

**THE CORPORATION OF THE CITY OF MARION**

and

**ISNA PTY LTD**

**NEVARC NOMINEES PTY LTD**

**CRAVEN SECURITIES PTY LTD**

**CRAVEN LAND PTY LTD**

**DEED**





- 1.2.5 “Connector Road” means the road which is to be constructed from Quailo Road just north of the intersection of Gledsdale Road and Shakes Crescent, Hallett Cove to the intersection of Berrima Road and Lander Avenue, Sheidow Park along the route of the disused railway line.
- 1.2.6 “Construction” includes all activities of any kind involved in the procurement of construction of the Connector Road;
- 1.2.7 “Craven’s Contribution” means the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) (excluding GST) to be paid to the Council by Craven adjusted in accordance with CPI as per Clauses 5 and 7;
- 1.2.8 “Fill” means uncontaminated dirt, soil, earth, rock or other material which is, in the reasonable opinion of the Council, suitable for use in the construction of the Connector Road;
- 1.2.9 “Liabilities” means debts, obligations, claims, losses, liabilities, costs or expenses of any kind and however arising, including penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertainable;
- 1.2.10 “Plan” means, subject to Clause 3, the plan as attached as Annexure 2.
- 1.2.11 “Works” means the design and construction of the Connector Road in accordance with recognised standards taking into account expected traffic and pedestrian movements.

### 1.3 **General**

Unless the contrary intention appears:

- 1.3.1 Words denoting the singular number only shall include the plural number and vice versa.
- 1.3.2 Reference to any gender shall include every other gender and words denoting individuals shall include corporations and vice versa.
- 1.3.3 Reference to any Act of Parliament, Statute or Regulation shall include any amendment currently in force at the relevant time and any Act of Parliament, Statute or Regulation enacted or passed in substitution therefor.
- 1.3.4 A reference to the “parties” means the parties to this Agreement.
- 1.3.5 Headings are for convenience of reference only and do not affect the interpretation or construction of this Deed.

### 1.8 **Contra Proferentem**

In the interpretation of this Deed, no rule of construction applies to the disadvantage of one party on the basis that that party put forward or drafted this Deed or any provision in it.

### 1.9 **Joint and Several**

Where a right is conferred or a Liability is imposed on two or more parties to this Deed (the "relevant parties"), a right conferred on the relevant parties is a right conferred on the relevant parties jointly and must be exercised jointly. A Liability imposed on the relevant parties is a Liability imposed on each of the relevant parties severally as well as all of the relevant parties jointly.

## 2. **COUNCIL'S OBLIGATIONS**

2.1 The Council acknowledges and agrees to use its best endeavours to undertake the following obligations:

- 2.1.1 to prepare plans and specifications depicting the construction of the Connector Road, in accordance with recognised standards taking into account expected traffic and pedestrian movements;
- 2.1.2 to procure the Completion of the Works within 24 months of signing a construction contract;
- 2.1.3 to provide two Access Points to the Connector Road from the Land as shown in the Plan;
- 2.1.4 to keep Craven informed of progress and provide Craven with written advice within 7 days of any variations to the Completion Date of the Connector Road.

### 2.2 **Awarding of Tender**

- 2.2.1 The parties acknowledge and agree that for the Council to procure the construction of the Connector Road it is required by its policies, procedures and other legislative requirements to undertake a tender process for the construction of the Connector Road in accordance with all relevant policies and procedures of the Council and other legislative requirements.
- 2.2.2 Council will use its best endeavours to accept an offer made by way of tender pursuant to the above tender process, which offers to undertake the construction of the Connector Road on terms and conditions, and for a cost, acceptable to the Council.
- 2.2.3 This clause does not require the Council to award a tender or continue a tender process if the Council is of the opinion that it should terminate the tender process or refuse to award the tender for reasons of probity or good governance.

