



GOVERNMENT OF  
WESTERN AUSTRALIA

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**FINANCIAL ASSISTANCE AGREEMENT – Byford Nature Splash Park**

**21/2091**

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**THE DEPARTMENT OF LOCAL GOVERNMENT, SPORT  
AND CULTURAL INDUSTRIES**

**AND**

**Shire of Serpentine Jarrahdale**

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**THIS Agreement is made between:**

**State of Western Australia acting through the Department of Local Government, Sport and Cultural Industries of 246 Vincent Street Leederville WA 6007 (DLGSC)**

and

**Shire of Serpentine Jarrahdale of 6 Paterson Street, Mundijong, WA 6123 ABN 98 924 720 841 (Recipient)**

**OPERATIVE PART**

**THE PARTIES AGREE as follows:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, unless repugnant to the context:

**Agreement** means this Financial Assistance Agreement including any schedules or annexures.

**Acquittal** occurs when DLGSC has advised the Recipient that the reports and financial information provided by the Recipient in accordance with clause 3.5 (c) are satisfactory.

**Approved Budget** means the budget approved by the DLGSC and set out in Schedule 4.

**Auditor** means a person who is an approved auditor for the purposes of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or a Registered Company Auditor and who is independent of the Recipient.

**Auditor General** means the Auditor General for the State of Western Australia.

**Business Day** means a day, not being a Saturday, Sunday or public holiday, on which banks are open for general banking business in Western Australia.

**Completion Date** means that date for completion of the Project as specified in, or ascertainable from, Schedule 4.

**DLGSC** means Department of Local Government, Sport and Cultural Industries entering into this Agreement or such other body or instrumentality that is charged with the administration of this Agreement from time to time on behalf of the State.

**Evaluation or Audit** includes to audit, examine, investigate, inspect, review or evaluate.

**Funding** means the amount specified in Schedule 4, including any interest accrued on that amount.

**Insolvency Event** means the happening of any of these events:

- a. an order is made, or an application is made to a court for an order, that a body corporate be wound up; or
- b. except to reconstruct or amalgamate while solvent, a body corporate:
  - (i) is wound up or dissolved; or
  - (ii) resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so; or
  - (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or
- c. a special administrator is appointed under Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or
- d. a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- e. a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- f. any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against, any asset or undertaking of a body corporate; or
- g. the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment of money or the recovery of any property; or
- h. a body corporate:
  - (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
  - (ii) stops or suspends payment of all, or a class of, its debts; or
  - (iii) is or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
    - (a) insolvent or unable to pay its debts when they fall due; or
    - (b) the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth); or

- (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F (1) of the *Corporations Act 2001* (Cth); or
- (v) ceases, or threatens to cease, to carry on all or a material part of its business; or
- i. a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken which could result in that event; or
- j. anything analogous or having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Milestones** means the milestones and outcomes howsoever expressly or impliedly set out in Schedule 4 (if any).

**Obligation** means obligation under this Agreement.

**Party** means each of DLGSC or the Recipient as the context requires and **Parties** means both of them.

**Probity Event** means an event that:

- (a) has a material adverse effect upon the character, honesty and integrity of an officer of the Recipient;
- (b) relates to an officer of the Recipient and has a material adverse effect upon the public interest;
- (c) involves a material failure to achieve or maintain reasonable standards of ethical behaviour;
- (d) involves a material failure to achieve or maintain good corporate citizenship;
- (e) involves a material failure to maintain the avoidance of conflicts of interest; or
- (f) involves a material failure to achieve or maintain standards of behaviour expected of a person engaged in a State funded project.

**Project** means the initiative or activities funded for the purpose described in Schedule 4.

**Registered Company Auditor** means a person who is, for the time being, registered as an auditor or taken to be registered as an auditor under Part 9.2 of the *Corporations Act 2001* (Cth).

**Schedule** means any schedule to, and forming part of, this Agreement.

**Special Conditions** means any conditions specified as such in Schedule 4.

**State** means the State of Western Australia.

**Term** means the term of this Agreement.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to persons include corporations;
- (d) references to a person include the legal personal representatives, successors and assigns of that person;
- (e) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) references to this Agreement or any other instrument include this Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the Parties;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail and facsimile transmission;
- (h) an Obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (i) if a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (j) references to this Agreement include its recitals, schedules and annexures;
- (k) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (l) references to time are local time in Perth, Western Australia;
- (m) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (n) references to currency are to Australian currency unless otherwise stated;
- (o) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Agreement or any part thereof;
- (p) a reference to any thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (q) when the day or last day for doing an act is not a Business Day, then the day or last day for doing the act will be the directly preceding Business Day;

- (r) if the word “including” or “includes” is used, the words, “without limitation” are taken to immediately follow; and
- (s) the phrases "described in", "set out" and "specified in" must all read as if the words "expressly or impliedly" appeared immediately before them.

