

DATED the day of 2011

AGREEMENT

BETWEEN

SHIRE OF SERPENTINE JARRAHDAL

AND

YMCA OF PERTH (INC)

FOR THE

MANAGEMENT

OF THE

SERPENTINE JARRAHDAL COMMUNITY RECREATION CENTRE

This Agreement (“the Agreement”) is made on the day of 2011

BETWEEN

SHIRE OF SERPENTINE JARRAHDALE of 6 Paterson Street, Mundijong, Western Australia (“the Shire”)

AND

YMCA OF PERTH (Inc.) of 201 Star Street, Welshpool, Perth, Western Australia (“the YMCA”)

(collectively “the Parties”).

RECITALS

- A. The Shire is the owner of the Serpentine Jarrahdale Community Recreation Centre situated at Mead Street, Byford (“the Centre”) and is the owner of fittings and fixtures at the Centre.
- B. The Shire has appointed the Management Committee and has delegated to the Management Committee the duty to care for, control and manage the Centre. The rights, powers and obligations of the Management Committee are set out in Schedule One hereof and the Management Committee will have all the powers and obligations of the Shire in respect of the Centre except the power to approve the Centre’s budgets, to make local laws and to borrow money.
- C. The Management Committee Appointments to the Management Committee shall be made by Council of the Shire and are effective for a period of two years. Two members shall be appointed from Expressions of Interest called from the general community. Two members shall be elected members of the Shire. One member shall be the Director Engineering of the Shire or his/her representative. One member shall be the Director Corporate Services of the Shire or his/her representative. YMCA shall nominate an employee to report to the Management Group but this person will not be considered a member.
- D. It is recognised by the parties that the YMCA representatives who are members of the Management Committee will be involved in that Committee’s decisions in formulating directives and policies concerning the Centre.
- E. The Management Committee will delegate the day to day operation of the Centre within the scope of the agreed Management Plan, to the YMCA including, without limiting the generality of the foregoing, responsibility for recruitment, employment, control and remuneration of all staff (who will be employees of the YMCA), all programming, repairs, maintenance and cleaning, maintenance of the operating budgets, collection of all moneys and the payment of accounts.
- F. The Centre operating account will be maintained as part of the YMCA accounts, in a separate bank account under the name of the Centre (Bank Account). Transactions on the Bank Account and charges drawn by the YMCA will only occur in a manner and in accordance with the Financial Arrangements.

DEFINITIONS

In this Agreement the following terms and expressions have the following meanings ascribed to them:

“Act” means Local Government Act 1995 (WA”);

“Approved Budget” means a Proposed Operating Budget that has been approved by the Shire in accordance with **clause 4(2)** of this Agreement;

“Surpluses” means where the income derived by the YMCA from the Centre for any given Operating Year exceed the expenses incurred by the YMCA for the Centre for the same given period on an accruals basis but excluding depreciation;

“Financial Arrangements” means the obligations set out in Schedule Two hereof;

“Financial Target” means the target figures for each Operating Year the subject of a Proposed Operating Budget;

“Management Committee” means the management committee appointed by the Shire to manage the Centre;

“Management Fee” means the annual fee payable by the Shire to the YMCA in consideration of the due performance by the YMCA of its obligations pursuant to this Agreement;

“Management Plan” means a management and operational plan for the Centre prepared in accordance with **clause 3(1)** of this Agreement;

“Operating Year”, means the period 1 July to 30 June of each year of the Term;

“Proposed Operating Budget” means a proposed operating budget for the income to be received (including Management Fee) and expenses to be incurred by the YMCA in operating the Centre (including all expenses which the YMCA will or is likely to incur in fulfilling its obligations in relation to the Centre as provided for in, or contemplated by, this Agreement) which is to include annual financial forecasts, for each Operating Year, which will include details of the Financial Target;

“Deficit” means where the expenses incurred by the YMCA from the Centre for any given Operating Period exceed the income earned by the YMCA for the Centre for the same given period on an accruals basis;

“Term” means the term of this Agreement outlined in **clause 1**;

“Unforeseen Cause” means an action or event which is undertaken or which occurs which is outside of the control of the YMCA and which could not at the time of preparing the budgets and business plans for the year in which it occurs have reasonably been expected to occur and which has or could materially alter the capacity of the YMCA to meet an Approved Budget.