- 5.2 Craven will pay Craven's Contribution, CPI adjusted according to Clause 7, to the Council within fourteen (14) days of Council entering into a construction contract for the Connector Road.
- 5.3 Craven agrees that from the date of this Deed until Council approves the commencement of the tender process and therefore Clause 6 applies, Craven will not mortgage, dispose of or otherwise deal with the Land subject to this Deed in a manner which is inconsistent with the intentions of the parties as set out in this Deed, unless the mortgagee or other third party agrees to be bound by the terms of this Deed.

## **6 BANKER'S UNDERTAKING**

- 6.1 Craven shall provide to the Council within fourteen (14) days of Council approving the commencement of the tender process as outlined in Clause 2.2 a Banker's Undertaking payable to the Council and from a financial institution having an office in Adelaide in the amount of Craven's Contribution CPI adjusted to the date outlined in Clause 7.2.
- 6.2 The Banker's Undertaking may be called upon by the Council to discharge or partially discharge any liability or potential liability of Craven to the Council as a result of the failure of Craven to perform its obligations under this Deed. The Council may call upon the Banker's Undertaking at any time without reference to Craven.
- 6.3 Where the Council has not called upon the Banker's Undertaking, the Council shall as soon as reasonably practicable after receiving Craven's Contribution return the Banker's Undertaking to Craven.

## **7. PAYMENT REVIEW - CPI**

- 7.1 The payment made by Craven pursuant to Clause 5.2, will be reviewed and adjusted on the date that the Council issues written demand for that payment ("the Payment Review Date") so that the payment shall be re-calculated and adjusted by a proportion equivalent to the proportional change in the Consumer Price Index ("the CPI") over the period from 2 December 2004 to the Payment Review Date.
- 7.2 The amount for the Banker's Undertaking provided by Craven pursuant to Clause 6, will be reviewed and adjusted on the date that the Council approves the commencement of the tender process according to Clause 2.2 ("the Banker's Undertaking Review Date") so that the amount for the Banker's Undertaking shall be re-calculated and adjusted by a proportion equivalent to the proportional change in the Consumer Price Index ("the CPI") over the period from 2 December 2004 to the Banker's Undertaking Review Date.
- 7.3 For the purposes of this Deed:
  - 7.3.1 CPI means the Consumer Price Index for Adelaide, All Groups, published from time to time by the Commonwealth Bureau of Statistics;

13.3 transmitted by facsimile to the recipient party's address.

For the purposes of this clause, a reference to an address means the party's principal and current business address which in the absence of notice to the contrary is deemed to be the address stated herein.

14. **GST**

14.1 **All amounts are GST exclusive amounts**

Subject to this Clause 14, all amounts expressed or described in this Deed are GST exclusive amounts.

14.2 **All amounts to be increased for any GST**

If any GST (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time, 'GST') is payable by any party ('Supplier') in respect of the supply of any goods, services, real property or any other things to another party ('Recipient'), then the amount expressed or described in this Deed ('Original Amount') is to be increased so that the Supplier receives an amount ('Increased Amount') which, after subtracting the GST liability of the Supplier on that Increased Amount, results in the Supplier retaining the Original Amount after payment of that GST liability.

14.3 **Supplier to assist Recipient**

The Supplier will do all things reasonably available to it to assist the Recipient to claim on a timely basis any input tax credits the Recipient may be entitled to claim for any acquisition of goods, services, real property or any other thing from the Supplier. This includes the Supplier maintaining its registered status for GST purposes, and issuing tax invoices for supplies made under this Deed on a timely basis as reasonably requested by the Recipient.

**EXECUTED** as a Deed.

**THE COMMON SEAL OF THE )  
CORPORATION OF THE CITY OF )  
MARION** was hereunto affixed in the )  
presence of: )

.....  
Chief Executive Officer

.....  
Mayor

**THE COMMON SEAL of ISNA PTY )  
LTD** was hereunto affixed in the )  
presence of: )  
)

**ANNEXURE 1**

Map depicting the route of Connector Road



**ANNEXURE 2**

Access Points to the Connector Road from the Land