## **2. SCOPE OF THIS AGREEMENT**

- (a) The Recipient must:
  - (i) acquit and carry out all aspects of the Project in a competent, diligent, satisfactory and professional manner, and to a high standard;
  - (ii) comply with this Agreement; and
  - (iii) where necessary, provide appropriate additional funding and other resources, including staff with the capacity to meet its Obligations.
- (b) The DLGSC must pay to the Recipient the Funding in the manner set out in Schedule 4 and Schedule 5.
- (c) The Recipient must:
  - (i) notify DLGSC of legal proceedings, arbitration or administrative proceedings or debt recovery actions pending or threatened against the Recipient as soon as practicable after the institution of those proceedings or that debt recovery action;
  - (ii) notify DLGSC immediately if the Recipient is in breach of any law or act, receives an audit qualification or is under scrutiny through an inquiry or decree or any consent, registration, approval, licence or permit or agreement, order or award binding on the Recipient;
  - (iii) notify DLGSC immediately if the Recipient becomes aware of any fraud or corruption with regards to the Project or the Funding;
  - (iv) keep and maintain accurate, complete, up-to-date, properly detailed written records of income, expenditure, work, activities, progress, setbacks, problems and business and commercial arrangements and dealings in relation to either or both of this Agreement and the Project, and promptly provide DLGSC with information or documentation (relating in any way to the Project or this Agreement) requested by DLGSC. The Recipient must ensure that all such information or documentation (as the case may be) is accurate, complete, up-to-date, properly detailed and not in any way misleading or deceptive;
  - (v) establish a separate account or cost centre within its financial system solely for the Funding;
  - (vi) immediately notify DLGSC in writing if it forms the opinion that it will be unable to, or be unlikely to be able to, satisfy any of its financial obligations in relation to the Project from the financial resources available, or likely to be available, to it, at the time the financial obligation is due;



- (vii) if a conflict of interest arises:
  - (A) promptly notify DLGSC that the conflict has arisen and provide full details; and
  - (B) take reasonable steps in consultation with DLGSC to remove the conflict.

If the Recipient does not notify DLGSC of a conflict of interest which exists or if the conflict cannot be removed, DLGSC may, without limiting any other remedy, by notice to the Recipient, immediately terminate this Agreement;

- (viii) not offer or give or agree to give any person employed by the Government of Western Australia any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement; and
- (ix) ensure that any "Lobbyist" (as that term is defined in Public Sector Commissioner's Instruction) which can be found at: [CI 16 - Government representatives contact with registrants and lobbyists.pdf](https://www.wa.gov.au/government/representatives/contact-with-lobbyists) ([www.wa.gov.au](http://www.wa.gov.au))

that it or any of its officers, employees, agents or contractors has employed, engaged or has otherwise involved, directly or indirectly, in connection with this Agreement, is duly registered as a "Lobbyist" in terms of that Public Sector Commissioner's Instruction and has fully complied with its obligations under it.

### **3. OBLIGATIONS OF RECIPIENT**

#### **3.1 Use of Funding**

The Recipient must use the Funding only for the carrying out of the Project in accordance with this Agreement and the Approved Budget and expend such funds by the Completion Date. All such expenditure must be effected in a commercially prudent, sensible and reasonable manner. Furthermore, the Recipient must meet all Milestones in accordance with Schedule 4.

#### **3.2 No Changes**

The Recipient must not make any changes to the Project or the Approved Budget without the prior written consent of DLGSC, which consent may be withheld at DLGSC's discretion.

#### **3.3 No Endorsement**

The Recipient agrees that nothing in this Agreement constitutes an endorsement by DLGSC of any goods or services provided by the Recipient.

#### **3.4 Acknowledgement of DLGSC**

- (a) Any activity including presentations, publications, signage, articles, newsletters, or other literary works relating to the Project must:

- (i) give equal representation to the Parties in the display of logos and party names where agreed and as deemed appropriate; and
  - (ii) be consistent with DLGSC Marketing, Communications and Acknowledgements Policy.
- (b) The respective roles of the Parties must be acknowledged at relevant forums, conferences, and project launches where the Project is promoted.
- (c) The Parties must:
- (i) work cooperatively at the senior management and officer levels;
  - (ii) maintain open communication, both formal and informal, to progress the objectives of this Agreement;
  - (iii) share information and knowledge as practicable; and
  - (iv) advise any shared stakeholders about arrangements between the Parties.
- (d) The Parties must coordinate joint communications when dealing with the media and shared stakeholders in relation to the Project referred to in this Agreement on issues of significance or mutual concern, including circulating draft media statements, advertising proposals and advertisements between the Parties for comment prior to publication.
- (e) The Recipient must coordinate joint communications with DLGSC prior to the release of any media statement, advertising proposal and advertisement by the Recipient in relation to the Project.

