

2. CONCESSIONAL DEVELOPMENT CONTRIBUTION RATE

- 2.1. The Parties acknowledge and agree that the Concessional Development Contribution Rate will apply in respect of any development on the Land that is approved by the Shire during the Share Period.
- 2.2. The Shire will not terminate this Agreement at any point during the Share Period.
- 2.3. If the College breaches this Agreement and the use of the Facilities are terminated during the Share Period, the College must pay the full development contribution to the Shire in accordance with Shire of Serpentine Jarrahdale Town Planning Scheme No. 2.
- 2.4. At the expiration of the Share Period or subsequent Extension Period (as exercised by the Shire under Clause 1.4) and on payment of the Concessional Development Contribution Rate for the development of the College, the liability to pay full development contribution to the Shire expires.

3. SAFETY

- 3.1. The Parties acknowledge and agree that the safety of all users, including the College's students, is of important consideration.

4. DEVELOPMENT OF FACILITIES

- 4.1. The College agrees to develop at its cost and, subject to clause 13, maintain the Facilities, within 5 years of the date of this Agreement, subject to obtaining all required approvals from all relevant Authorities. The College must use Reasonable Endeavours to obtain these approvals.
- 4.2. Should the Facilities not be developed within 5 years, this Agreement will terminate unless an extension is agreed by the Shire. In the event of termination, the College will be liable to pay to the Shire the full non-concessional development contribution in accordance with the prevailing development contribution rate, within 60 days of the date of termination.

- 4.3. The Shire acknowledges that it may grant an extension (not to be unreasonably withheld) to the timeframe listed in 4.1, if the College is unable to develop the Facilities as it is unable to obtain all required approvals from all relevant Authorities, funding for the development or secure a groundwater bore resource for the Facilities.
- 4.4. The Shire will use reasonable endeavours to assist the College with obtaining an allocation of water to the Land.
- 4.5. The College and the Shire agree to work in good faith to set out seasonal use arrangements that reflect the needs of both Parties, and the Authorised Times of Use as defined by Item 6 of the Schedule.

5. SHIRE ACCESS

- 5.1. The College shall ensure access for the Shire and general public to the Facilities in accordance with the Authorised Times of Use for the Permitted Use.
- 5.2. The College acknowledges that the Shire will promote the Facilities for junior sport and recreational purposes in accordance with the Permitted Use.
- 5.3. The College acknowledges that the Facilities will also be available for public use as defined by the Permitted Use definition under this Agreement.

6. USE OF THE FACILITIES

- 6.1. The Parties shall use reasonable endeavours to ensure that the Facilities are left in a clean and safe condition free from litter waste and rubbish at all times.
- 6.2. The College will maintain the Facilities in a suitable condition for the Permitted Use.
- 6.3. The College shall use all reasonable endeavours to conduct maintenance works on the Facilities in a manner that does not impact on use of the Facilities by the Shire in accordance with the Authorised Times of Use. In the case where the College is required to conduct maintenance works on the Facilities which may impact Permitted Use by the Shire, the College shall

first notify the Shire at least 4 weeks' prior, to allow the Shire to make arrangements in order to minimise the disruption to pre-arranged bookings. The general public will be given sufficient notice to advise when access to the Facilities may not be available due to maintenance.

- 6.4. The College shall provide, at the beginning of each year, its annual maintenance plan to enable considerations in respect of potential restrictions on use of the Facilities. This maintenance is to be to a standard of an oval used for junior sporting purposes.

7. DAMAGE OR DESTRUCTION

- 7.1. The College will remedy any damage to the Facilities as soon as practicable.
- 7.2. The Party responsible for that damage must pay for those costs incurred by the College for remedying any damage to the Facilities.
- 7.3. The Shire will not be held liable for any damage caused by the general public.

