to appropriately manage the Conflict of Interest, within the time frame stipulated by the Department in writing.
- 18.4 **Severability:** If any part of this Agreement is prohibited, void, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.
- 18.5 **Relationship:**
- (a) Nothing in this Agreement is intended to create a partnership, joint venture or agency relationship between the parties;
 - (b) A party will not hold itself out to be an employee, partner, agent or representative of the other party.
- 18.6 **Applicable law:** This Agreement is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales.
- 18.7 **Governing jurisdiction:** The parties submit to the exclusive jurisdiction of the Courts exercising jurisdiction in the State of New South Wales and the courts of appeal therefrom.
- 18.8 **Counterparts:** This Agreement may be signed in any number of counterparts which taken together will constitute one instrument.

EXECUTED AS A DEED on _____ **2022.**

Signed, sealed and delivered for and on behalf of the Crown in right of the State of New South Wales, but not so as to incur any personal liability by:

(name and position of authorised officer)

(signature of authorised officer)

in the presence of:

(name of witness)

(signature of witness)

Signed, sealed and delivered for and on behalf of [insert Council] ABN [insert ABN #]

(name and position of authorised officer)

(signature of authorised officer)

in the presence of:

(name of witness)

(signature of witness)

SCHEDULE 1 – AGREEMENT DETAILS

Item 1: Representatives

Department	
Address:	
Email:	
Representative:	

Council	
Address:	
Email:	
Representative:	

Item 2: Project

Project title	
Project description	
Project Commencement Date:	

Item 3: Funding Amount

Funding Amount:	
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Item 4: Payment of Funding Amount

Amount	Timing of Payment
\$[insert]	The later of: the Commencement Date; and 1 July 2022.

Item 5: Reporting Requirements

Report	Council's obligations	Reporting period
Project Progress Report	<p>The Project Progress Report must be in the form of the template made available to the Council and must include:</p> <ul style="list-style-type: none"> (a) the status of delivery against the Milestones; (b) any delay in the delivery of the Project; (c) details of the Project costs incurred to date; (d) Project risks/ issues; (e) key achievements in the reporting period; (f) copies of published reports and materials in relation to the Project; (g) photographs documenting the progress of the Project; (h) such other information reasonably requested by the Department; and (i) in the final Project Progress Report, the achievements of the Project <p>The Project Progress Report must be accompanied by copies of any certification reports issued to the Council, where required, for any Project works undertaken.</p>	A Progress Report to be submitted to the Department every [insert] months after the Project Commencement Date.

Item 6: Tax Invoice Requirements

1. All tax invoices must:
 - (a) be addressed to the Department's head office; and
 - (b) prominently be identified as "Tax Invoice", and contain:
 - (c) the Council's name;
 - (d) the Council's ABN;
 - (e) the name of Project;
 - (f) the milestone payment reference (i.e. 1st milestone);
 - (g) the amount requested;
 - (h) the GST component (listed separately to the amount requested); and
 - (i) the total amount requested.

SCHEDULE 2 – MILESTONES

Date of completion	Milestone	Funding Amount
Date of this Agreement	Milestone 1 Execution of this Agreement by the Department and the Council	\$
[insert date of completion for Milestone 2]	Milestone 2	
[insert date of completion for Milestone 3]	Milestone 3	

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SCHEDULE 3 – VARIATION SCHEDULE

1. Both parties acknowledge and agree that:

(a) the following clauses of this Agreement may be varied by completing the schedule below:

i. Schedule 2

(b) on and from the relevant Effective Date, the Clause is varied to as shown in the second column, 'Amended Clause':

Clause	Amended Clause	Effective Date	Department's Authorised Officer	Council's Authorised Officer

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ATTACHMENT 1 – PROJECT PLAN

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