### **3.5 Accounts, Acquittal and Reporting**

- (a) The Recipient must provide to DLGSC progress reports on a quarterly basis (as at 30 September, 31 December, 31 March and 30 June), or as determined from time to time by DLGSC, until the completion of the Project, which must include:
- (i) a financial report (certified by the Chief Financial Officer or Accountable Officer of the Recipient), as detailed in Schedule 2; and
  - (ii) an evaluation report as per Schedule 3, showing how and to what extent the Funding was spent and the extent to which the Milestones and outcomes were achieved.

Quarterly reports must be submitted within one (1) month after the end of each quarter.

- (b) The Recipient must provide to DLGSC an annual report on the Project based on a financial year ending 30 June which must include:
- (i) a financial report (certified by the Chief Financial Officer or Accountable Officer of the Recipient and audited by an Auditor), outlining income and expenditure in respect to the Project, in Schedule 2; and
  - (ii) an evaluation report as per Schedule 3, showing how and to what extent the Funding was spent and the extent to which the Milestones and outcomes were achieved.

The annual report on the Project must be submitted within three (3) months after the end of the financial year.

- (c) The Recipient must provide to DLGSC a report (**the Acquittal**) at the completion of the Project or the conclusion of this Agreement (whichever occurs first), which must include:
- (i) a financial report (certified by the Chief Financial Officer or Accountable Officer of the Recipient and audited by an Auditor) certifying that the Funding was used for the Project, such certification to address the issues itemised in Schedule 2; and
  - (ii) an evaluation report as per Schedule 3, showing how and to what extent the Funding was spent and the extent to which the Milestones were achieved.

The Acquittal must be submitted within three (3) months after the completion of the Project.

- (d) The DLGSC will provide reporting templates to assist the Recipient with its reporting Obligations set out in clause 3.5.

### **3.6 General Undertakings of the Recipient**

The Recipient must:

- (a) at all times duly perform and observe its Obligations and must promptly inform DLGSC of any occurrence that might adversely affect its ability to do so in a material way;
- (b) undertake its Obligations with integrity, good faith and probity in accordance with good corporate governance practices;
- (c) not, nor attempt to, sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights, entitlements and powers or Obligations under this Agreement;
- (d) comply with all State and Commonwealth laws; and
- (e) cooperate fully with DLGSC in the administration of this Agreement.

### **3.7 Negation of Employment, Partnership and Agency**

- (a) The Recipient must not represent itself, and must ensure that its employees, contractors, sub-contractors or agents do not represent themselves, as being an employee, partner or agent of the State or DLGSC or as otherwise able to bind or represent the State or DLGSC.
- (b) The Recipient is not by virtue of this Agreement, and is not deemed to be, an employee, partner, or agent of the State or DLGSC, or have any power or authority to bind or represent the State or DLGSC.

### **3.8 Procurement of Goods and Services**

Unless otherwise agreed in writing by DLGSC, if procuring any goods and services in connection with the Project using the Funding the Recipient:

- (a) must ensure that all contracts having a value:

- (i) up to \$50,000.00 must have been awarded on the basis that the Recipient obtained at least three (3) verbal quotes;
  - (ii) over \$50,000.00 up to \$250,000 must have been awarded on the basis that the Recipient obtained at least three (3) written quotes; and
  - (iii) over \$250,000.00 must have been awarded after a public tendering process,
- and the Recipient must not "contract split" to avoid the intent of this clause; and
- (b) must also comply with the Western Australian Government's Aboriginal Procurement and Buy Local policies.

#### **4. EVALUATION OR AUDIT RIGHTS**

- (a) The DLGSC may arrange for an Evaluation or Audit to be carried out in respect of the Project. If DLGSC arranges for an Evaluation or Audit:
  - (i) the DLGSC will notify the Recipient that DLGSC has arranged or will arrange for an Evaluation or Audit to be carried out; and
  - (ii) the Recipient must allow all persons appointed by DLGSC to carry out the Evaluation or Audit to have full access to the records and premises in the control or possession of the Recipient for the purpose of carrying out the Evaluation or Audit.
- (b) Clause 4 survives the end of this Agreement by five (5) years.

#### **5. CONTACT OFFICERS**

- (a) The Parties must appoint Contact Officers. The Contact Officer for each Party is authorised to act for that Party in relation to this Agreement and is the first point of contact for the other Party in relation to any disputes arising under the Agreement.
- (b) The details of each Party's Contact Officer are set out in Schedule 1.
- (c) If a Party changes its Contact Officer that Party must notify the other Party in writing of the new contact details within five (5) Business Days after the change.