8. NON-PERMITTED ACTS

- 8.1. Both Parties shall not:
- (a) permit any person under their control to act unlawfully, indecently or disorderly on the Facilities;
 - (b) do anything on the Facilities which may give rise to the nuisance, disturbance or annoyance to any occupier in the vicinity of the Facilities, other than where permitted by the prevailing legislation;
 - (c) bring onto, or store on the Facilities anything of a dangerous, hazardous or flammable nature;
 - (d) do anything which causes pollution or contamination of the Facilities;
 - (e) permit any person to smoke, vape and/or consume alcohol; or
 - (f) enter any of the adjacent educational facilities on the Land.
- 8.2. The College acknowledges that the Shire is not responsible for regulating the behaviours of the general public in regard to Clause 8.1.

8.3. The Parties agree to work collaboratively to address issues of antisocial behaviour and/or vandalism.

9. BOOKINGS FOR LARGER EVENTS or ADDITIONAL USE

9.1. The College may seek to use its Facilities outside the Authorised Times of Use, such as for a large event or gathering, by providing the Shire with at least 4 weeks' notice.

10. SIGNAGE

10.1. Should the Shire wish to affix or erect any sign on the Facilities, the Shire shall first obtain approval in writing by the College. If such approval is given, the Shire shall undertake all necessary approvals and be responsible for the costs of erecting the sign and shall be responsible for maintaining the sign in good repair and condition. All out of date signage will be removed.

11. INSURANCE

11.1. Both Parties must maintain a public liability policy of insurance with a cover for any one occurrence of not less than the amount specified in Item 7 of the Schedule.

11.2. Each Party must note the interests of the other Party on their insurance policy.

12. INDEMNITY

12.1. Each Party shall indemnify and keep indemnified the other Party (including its officers, employees, agents, contractors, licensees, invitees or representatives) and against all Loss incurred or suffered by or brought against any of those indemnified to the extent that the same was caused or contributed to by any tortious or other unlawful act or omission (including breach of a contractual term, condition or warranty) by the first mentioned Party or any of its officers, employees, agents, contractors, licensees, invitees or representatives.

13. MAINTENANCE COSTS OF FACILITIES

- 13.1. The Parties will be responsible for the cost and labour to undertake the maintenance of the Facilities based on the proportional use of the Facilities. This will be determined every three (3) months in arrears, based on the following formula:

Maintenance Cost For Previous 3 Month Period	= A
Total Facility Hours Available During 3 Month Period	= X
College Exclusive Use	= Y
Shire Booked Use For Junior Sports	= Z
College Cost	= $(Y/X) \times A$
Shire Cost	= $(Z/X) \times A$

- 13.2. The College will undertake required maintenance of the Facilities, in accordance with standards for a junior sporting oval. Required maintenance must maintain this standard for junior sporting at all times.
- 13.3. Upon agreement to the calculation under 13.1 by both Parties, the College will invoice the Shire for payment based on a three (3) month in arrears schedule.

14. **FENCING AND LOCKING OF THE FACILITIES**

- 14.1. The Parties acknowledge and agree that the College may, at its cost, install a 1.8m high perimeter fence on the outside boundary of the Facilities, with gated entry linked to the future car park, located in the south east corner of the oval.
- 14.2. The gated entry to the southern property boundary (Mead Street) will only be locked during the College's exclusive use times, as defined in Item 6. For the avoidance of doubt, outside of the College's exclusive use times, the gated entry will be unlocked during the following times:
- Summer timetable:
Weekdays (school term): 05:30am to 07:30am, 5:00pm to 08:00pm
Weekends and school holidays: 05:30am to 08:00pm
 - Winter, Spring and Autumn timetable:
Weekdays (school term): 06:00am to 07:30 am, 5:00 pm to 06:30pm
Weekends and school holidays: 06:00am to 06:30pm
- 14.3. The College is responsible (including costs incurred) for the locking and unlocking of gates as per Clause 14.2.
- 14.4. Clause 14.2 does not include the associated basic toilet and storage component of the Facilities, which are to remain locked outside of the College's exclusive use times, except when in use for booked formalised junior sports.
- 14.5. The College will provide access keys to the Shire to enable access to the basic toilet and storage component of the Facilities in accordance with Clause 14.3.

15. COSTS

- 15.1. The College shall pay all reasonable costs incurred relating to the negotiations and instructions for the preparation and completion of this Agreement by the Shire's nominated solicitors.

