

Deed of Amendment No.2 Capital Metro Project - Project Agreement

The Australian Capital Territory
Territory

Canberra Metro Pty Limited
Project Co

Clayton Utz
Lawyers
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 920/13551/0000

Contents

1.	Definitions and Interpretation	1
1.1	Definitions	1
1.2	Definitions in Project Agreement	1
1.3	Interpretation.....	1
1.4	Capacity of Project Co	1
2.	Amendments to the Project Agreement	2
3.	Binding effect of this deed	2
4.	Ratification of Project Agreement	2
5.	General	2
5.1	Governing Law and jurisdiction	2
5.2	Further acts and documents	2
5.3	Entire agreement	3
5.4	Expenses	3
5.5	Stamp duty.....	3
5.6	No representation or reliance	3
5.7	Counterparts	3
	Attachment 1 – Amendment to the Project Agreement	4

Deed of Amendment No.2

Date _____ March 2017

Parties **The Australian Capital Territory**, the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (Cth) represented by Transport Canberra and City Services (**Territory**)

Canberra Metro Pty Limited ACN 612 075 868 in its personal capacity and as trustee for the Project Trust (**Project Co**)

Background

- A. The Territory and Project Co have entered into the deed entitled "Capital Metro Project - Project Agreement" dated 17 May 2016 (**Project Agreement**).
- B. The Territory and Project Co have agreed to amend the Project Agreement on the terms set out in this deed.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed:

Effective Date means the date on which all parties have executed and delivered this deed.

1.2 Definitions in Project Agreement

Unless otherwise expressly defined in clause 1.1, expressions used in this deed have the meanings given to them in or for the purposes of the Project Agreement.

1.3 Interpretation

The parties agree to be bound by clause 2.1 (Interpretation) of the Project Agreement as if set out in its entirety in this clause 1.3, except that for the purposes of this deed, references in clause 2.1 (Interpretation) of the Project Agreement to "this Agreement" or "the Project Agreement" are to be read as references to "this deed".

1.4 Capacity of Project Co

- (a) Insofar as Project Co enters into this deed in its capacity as trustee of the Project Trust, it must remain trustee of the Project Trust, subject to clause 46.5(e) (Project Trust undertakings) of the Project Agreement, until the expiry or satisfaction of all of Project Co's obligations under this deed.
- (b) A liability of Project Co arising under or in connection with this deed (whether that liability arises under a specific provision of this deed, for breach of contract or otherwise), is a liability that can be enforced against Project Co both in its own right and in its capacity as trustee of the Project Trust, unless the liability relates only to an asset which Project Co holds in its personal capacity and not as trustee, in which case the liability can only be enforced against Project Co in its personal capacity.

2. Amendments to the Project Agreement

The parties agree that on, and with effect from, the Effective Date, the Project Agreement is amended in accordance with Attachment 1 to this deed.

3. Binding effect of this deed

The parties agree that on, and with effect from, the Effective Date,

- (a) each party to the Project Agreement is bound by the Project Agreement as amended by this deed; and
- (b) any reference in a Project Document to the Project Agreement is a reference to the Project Agreement as amended by this deed.

4. Ratification of Project Agreement

The parties agree that:

- (a) this deed varies the Project Agreement, and does not terminate, discharge, rescind or replace the Project Agreement;
- (b) the amendments to the Project Agreement do not affect the validity or enforceability of the Project Agreement;
- (c) nothing in this deed:
 - (i) prejudices or adversely affects any right, power, authority, discretion or remedy which arose under or in connection with the Project Agreement prior to the date of this deed; or
 - (ii) discharges, releases or otherwise affects any liability or obligation which arose under or in connection with the Project Agreement before the date of this deed;
- (d) this deed is supplemental to the Project Agreement and, except as otherwise expressly provided to the contrary, the Project Agreement is expressly ratified and confirmed.
- (e) if there is any conflict, apparent conflict, discrepancy, ambiguity or inconsistency (**Inconsistency**) between the terms and conditions of the Project Agreement and those of this deed then this deed will, to the extent of the Inconsistency, prevail.

5. General

5.1 Governing Law and jurisdiction

This deed is governed by, and must be construed according to, the Laws governing the Project Agreement.