#### **6. REPAYMENT AND RETENTION OF THE FUNDING**

At the completion of the Project or the conclusion of this Agreement (whichever occurs first) the Recipient must remit to DLGSC within twenty (20) Business Days any Funding that DLGSC has paid and that has not been used or committed in accordance with this Agreement.

#### **7. LIMITATION OF LIABILITY**

Neither DLGSC nor the State has no responsibility or liability for the success or otherwise of the Project and is not liable for any losses suffered by the Recipient in undertaking the Project. If the Funding is insufficient for the Recipient to

properly meet all of its Obligations, then the Recipient is solely responsible for funding any shortfall.

## **8. INSURANCE AND INDEMNITY**

- (a) The Recipient must affect and maintain throughout the Term adequate insurance, with a reputable insurer, to provide cover for the Project undertaken by the Recipient, including Public Liability and Workers' Compensation insurances and property insurance covering loss of or damage to any property that the Recipient uses on the Project for its full replacement value.

If and when requested by DLGSC, the Recipient must provide either or both of the following:

- (i) a written statement of the applicable insurance cover held by the Recipient; and
  - (ii) a copy of any policy of insurance, a Certificate of Currency, and receipts for premiums in connection with any policy of insurance.
- (b) The Recipient indemnifies and must keep indemnified the State and DLGSC and to hold them and their respective officers, employees and agents harmless from and against all claims, costs, damages, expenses, losses and liabilities claimed, suffered or incurred by the State or DLGSC or any of their respective officers, employees and agents whether before or after the date of this Agreement to the extent caused by any:
- (i) breach of any Obligation by the Recipient;
  - (ii) act or omission of the Recipient or its employees, contractors, officers or agents; or
  - (iii) breach of a State or Commonwealth law by the Recipient or any of its employees, contractors, officers or agents.
- (c) This indemnity will survive expiration or termination of this Agreement.

## **9. FREEDOM OF INFORMATION ACT 1992, FINANCIAL MANAGEMENT ACT 2006 AND AUDITOR GENERAL ACT 2006**

- (a) This Agreement and information regarding it is subject to the *Freedom of Information Act 1992 (WA)*. The DLGSC may publicly disclose information in relation to this Agreement, including its terms and the details of the Recipient.
- (b) Despite any express or implied provision of this Agreement to the contrary, the powers and responsibilities of the Auditor General under the *Financial Management Act 2006 (WA)* and the *Auditor General Act 2006 (WA)* are not limited or affected by this Agreement. The Recipient must allow the Auditor General, or an authorised representative, to have access to and examine the Recipient's records and information concerning this Agreement.

## **10. WARRANTIES**

Except where the Recipient has otherwise disclosed in writing to DLGSC, and DLGSC has given its prior written consent to the matter disclosed, the Recipient warrants in favour of DLGSC and the State that:

- (a) the Recipient has no conflict of interest arising out of this Agreement;
- (b) the Recipient is properly authorised and has the power to enter into this Agreement and perform the Obligations;
- (c) the Recipient's Obligations under this Agreement are valid and binding and are enforceable against the Recipient;
- (d) all information provided by the Recipient to DLGSC in connection with this Agreement is true and correct;
- (e) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against the Recipient which could have a materially adverse effect on the Recipient's ability to perform its Obligations;
- (f) neither the Recipient nor any officer of the Recipient has been convicted of a criminal offence that is punishable by imprisonment or detention; and
- (g) there is nothing that prevents the Recipient from complying with any of its Obligations.

## **11. PROBITY**

- (a) The Recipient must notify DLGSC if they consider a Probity Event has occurred or may occur. Such notice must describe the circumstances giving rise to the occurrence (or possible occurrence) of the Probity Event.
- (b) The DLGSC may, at any time, make any inquiries of the Recipient in relation to any issue or matter which may constitute a Probity Event, by giving the Recipient a notice setting out those issues or matters.
- (c) The Recipient must, within five (5) Business Days of receipt of a notice under sub-clause (b), provide full details of the matters or issues requested by DLGSC.
- (d) If the Recipient notifies DLGSC under sub-clause (a), or if the information provided by the Recipient under sub-clause (c) leads DLGSC to believe on reasonable grounds that a Probity Event has occurred, then sub-clauses (e) and (f) shall apply.
- (e) Within three (3) Business Days of receipt of a notice under either of sub-clauses (a) or (d), the Parties must meet in good faith and discuss the occurrence of such an event and endeavour to agree on the actions to be taken by the Recipient to resolve such Probity Event.

If the Parties agree on a course of action then the Recipient must ensure that the actions are taken immediately following such agreement.