16. ASSIGNMENT AND SUBLICENSING

- 16.1. The College may not assign, transfer, financially or physically encumber or otherwise dispose of the Land or the Facilities or any part thereof or the

rights, liberties or authorities granted to the College under this Agreement, unless such assignee, transferee, mortgagee or charge first enter into this Agreement with the Shire.

17. STATUTORY OBLIGATIONS AND NOTICES

- 17.1. Each Party and its Visitors shall at all times promptly comply with the provisions of any Statute, local laws, relevant codes and standards published by Standards Australia (including without limitation the Building Code of Australia) in force.
- 17.2. Each Party shall follow all directions, order, notices, requests required under any Federal or State Act and local laws relating to its use of the Facilities or relating to the Permitted Use.
- 17.3. Each Party shall promptly advise the other Party in writing of any requirements and orders of any Authority that it receives or becomes aware of which affect its use of the Facilities.

18. GST

Recovery of GST

- 18.1. Terms that are defined in the GST Act have the same meaning when used in this clause 9.
- 18.2. If GST is or will be imposed on a supply made by a party under or in connection with this Agreement, either Party may, to the extent that the consideration otherwise provided for that Supply under this document is not stated to already include an amount in respect of GST on the Supply:
- a) increase the consideration otherwise provided for that supply under this document by the amount of that GST; or
 - b) otherwise recover from the recipient the amount of that GST.

Invoices required

- 18.3. The recovery of any amount in respect of GST by either Party under this Agreement on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient.

19. NOTICE

19.1. Notices that may or must be sent under or in connection with this Agreement shall be in writing and signed by the Party or representative of the Party giving notice.

19.2. A notice is deemed to be given or made:

- (a) by hand-delivery; or
- (b) by registered post to the recipient's nominated mailing address set out below in this clause; or
- (c) by email.

19.3. A Notice given in accordance with this clause is taken to be received:

- (a) if hand-delivered, immediately upon delivery; or
- (b) if sent by registered post, on the third Business Day after the date of posting (or the seventh Business Day after the date of posting to or from a place outside Australia); or
- (a) when the email enters the recipient's information system.

19.4. A Notice which is delivered after the normal business hours of the Party to whom it is delivered or sent, is to be treated as having been given or made at 9.00am the next Business Day.

19.5. The following are each Party's nominated address:

College: [department/attention],
[organisation name]
[address]
[suburb]

Shire: Chief Executive Officer
Shire of Serpentine Jarrahdale
6 Paterson Street
MUNDIJONG WA 6123
info@sjshire.wa.gov.au

20. TERMINATION

- 20.1. Neither Party may terminate this Agreement during the Share Period for convenience.
- 20.2. If this Agreement is terminated by the College, the College must make payment to the Shire of its full non-concessional development contribution in accordance with the prevailing development contribution rate.

21. DISPUTE RESOLUTION

- 21.1. If any Dispute or difference arises between the Parties in connection with any aspect of this Agreement, the Parties will refer the matter to a nominated representative of CEWA Ltd and a nominated representative of the Shire for the negotiation who will have authority to settle the dispute on behalf of the Parties.
- 21.2. If CEWA Ltd and the Shire cannot settle the dispute within 28 days of the matter being referred to them then the dispute or difference shall be referred to and determined by arbitration under and in accordance with the provisions of the *Commercial Arbitration Act 2012* and any party may be represented by a duly qualified legal practitioner or other representative.
- 21.3. The preceding provisions of this clause shall not prevent a party from litigating with a view to seeking urgent interlocutory, declaratory or injunctive relief.

22. NO FETTER

The Parties acknowledge that the Shire is a local government established by the *Local Government Act 1995*, and in that capacity, the Shire may be obliged to determine applications for consent, approvals, authorities, licences and permits pursuant to written law governing such applications. The Shire shall not be taken in default or fettered under this Agreement by performing its statutory obligations or statutory discretions.

23. ACTS BY AGENT

23.1. All acts or things which the Shire is required to do under this Agreement may be done by the Shire, the CEO, an authorised employee, solicitor, or contractor of the Shire.