OPERATIVE PART

1. TERM AND OPTIONS TO RENEW

The term for the Agreement will be for a period commencing on the 1 July 2010 (“the commencement date”) and expiring on 30 June 2013

2. GENERAL PURPOSE

The purpose of this Agreement is to record the terms of an arrangement between the Shire and the YMCA for the operation and management of the Centre.

3. THE DUTIES OF THE YMCA

(1) Management Plan

YMCA will prepare a Management Plan for each Operating Year throughout the term of this Agreement.

A Management Plan for the next following Operating Year is to be submitted to the Shire, through the Management Committee, (the Submission) no later than 30 April in each year of the Term.

Each Management Plan will include:

- (a) A statement of Centre philosophy and general aims, including a Mission Statement for the efficient and effective management and operation of the Centre.
- (b) A proposed programme for the following Operating Year for the maintenance, repairs and cleaning requirements of all buildings, plant equipment, fixtures, fittings and other apparel.
- (c) A proposed schedule of activities, programs and services to be provided at the Centre and the proposed days and hours of operation during the following Operating Year, highlighting any variation from the previous year.
- (d) Expected staffing requirements and the proposed training schedule for the following Operating Year, highlighting any variation from the previous year.
- (e) A Proposed Operating Budget for the next Operating Year.
- (f) A proposal in relation to fees and charges to be levied during the following Operating Year, highlighting any variation from the previous year.
- (g) A marketing and promotion plan for the Centre.
- (h) Preparation of a Crisis Management Plan addressing safety, staffing and community issues as applicable to the Centre.
- (i) Planning for facility up-grades and capital works.
- (j) Proposed objectives, and associated performance measures and details of implemented Continuous Improvement initiatives for the following Operating Year in respect of paragraphs (a) to (i) above as applicable for the purpose of reviewing the performance of the YMCA.

Approval of Management Plan

- (k) With the exception of that part of the Management Plan comprising the Proposed Operating Budget which will be reviewed and approved by the Shire in accordance with **clause 4**, the Management Committee will review the Management Plan within 28 days of receipt and may require:
 - (i) amendments to the Management Plan; or
 - (ii) further details to be provided.
- (l) If the Management Committee requires amendments or further details pursuant to **clause 3(1)(k)**, YMCA will provide further details or an amended Management Plan, as soon as possible.

(2) **Centre Management**

The YMCA will manage the Centre on behalf of the Shire in accordance with the Management Plans approved by the Management Committee pursuant to **clause 3(1)** and covenants with the Shire that in the management of the Centre it will:

- (a) Staff
 - (i) Recruit, appoint, supervise, train, and remunerate all staff as employees of the YMCA.
 - (ii) Pay to all staff their entitlements in relation to salaries, wages, superannuation, and other benefits, including retrenchment payments as a result of termination of this Agreement for any reason so as to comply with all relevant statutes, regulations and industrial awards or agreements in relation to the employment of such employees or staff.
 - (iii) Pay all staff related costs including but not limited to the costs of uniforms, safety equipment, emergency plans and first aid requirements.
 - (iv) Pay to the appropriate authorities all statutory fees and charges in relation to taxation, superannuation, workers compensation, insurances and other statutory fees and charges relating to the employment of those persons.
 - (v) Maintain all staff and other records and funds necessary to perform the functions required under this subclause.
- (b) Professional Standards

Ensure that the highest professional standards are maintained in line with the Management Plan of the Centre.
- (c) Operation of Activities/Services

Have the responsibility for the Centre's services and activities during the hours of opening and at other times in accordance with the

approved Management Plans and Approved Budget, including the provision and maintenance of monthly membership participation rates on all activities and programmes operated in the Centre:

- (i) YMCA may recommend to the Management Committee and seek the Shire's approval to the YMCA licensing any of the Centre's activities/services. The YMCA shall not tender out, license or otherwise subcontract the services to be provided by the Centre without the Shire's prior approval;
- (ii) in conjunction with the Management Committee and in addition to the day to day operation of the Centre, establish, market and promote such special events and activities as it sees fit. The costs incurred under this clause are to be costs against the Centre within the terms of the Approved Budget

(d) Cleaning

Be responsible for, ensure the operation and pay the costs of, a cleaning program sufficient to ensure that all areas of the Centre including but not limited to plant, equipment, chattels, amenities, kitchens, wet areas, seating, tables, windows, carpets and all surfaces are maintained to all regulatory and supplier standards in a safe, clean and hygienic condition at all times to ensure the highest standard of presentation.