- (f) If the Parties are unable to reach agreement under sub-clause (e) within five (5) Business Days of meeting, or the Recipient fails to meet with DLGSC in accordance with sub-clause (e), then DLGSC may serve a further notice on the Recipient setting out the action that DLGSC requires the Recipient to take to address the adverse effects of the Probity Event

and the time within which such action must be taken including without limitation any or all of the following:

- (i) terminating any contract; or
- (ii) procuring that a person cease to have shares, entitlements, contracts, arrangements, significant influence, or power of control over the Recipient; or
- (iii) removing a person from any involvement with the Project.

## **12. DEFAULT AND TERMINATION**

### **12.1 Event of Default by the Recipient**

An Event of Default occurs if:

- (a) the Recipient breaches any Obligation which (if remediable) continues without remedy for ten (10) Business Days after notice in writing has been served on the Recipient by DLGSC; or
- (b) the Recipient breaches this Agreement and such breach cannot be remedied; or
- (c) the Recipient suffers or is or becomes subject to an Insolvency Event; or
- (d) the DLGSC has reasonable grounds to believe that the Recipient is unwilling or unable to comply with its Obligations; or
- (e) any aspect of this Agreement is or is held to be void, unenforceable, or invalid for whatever reason; or
- (f) a representation or warranty made by the Recipient under this Agreement is or becomes untrue or is breached; or
- (g) the Recipient persistently, regularly, consistently or continually breaches this Agreement; or
- (h) any officer of the Recipient is convicted of a criminal offence that is punishable by imprisonment or detention; or
- (i) the Recipient is convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, \$10,000; or
- (j) if in the reasonable opinion of DLGSC, the reputation of DLGSC, the State of Western Australia or the Government of Western Australia is, or is likely to be, damaged by any act or omission of the Recipient.

### **12.2 Effect of Event of Default**

If an Event of Default occurs, DLGSC may terminate this Agreement by providing further notice in writing to the Recipient and in any such event without limiting DLGSC rights at law the Recipient must immediately refund all unexpended Funding to DLGSC.

## **13. GOODS AND SERVICES TAX (GST)**

- (a) For the purposes of clause 13 and Schedule 5:

- (i) "GST" means the goods and services tax applicable to any taxable supplies as determined by the GST Act;
  - (ii) "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations; and
  - (iii) the terms "supply", "tax invoice", "taxable supply" and "value" have the same meanings as in the GST Act.
- (b) If the supply of anything under this Agreement is a taxable supply under the GST Act, the Funding is inclusive of GST.
  - (c) The Obligation of DLGSC to pay the GST on any supply by the Recipient under this Agreement is conditional upon the prior issue by the Recipient to DLGSC of a tax invoice that complies with the GST Act. This provision applies notwithstanding any law to the contrary.

#### **14. NOTICES**

Any notice or other communication that may or must be given under this Agreement:

- (a) must be in writing;
- (b) may be given by an authorised officer of the Party giving notice;
- (c) must be:
  - (i) hand-delivered or sent by prepaid post to the address of the Party receiving the notice as set out in item 1 of Schedule 1; or
  - (ii) sent by facsimile to the facsimile number of the Party receiving the notice as set out in item 1 of Schedule 1; or
  - (iii) if item 1 of Schedule 1 includes email addresses, sent to that email address and the notice is in an attachment in .pdf format;
- (d) subject to paragraph (e), is taken to be received:
  - (i) in the case of hand delivery, on the date of delivery;
  - (ii) in the case of post, on the seventh Business Day after posting;
  - (iii) in the case of facsimile, on the date of transmission; and
  - (iv) in the case of email on the date of sending unless the sender does receives a notification that the email has not been delivered; and
- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

#### **15. WAIVER**

- (a) No right under this Agreement will be deemed to be waived except by notice in writing signed by both Parties.
- (b) A waiver by either Party will not prejudice that Party's rights in relation to any further breach of this Agreement by the other Party.



- (c) Any failure to enforce this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party, will not be construed as a waiver of any rights.

## **16. ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements between the Parties with respect to the subject matter of this Agreement.

## **17. ASSIGNMENT ETC.**

- (a) This Agreement is personal to the Recipient and may not be assigned, novated, encumbered or otherwise dealt with by the Recipient without DLGSC consent, which may be withheld at DLGSC discretion.
- (b) The Recipient will be deemed to have assigned this Agreement if any act, matter or thing is done or occurs, the effect of which is, in the opinion of DLGSC, to transfer, directly or indirectly, the management or control of the Recipient.
- (c) The DLGSC may deal with its rights and Obligations under this Agreement as it sees fit.

## **18. VARIATION**

Any modification, amendment or other variation to this Agreement must be made in writing, duly executed by both Parties.

## **19. RIGHTS AND REMEDIES**

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.

## **20. GOVERNING LAW**

This Agreement is governed by the laws of Western Australia. Each Party irrevocably submits to the exclusive jurisdiction of the courts of Western Australia.