23.2. All acts or things which the College is required to do under this Agreement may be done by the College, the Principal or an authorised employee or solicitor of the College.

24. VARIATION

This Agreement may only be varied by agreement and signed in writing by both Parties.

25. SEVERANCE

25.1. If:

- (a) a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way;
- (b) any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected; and
- (c) the removal of a clause or part of a clause under clause 25.1(b) materially alters the commercial allocation of benefit and risk (or management of risk) under this Agreement, the parties agree to negotiate in good faith to amend or modify the terms of the Agreement as may be necessary or desirable having regard to the original terms of the bargain and the prevailing circumstances.

26. STATUTORY POWERS

26.1. The powers conferred on the Parties by or under any statute (except to the extent inconsistent with the terms expressed in this Agreement) are in extension of the powers conferred on the Parties by this Agreement.

26.2. The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

27. GOVERNING LAW

This Agreement is governed by the law in force in Western Australia. Each Party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising in connection with this Agreement. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

28. TIMELINESS

The Parties shall use all reasonable endeavours to ensure that the performance and observance of the provisions of this Agreement shall be fulfilled in a timely and prompt manner.

29. WAIVER

- 29.1. Failure to exercise or delay in exercising (whether full or partial) any right, power or privilege in this Agreement by a Party does not operate as a waiver of that right, power or privilege.
- 29.2. No right of any Party under this Agreement shall be deemed to be waived except where such a waiver is in writing signed by or on behalf of that Party.
- 29.3. A waiver by a Party shall not prejudice the rights of that Party in respect of any subsequent or other breach of the Agreement by the other Party.
- 29.4. A failure by a Party to enforce any provision of this Agreement or any forbearance, delay or indulgence granted by a Party to the other shall not be construed as a waiver of the first mentioned Party's rights under this Agreement.

30. MISCELLANEOUS

- 30.1. The Parties must do everything reasonably necessary, including signing further documents, to give full effect to this Agreement.

- 30.2. Nothing in this Agreement may be construed to make the Shire a partner, agent, employee or joint venturer of the College or Roman Catholic Archbishop of Perth.
- 30.3. Whenever the consent of a Party is required under this Agreement:
- (a) that consent may be given or withheld by that Party in its absolute discretion and may be given subject to such conditions as that Party may determine;
 - (b) the Parties agree that any failure by a Party to comply with or perform a condition imposed under clause 30.3(a) will constitute a breach of this Agreement by that Party.

31. DEFINITIONS

In this Agreement unless the contrary intention appears:

Authorised Times of Use means the authorised times of use specified in **Item 6** of the Schedule.

Authority means any entity, person or group of persons empowered by Statute or otherwise to perform and carry out public regulatory administrative or executive functions of Commonwealth, State or local government.

Business Day means any day other than a Saturday, Sunday or public holiday in Western Australia.

CEO means the local government chief executive officer.

College means the College specified in **Item 3** of the Schedule.

Concessional Development Contribution Rate means 0.3% of the total cost of any development on the Land.

Dispute means any real or perceived conflict, difference of opinion, or unresolved issue arising in connection with this Agreement or the parties' rights or obligations under this Agreement, or the Facilities.

Extension Period means the periods of extension specified in **Item 5** of the Schedule.

Facilities means the facilities specified in **Item 2** of the Schedule.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999*.

Land means the land specified in **Item 1** of the Schedule.

Loss means loss, damage, liability, lawsuit, action, writ, proceeding, cost or expense.

Party depending on the context means the Shire or the College.

Permitted Use means the use specified in **Item 4** of the Schedule.

Principal means the principal or acting principal of the College.

Reasonable Endeavours means the taking by the person subject to the obligation of all the reasonable steps, which a prudent and conscientious person having willingly undertaken the obligations would take to achieve the object of the obligation.

Schedule means the schedule annexed to this Agreement.

Share Period means the period specified in **Item 5** of the Schedule.

State means the State of Western Australia and any government department, agency and instrumentality thereof.

Statute includes all Statutes (State and Commonwealth) for the time being enacted or modifying any Statutes and all regulations, bylaws and other statutory orders and instruments made under any Statute.