(e) Repairs and Maintenance

Be responsible for the upkeep and proper maintenance and repair of all fixtures, fittings, plant, equipment, machinery and chattels of the Centre, fair wear and tear excepted.

Be responsible for, ensure the operation and pay the costs of the effecting of all repairs to fixtures, fittings, plant, equipment, machinery and chattels, other than repairs of a structural nature which are the responsibility of the Shire. These costs are to be costs against the Centre within the terms of the Approved Budget.

(f) Management Committee

Nominate three (3) persons as representatives of the YMCA on the Management Committee.

(g) Income and Expenditure

Receipt all income and pay all appropriate operating expenses on time and in accordance with the approved Management Plans and the Approved Budget.

Operate a bank account and deal with the income and expenses of the Centre in accordance with the obligations set out in Financial Arrangements

Maintain an appropriate system of accounting on the principles of double-entry book-keeping and provide the chart of accounts for the Shire's approval. Any changes to the chart of accounts should be made only with the prior approval of the Shire of.

(h) Financial Accounts and Reporting

Be responsible for and properly manage the purchasing, invoicing, account collections and all accounting functions of the Centre.

Prepare monthly financial reports and statements and provide to the Shire financial information in relation to the Centre as the Shire or the Management Committee may from time to time require and in a format acceptable to the Shire or Management Committee.

(i) End of Year Accounts

Prepare, in a manner and form agreed between the YMCA and the Shire, financial statements and annual returns for the Centre for each financial year (ending 30th June) of the Term.

Ensure that the financial statements and annual returns are audited by a suitably qualified auditor who shall be appointed by agreement of the Parties.

Upon receipt by the YMCA of the audited financial statements and annual returns ("the Audited Accounts") provide a copy of the Audited Accounts to the Management Committee and to the Shire, no later than 31st October in each year of the Term.

(j) Marketing and Promotion

Provide marketing and promotional services and activities for the Centre in accordance with the approved Management Plans and acknowledging the Centre as an asset of the Shire.

(k) Security

Provide security services sufficient to maintain the Centre in a safe and secure manner

(l) Signs and Sponsorships

Not, without the written consent of the Management Committee, enter into any signage or sponsorship arrangements or display any signs or advertisements at the Centre.

(3) General Obligations

The YMCA further covenants with the Shire that it will:

(a) Make Good Damage

Make good any loss or damage to any property of Shire (including without limitation damage to the Centre or the Shire's fixtures and

fittings) caused by the negligence or default of YMCA or any employee or agent or subcontractor of YMCA.

(b) Report Defects

Immediately inform the Shire and in accordance with **clause 3(2)(e)**, undertake any necessary repairs of any defects or deterioration of the Centre or any fixtures, fittings or furniture in the Centre and any acts of vandalism or major repairs necessary to the Centre and any vermin or unwholesome odours in the Centre discovered by the YMCA.

(c) Compliance with Laws

Comply with and observe the provisions of all Acts, statutes, by-laws and regulations which relate to the Centre and/or the operation of the Centre by the YMCA.

(d) Workplace Safety

Provide a safe and hazard free work environment in accordance with all relevant legislation.

(e) Insurance

Arrange and maintain insurance cover as follows:

Public Liability insurance in the name of the YMCA with the interest of the Shire noted under the policy as the Principal to an amount of \$10 million;

Workers compensation insurance to cover all employees of the YMCA, whether permanent, part time or casual, employed at or in connection with the Centre;

Insurance sufficient to cover loss or damage claimed by any volunteer providing services at, for or in connection with the Centre;

Professional Indemnity Insurance to an amount of \$10 million.

Cash Handling Insurance to a minimum amount of \$25 thousand.

Special Events Insurance as required

Mobile plant and vehicles.

Such other cover as the Shire may reasonably request the YMCA obtain.