5.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to both parties) required by Law or reasonably requested by another party to give effect to this deed.

5.3 Entire agreement

To the extent permitted by Law and in relation to their subject matter, this deed:

- (a) **(entire understanding)**: embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and
- (b) **(prior agreements)**: supersede any prior agreement of the parties.

5.4 Expenses

Except as otherwise expressly provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

5.5 Stamp duty

Project Co must

- (a) pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed; and
- (b) indemnify each other party against any liability arising from failure to comply with clause 5.5(a).

5.6 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

5.7 Counterparts

This deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

Attachment 1 – Amendments to the Project Agreement

1. Amendments to the Project Agreement

- (a) The Parties agree that on and with effect from the Effective Date, Clause 1.1 of the Project Agreement is amended as follows:

“**Insurance Component** means:

- (a) the insurance component (being the insurance premiums, statutory charges and fees) of the Monthly Service Payment payable in respect of the relevant Benchmarked Insurances;
- (b) \$5,000 per LRV per annum (CPI Indexed) in respect of compulsory third party insurance; and
- (c) any amount payable under clause 39.16(d).”

- (b) The Parties agree that on and with effect from the Effective Date, clause 10.9(b), clause 10.9(c) and clause 10.9(d) are omitted from the Project Agreement.

- (c) The Parties agree that on and with effect from the Effective Date, the Project Agreement is amended, per Minor Modification Proposal – Review of Project Plans (dated 2 August 2016), with the following new section inserted into Project Agreement Schedule 11 after Section 1.2:

“1.2A Review of Project Plans

- (a) The Territory will review Project Plans submitted in accordance with Section 1.1 of this Schedule and provide any comments or conditions in writing to the Independent Certifier within 14 Business Days of receipt of the Submitted Document;
- (b) The Independent Certifier will review Project Plans submitted in accordance with Section 1.1 of this Schedule and shall:
- (i) prepare a table containing any comments or conditions the Independent Certifier has in relation to the Submitted Document;
- (ii) prepare a consolidated table of the Independent Certifier’s and the Territory’s comments or condition within 16 Business Days of receipt of the Submitted Document; and
- (iii) provide the document prepared pursuant to Section 1.2A(b)(ii) to Project Co within 16 Business Days of receipt of the Submitted Document.
- (c) Subject to Section 1.2A(a) and Section 1.2A(b) of this Schedule, the Territory, the Independent Certifier and Project Co must meet within 3 Business Days after the expiry of the period in Section 1.2A(b)(iii) to discuss and confer on the “comments” or “conditions” in response to the Project Plans.”

- (d) The Parties agree that on and with effect from the Effective Date, the Project Agreement Schedule 8 Section 4.2 is amended, per Minor Modification Proposal – Coranderrk Access Date (dated 10 August 2016), changing the access date to temporary land section City Block 8, Section 37, at the corner of Constitution Avenue and Coranderrk Street (Car Park) from “31/7/2016” to “31/8/2016”.
- (e) The Parties agree that on and with effect from the Effective Date, the Project Agreement Schedule 8 Section 4.1 is amended, per Minor Modification Proposal – Land Access at Flemington Road (dated 28 October 2016), changing the access date to the Area 1 and Area 2 of the intersection of Manning Clark and Flemington Road to 4/11/2016 for Area 1 and 30/11/2016 for Area 2.
- (f) The Parties agree that on and with effect from the Effective Date, the Project Agreement is amended, per Minor Modification Proposal – Commencement of review period (dated 7 September 2016), with the following section added after the Project Agreement Schedule 7 Appendix 11 Section 1.1 (c) (iii).
- “ (iv) the period that commences as the first business day, following the date of receipt; and where that day is not a weekend, Canberra related public holiday or rostered day off (RDO)”

Executed as a deed.

Signed for and on behalf of the **Territory** by its duly appointed delegate in the presence of:

Signature of Witness

Signature of Delegate

Full name (print)

Full name (print)

Signed by **Canberra Metro Pty Limited** in its personal capacity and as trustee for **Capital Metro Trust** by its attorney

in the presence of

sign here ► _____
Attorney

sign here ► _____
Witness

print name _____

print name _____