## **21. SCHEDULES**

- (a) Any express or implied provision of any Schedule hereto is hereby deemed to be a provision of this Agreement and therefore must be complied with (by the relevant Party) in accordance with its terms.
- (b) In sub-clause 21(a), 'provision' includes term, condition, warranty, stipulation, right, Obligation, representation and the like.
- (c) Without limiting the preceding provisions of this clause 21, the Recipient must comply with the Special Conditions, if any.

## **22. DISPUTE RESOLUTION**

- (a) Subject to clause 22(j), the Parties agree that unless and until a Party has complied with the requirements of this Clause 22, a Party may not commence any court proceedings in respect of any dispute.

- (b) If at any time a dispute exists:
  - (i) between DLGSC and the Recipient either party may refer the dispute to the relevant Contact Officers appointed under clause 5 and specified at items 2.1 and 2.2 respectively for resolution and
  - (ii) the relevant Contact Officers will consider the dispute referred to them and in doing so, give due consideration to submissions by the Parties in connection with the dispute.
- (c) If a dispute remains unresolved ten (10) Business Days after the referral of the dispute to the relevant Contact Officers under sub-clause (b), a Party may give a written notice to other party in accordance with this sub-clause (c) (**Dispute Notice**).
- (d) The Dispute Notice must:
  - (i) state that the notice is given under this clause 22;
  - (ii) describe the nature of the Dispute; and
  - (iii) nominate the Party's authorised officer for resolution of the Dispute (**Authorised Officer**).
- (e) Within two (2) Business Days after receipt of a Dispute Notice, the recipient Party must give a written notice to the other Party nominating its Authorised Officer.
- (f) The Parties must ensure that their Authorised Officers meet and negotiate with a view to resolving the Dispute within five (5) Business Days after the receipt of the notice referred to sub-clause (c).
- (g) If the Parties' Authorised Officers fail to resolve the Dispute within ten (10) Business Days after receipt of the Dispute Notice given by a Party in accordance with sub-clause (c), the Parties' Authorised Officers may agree a dispute resolution process for the resolution of the Dispute in which case the Dispute will be resolved in accordance with such process.
- (h) Either Party may commence litigation if:
  - (i) the Parties fail to resolve the Dispute in accordance with paragraph (f) and fail to agree a dispute resolution process in accordance with paragraph (g) within ten (10) Business Days after the receipt of a Dispute Notice given by a party in accordance with paragraph (c);
  - (ii) either Party fails to comply with any of the requirements of this Clause 22; or
  - (iii) either Party fails to comply with any dispute resolution process agreed in accordance with paragraph (g).
- (i) The Parties must continue to perform their obligations under this Agreement despite the existence of any dispute between the Parties.
- (j) This clause does not apply:
  - (i) if a Party considers it necessary to seek an urgent interim determination; or
  - (ii) where DLGSC considers that an Event of Default has occurred under this Agreement.

## SCHEDULE 1 – CONTACT OFFICERS

### 1. Notice addresses

#### 1.1 DLGSC

Mail:	PO Box 8349, Perth Business Centre, WA 6849
Email:	<a href="mailto:communityinfrastructure@dlgsc.wa.gov.au">communityinfrastructure@dlgsc.wa.gov.au</a>

#### 1.2 Recipient

Mail:	6 Paterson Street, Mundijong, WA 6123
Email:	<a href="mailto:info@sjshire.wa.gov.au">info@sjshire.wa.gov.au</a>

### 2. Contact Officers

#### 2.1 DLGSC

<b>Name:</b>	Kim Lateef
<b>Job title:</b>	Senior Project Officer
<b>Phone:</b>	08 9492 2764
<b>Email:</b>	<a href="mailto:Kim.Lateef@dlgsc.wa.gov.au">Kim.Lateef@dlgsc.wa.gov.au</a>
<b>Postal address:</b>	PO Box 8349, Perth Business Centre, WA 6849
<b>Street address:</b>	246 Vincent St, Leederville WA 6007

#### 2.2 Recipient.

<b>Name:</b>	Paul Martin
<b>Job title:</b>	Chief Executive Officer
<b>Phone:</b>	08 9526 1100
<b>Email:</b>	<a href="mailto:pmartin@sjshire.wa.gov.au">pmartin@sjshire.wa.gov.au</a>
<b>Postal address:</b>	6 Paterson Street, Mundijong, WA 6123
<b>Street address:</b>	6 Paterson Street, Mundijong, WA 6123

#### 2.3 Recipient financial contact

<b>Name:</b>	!
<b>Job title:</b>	!
<b>Phone:</b>	!
<b>Email:</b>	!
<b>Postal address:</b>	!
<b>Street address:</b>	!