An Insurance Certificate detailing the public liability, workers compensation and other insurance details is to be provided by the YMCA to the Shire by July 1st each year of the Term.

(f) Indemnity

The YMCA COVENANTS AND AGREES to indemnify and keep indemnified the Shire from and against all claims, demands, writs, actions and suits which may be brought or made against it by any person or persons in connection with loss of life or loss, injury or damage claimed to have been suffered to any property or by any person or persons arising out of or in connection with the use, occupation and management of the Centre by the YMCA and its servants, contractors, agents, invitees and licensees. The parties agree that nothing in this clause shall require the YMCA to indemnify the Shire, its officers, servants, or agents against any loss damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Shire, or its servants, agents, contractors or invitees.

(g) Permit Shire to Inspect and Repair etc

To permit the Shire and its agents with or without workmen and others, and with or without plant and equipment at all reasonable times to enter upon the Centre and all parts thereof to view the condition thereof and to take inventories of the Shire's fixtures therein and to effect such repairs, maintenance and amendments as may be required.

(h) Non Assignment

This Agreement may not be assigned in whole or in part to any other person, firm, corporation or body without the Shire's prior written consent, which consent may be withheld in the Shire's absolute discretion.

(i) Records Retention and Disposal

All Records relating to the Centre including but not limited to all membership details shall be retained for a minimum period of seven (7) years, after which they shall be referred to the Shire's Senior Records Officer for the application of the appropriate retention and disposal schedules as defined in the General Disposal Authority for Local Government Records as administered by the State Records Office of Western Australia.

(4) Variation to Approved Budget

If at any time, the YMCA considers that the Approved Budget for that year should be revised by reason of an Unforeseen Cause, then the YMCA shall prepare, and deliver to the Shire a further Proposed Operating Budget incorporating the change necessitated by reason of the Unforeseen Cause together with an explanation in writing for the Shire's approval.

The YMCA shall take all reasonable steps to achieve approved targets, within the Approved Budget and Management Plans. Not achieving such targets due to unsatisfactory performance on the part of the YMCA should not be deemed an unforeseen cause.

4. THE DUTIES OF THE SHIRE

(1) Use of Centre

The Shire will grant the YMCA the right to use and occupy the Centre to the extent necessary to carry out its duties and obligations under this Agreement.

(2) Proposed Operating Budget

As soon as reasonably possible after having received and considered the Proposed Operating Budget pursuant to either **clause 3(1) or clause 3(4)** the Council of the Shire shall advise the Management Committee either that:

- (a) the Shire has approved the Proposed Operating Budget, or;
- (b) the Shire has not approved the Proposed Operating Budget.

The Shire shall not unreasonably fail to approve or withhold approval of the Proposed Operating Budget.

If the Shire does not approve the Proposed Operating Budget it will, within 14 days of advising the Management Committee of its decision not to approve the Proposed Operating Budget, provide to the Management Committee and the YMCA written reasons for the decision not to approve the Proposed Operating Budget, and will provide the Management Committee and the YMCA with a reasonable opportunity to submit a further Proposed Operating Budget.

In the event that the Shire does not approve the Proposed Operating Budget and without prejudice to any rights of the Shire, the Shire will continue to fully support the operations of the Centre until the Proposed Operating Budget is finally approved.

(3) Capital Works and Refurbishment

The Shire may elect to carry out such major capital works or refurbishments, if any, to such value and at such times as the Shire at its sole discretion sees fit. Should the Shire elect to carry out such work or refurbishment the Shire shall bear the direct cost of that work or refurbishment. In the event that the YMCA considers that there may be a loss of or diminution in income or revenue resulting from or in anyway caused by the carrying out of that work or refurbishment it may lodge a further Proposed Operating Budget with the Management Committee which accounts for the loss that is projected to occur as a result of the works.

Except in the case of urgent works the Shire shall give a minimum of three months notice of such works.

(4) Indemnity

The Shire will indemnify and keep indemnified the YMCA from and against all claims, actions, demands, loss, damages, costs and expenses incurred by the YMCA in respect of anything done or omitted to be done in the exercise of the powers conferred on the Shire by this document or in the carrying out of the duties and functions of the Shire under this Agreement.