Visitor includes officers, employees, agents, contractors, licensees, invitees or representatives of a Party. In the case of the College, 'Visitor' includes students of the College.

32. INTERPRETATIONS

In this Agreement unless a contrary intention appears:

- (a) references to a person include that person's legal personal representatives, assigns and successors;
- (b) an obligation on the part of two or more parties shall bind them jointly and severally and a right in favour of two or more parties shall be enforceable by them jointly and severally;
- (c) references to this Agreement include its schedules and annexures;
- (d) references to a person which has ceased to exist or has been amalgamated, reconstituted or merged or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- (e) words importing any gender include the other genders;
- (f) headings shall be ignored in the construction of this Agreement;
- (g) reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them but this is not to be taken as implying that performance of part of an obligation is the performance of the whole;
- (h) where time is to be calculated from a day or event, such day or the day of such event shall be excluded;
- (i) words importing the singular include the plural and vice versa;
- (j) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
- (k) references to persons include corporations and vice versa;
- (l) references to time are to local time in Perth, Western Australia;
- (m) references to this Agreement or any other document include the document as varied, extended, renewed or replaced, and notwithstanding any change in the identity of the parties thereto;
- (n) references to a statute whether by name or otherwise includes the amendments to the statute for the time being in force and also any statute passed in substitution for it or in lieu of it and all subsidiary or subordinate legislation for the time being in force under it;
- (o) if a word or phrase is defined, cognate words and phrases have corresponding definitions;

- (p) reference to a clause means a clause of this Agreement;
- (q) all the provisions in the Schedule are incorporated in and form part of this Agreement.
- (r) no rules of construction apply to disadvantage a Party on the basis of that Party being responsible for the preparation of this Agreement or any part of it;
- (s) reference to \$ or Dollars is a reference to Australian dollars;
- (t) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (u) reference to the College using the Facilities means and includes use of the Facilities by the College or any of the College's Visitors; and
- (v) reference to the Shire using the Facilities means and includes the use of the Facilities by the Shire or any of the Shire's Visitors.

SIGNING PAGE

EXECUTED by the Parties

The seal of the Roman Catholic Archbishop of Perth

was hereunto affixed by _____

The Roman Catholic Archbishop of Perth

for the time being and attested by him

in the presence of:

Signature of witness

Seal

Name of witness

Signature of Archbishop

Address of witness

The **COMMON SEAL** of the)

SHIRE OF SERPENTINE JARRAHDALE)

Was hereunto affixed in the presence of:)

(Signed)

(Position)

(Print Full Name)

(Signed)

(Position)

(Print Full Name)

ANNEXURE A - PLAN

- MASTERPLAN LEGEND:
- 01 FUTURE PARISH PRECINCT
 - 02 PERFORMING ART CENTRE (FUTURE)
 - 03 MUSIC & FOOD TECHNOLOGY CENTRE
 - 04 DESIGN AND TECHNOLOGY CENTRE
 - 05 GENERAL LEARNING AREAS
 - 06 GYMNASIUM AND SPORT CENTRE
 - 07 ART, SCIENCE & RESOURCE CENTRE
 - 08 ADMINISTRATION
 - 09 COVERED ASSEMBLY
 - 10 ELC & YEAR 1 & 2 LEARNING SPACES
 - 11 RESOURCE CENTRE
 - 12 YEAR 3 & 4 LEARNING SPACE
 - 13 STAFF RESOURCES
 - 14 YEAR 5 & 6 LEARNING SPACE
 - 15 TRANSPORTABLE
 - 16 SHED
 - 17 PLAZA
 - 18 OVAL (AFL, RUGBY, ATHLETICS)
 - 19 HARD COURTS
 - 20 SOCCER PITCH
 - 21 CAR PARKING
 - 22 SERVICES & DELIVERIES
 - 23 WETLAND & WATER MANAGEMENT
 - 24 POSSIBLE SHARED USE FACILITY
 - 25 MAINTENANCE AND GROUNDS KEEPING
 - 26 CRICKET PRACTICE NETS
 - 27 LOCKER PODS
 - 28 BIKE STORAGE