## **SCHEDULE 2 – FINANCIAL REPORT**

*The DLGSC will provide relevant reporting templates to assist the Recipient in completing its reporting Obligations under this Schedule as per Clause 3.5 of the Agreement.*

*The information listed below, is indicative of the information requested by DLGSC and may be properly varied from time to time.*

1. Total approved budget for the current financial year.
2. Balance brought forward from previous reporting period.
3. Payments received from DLGSC to date.
4. Total committed in the current period from funds received.
5. Actual expenditure to date.
6. Initial estimated cost of the Project.
7. Amount of interest earned.
8. Amount of funding leveraged from other sources.
9. Forecast cost to complete the Project.
10. Use of funds: Infrastructure/Services/Administration

### **SCHEDULE 3 – EVALUATION REPORT**

*The DLGSC will provide relevant reporting templates to assist the Recipient in completing its reporting Obligations under this Schedule as per Clause 3.5 of the Agreement.*

*The information listed below, is indicative of the information requested by DLGSC and may be properly varied from time to time.*

1. Project outputs/outcomes (Key Performance Indicators).
2. Linkage to outcomes.
3. Project indicators.
4. Milestones/achievements target for the reporting period.
5. Milestones/actual achievements for the reporting period.
6. Explanation of variances between target and actual achievements, including impediments encountered, action taken to overcome these and potential future impediments if any.
7. Funding allocation by project category.
8. What precisely the Funding received has been spent on.

## SCHEDULE 4 – PROJECT DETAILS

### 1. Project

The purpose of the Funding is:

For the Shire of Serpentine Jarrahdale (the Shire) to develop a Nature Play Splash Park which incorporates natural elements and community facilities as part of a three-year Major Capital Project in the Byford Town Centre.

### 2. Funding Amount

\$1,340,000 will be provided for the Project noted in Clause 1 above.

The payment of the Funding will be subject to ongoing assessment of Project expenditure by DLGSC.

### 3. Manner in which Funding is to be Paid

After this Agreement has been executed by both Parties, DLGSC will authorise the payment of the full amount of Funding to the Recipient in the manner described in Schedule 4 and Schedule 5.

The transfer of the Funding will be subject to an assessment, with DLGSC being satisfied with the results of the assessment, of actual Project expenditure and material cash at bank balances of the Funding previously paid and available to the Recipient.

#### 3.1. Manner of Payment

- a. The Grant is to be paid by instalments based upon the achievement of the milestones set out in the table below.
- b. The State will pay each instalment specified in column C upon receiving evidence from the Recipient certifying the achievement of the corresponding milestone specified in column B if the State is satisfied:
- c. For the avoidance of doubt each milestone relates to the Project.

A Serial	B Milestone	C Instalment Amount
1	Execution of the Agreement	\$250,000
2	Design development/construction	\$1,000,000
3	Project completion and acquittal	\$100,000

### 4. Detailed Description of Project

#### 4.1. Project Description

In the 2021 State Election a commitment of \$1,340,000 was made towards the development of a Nature Splash Park in the Byford Town Centre. This project is part of a three-year Major Capital Project to provide a much-needed destination community space for families and children within the Shire.

The purpose of this project is to encourage public participation and activation through incorporating natural elements to encourage diverse, imaginative and creative play. These elements include:

- Water play area that can be utilised when dry, for water sustainability purposes and all year-round use;
- Small gathering nooks with seating, shade, and barbeque facilities; and
- Play elements designed for all ages to encourage intergenerational recreation.

The project scope will need to be revised as the Nature Splash Park was initially designed to be located at Bill Hicks Reserve instead of the Byford Town Centre site.

Refer to Attachment One – Initial Masterplan and Attachment Two – New Byford Town Centre site.

Final project scope of works to be determined by the Shire during the detailed design phase.

#### 4.2. Project Outcome

The outcomes/outputs and the performance measures of the Project are as follows:

Outcome	Performance Measures
To encourage public participation through inclusive play for all ages.	The development of a Nature Splash Park in Byford.

#### *Job Creation reporting*

Output	Performance Measures
Job creation	Number of people employed in the following demographics <ul style="list-style-type: none"> <li>• Local;</li> <li>• Aboriginal people;</li> <li>• persons aged 18 to 25; and</li> <li>• women.</li> </ul>
Apprenticeships and training	Number of apprenticeships and training opportunities provided

### 4.3. Project timeframe

The Recipient agrees to commence the Project within **3** months after execution of this Agreement and to finalise the Project within **6** months after the Project Completion Date noted in the table below.

Main Activities / milestones	Milestone date
Detailed design development and cost estimations	
Construction	
<b>Project completion date</b>	

### 4.4. Project budget

Project items	Funds under this Agreement (\$)	Other Funding (\$)	Name of Sources of Other Funding	Total Funds (\$)
As detailed in the project description	\$1,340,000	\$1,260,000	TBC	
<b>TOTALS</b>	<b>\$1,340,000</b>			<b>\$2,600,000</b>

## 5. Term of Agreement

The Term of this Agreement commences on the execution date of this Agreement and ends **18** months after the execution date.

The preceding paragraph is subject to those provisions of this Agreement that expressly or impliedly survive the expiration of this Agreement.

## 6. Special Conditions

### 6.1. Project Savings

The Recipient must inform the State if any savings associated with the cost of the Project are made by the Recipient in, or during, the delivery of the Project. The State will decide, in its sole discretion, whether any savings made may be used by the Recipient in accordance with the Approved Purpose, or whether they must be paid to the State.

### 6.2. Interest Earned

The Recipient must inform the State if any interest accrues on Grant monies paid to the Recipient. The State will decide, in its sole discretion, whether any interest accrued on Grant monies must either be used by the Recipient in accordance with the Approved Purpose, or must be paid to the State, or retained by the Recipient for its own purposes.

### 6.3. Pre-Funding Requirements

The Recipient must, prior to any payment of Grant monies being made by the State, meet the following obligations:



a. Bank Account

The Recipient opening a separate bank account for the Grant to be deposited into. Thereafter the Recipient must provide copies of all bank account statements to DLGSC within 14 days of the end of each month.

b. Project Control Group

The Recipient appointing a suitably qualified internal Project Control Group, with delegated authority to make decisions on behalf of the Recipient regarding the design and delivery of the Project. The DLGSC reserves the right to appoint a non-voting representative to the Project Control Group.

c. Project Manager

The Recipient appointing a suitably experienced and qualified Project Manager whose experience and qualifications must first be approved by DLGSC in writing. The Project Manager will be part of the Project Control Group. The costs associated with the Project Manager will be met by the Recipient. The Recipient must promptly notify the State of any proposed change to the appointment of the Project Manager and obtain the State's prior approval in writing to any replacement.

6.4. No Additional Funding

The Recipient acknowledges that the Grant is the maximum total commitment towards the Project by the State and that the Recipient is responsible for any shortfall.

6.5. Business Case

The Recipient must adhere to the Business Case (if any) which has been approved by the State in all material respects. Any material variation to the Business Case must first be approved by DLGSC in writing.

6.6. Project approvals

Prior to commencing work the Recipient must obtain all necessary statutory approvals and provide evidence of that fact to DLGSC.

6.7. Works

Works must be carried out to the satisfaction of DLGSC.

## SCHEDULE 5 – PAYMENT OF THE FUNDING

Funding will be made available as a conditional grant specifically for the delivery of the Project outlined in Schedule 4.

The Recipient will forward an invoice to DLGSC for the amount of the Funding outlined in Schedule 4. The payment will be processed by DLGSC and the payment cheque to the Recipient will then be electronic funds transferred to:

<b>Account name:</b>	Shire of Serpentine-Jarrahdale
<b>BSB:</b>	036032
<b>Account number:</b>	643515

The DLGSC through its internal process may raise a recipient-created tax invoice (RCTI) for the Funding amount identified in Schedule 4. The terms of the RCTI are governed by the following:

- (a) The Recipient warrants that it has an Australian Business Number and is registered for GST.
- (b) The Recipient must immediately notify DLGSC in writing of any change to the Recipient's registration for GST.
- (c) If any supply is made by the Recipient after the date of this Agreement in connection with the Funding, DLGSC may issue a RCTI in respect of the supply and the Recipient will not issue a tax invoice in respect of that supply.
- (d) The Recipient and DLGSC may agree that the provisions of the agreement to use recipient-created tax invoices will not apply in respect of a particular supply, in which case the Recipient must issue a tax invoice in respect of that supply.
- (e) The DLGSC or the Recipient may terminate agreement to use RCTIs at any time by giving written notice to the other Party.
- (f) In this Agreement the terms "supply", "registered", "tax invoice", "recipient-created tax invoice" and "GST" have the same meaning as in the GST Act and "GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999*.

**EXECUTION OF THIS AGREEMENT**

Authorised on behalf of the **Minister for Sport and Recreation** by **Lanie Chopping**, Director General Infrastructure at the Department of Local Government, Sport and Cultural Industries.

Lanie Chopping

Date

Authorised on behalf of the  
Shire of Serpentine Jarrahdale  
[signed]  
[Print name]  
[Position]  
Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

in the presence of:

\_\_\_\_\_  
(Witness Sign)

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Witness Position)

Affix Common Seal here (if applicable):

\_\_\_\_\_

ATTACHMENT ONE – INITIAL MASTERPLAN





ATTACHMENT TWO – NEW BYFORD TOWN CENTRE SITE



Figure 1 - Shire Civic Site