(5) **Major Structural Repair or Maintenance of the Centre**

The Shire will, as soon as possible, attend to and rectify any major or structural defect or other major building problem of the Centre (including all of those parts of the building, land and associated plant and equipment), within a reasonable time of having been notified in writing of such defect or problem by the YMCA.

(6) **YMCA Exempt from Rates and Taxes**

The Shire acknowledges that the YMCA is a benevolent institution and is exempt from local government rates and taxes.

(7) **Public Liability Insurance Excess**

The Shire must pay to the YMCA, without deduction, any amount which the YMCA may be liable to pay by way of excess for any claim which is made pursuant to any policy of public liability insurance it may have in respect of the Centre, provided that the amount which the Shire will be required to pay to the YMCA will be in proportion to the liability between the two parties as determined by a Court of Law, or in the event that the claim does not proceed to litigation then as agreed between the insurers of the parties to this agreement.

5. **Surplus and deficit distribution**

(1) **Management Fee**

- (a) In consideration of the due performance by the YMCA of its obligations pursuant to this Agreement, and subject to and conditional upon the YMCA complying with the terms and conditions of this Agreement, the Shire agrees to and will pay to the YMCA the annual Management Fee.
- (b) The Management Fee for the first Operating Year of this Agreement (i.e from 1 July 2010 until 30 June 2011) shall be \$45,000, for the second Operating Year (ie from 1 July 2011 until 30 June 2012) the Management Fee shall be \$46,350 and shall form part of the Approved Operating Budget expenditure pursuant to **clause 4(2)**.

(2) **Management Fee Review**

- (a) The Management Fee shall be reviewed in April as part of the review of the Proposed Operating Budget and at similar times in each subsequent year of this Agreement (“the review date”). The Management Fee for each operating year (other than the First and Second Operating Years) shall be determined by the following formula, subject to the **clause 5(2)(b)**:
 - (i) where the YMCA has achieved an operating result equal to or greater than the budgeted operating result for the Operating Year immediately prior to the review date the amount of the Management Fee multiplied by a percentage equal to the

percentage increase in the Consumer Price Index as published by the Australian Bureau of Statistics for Perth (All Groups) over the period of twelve (12) months ending on 31 December immediately preceding the review date; or

- (ii) where the YMCA has achieved an operating result worse than the budgeted operating result for the Operating Year immediately prior to the review date the amount of the Management Fee multiplied by a percentage equal to the percentage increase in the Consumer Price Index (CPI Increase) as published by the Australian Bureau of Statistics for Perth (All Groups) over the period of twelve (12) months ending on 31 December immediately preceding the review date less an adjustment equal to such CPI Increase multiplied by the ratio that the difference between actual and budgeted operating results bears to the budgeted operating result for the Operating Year immediately prior to the review date.
- (b) The increase in annual Management Fee, if any, resulting from the application of **clause 5(2)(a)(i) or (ii)**, as the case may be, shall be limited to a maximum of \$1,000.

(3) Subsidies and Guarantees

- (a) Subject to **clause 5(3)(e)**, the Shire and YMCA shall equally share any operational deficits audited in accordance with **clause 3(2)(i)**.
- (b) Subject to this clause the Shire and the YMCA shall share equally any operational surpluses identified in an audit in accordance with **clause 3(2)(i)**.

Where there is a Deficit for the Operating Year, as determined following the audit in **clause 3(2)(i)**, the Shire will within 14 days, following receipt of the audited financial statements, pay to YMCA half of the amount determined as the Deficit.

- (c) Where there is a Surplus for the Operating Year, as determined following the audit in **clause 3(2)(i)**, YMCA will within 14 days, following receipt of the audited financial statements, pay to the Shire half of the amount determined as the Surplus.
- (d) All payments made by the Shire to the YMCA shall be paid to the credit of "Serpentine Jarrahdale Community Recreation Centre Bank Account".
- (e) Notwithstanding any other provision of this document, the Shire and the YMCA agree that the Shire will only pay an equal share of a Deficit for the Operating Budget provided that:
 - (i) such Deficit was proposed as part of the Proposed Operating Budget; or

- (ii) if such Deficit was not proposed as part of the approved Operating Budget, that the Deficit has been approved by the Shire in accordance with the provisions of **clause 3(4)**.

6. GST LIABILITY

- (1) In this clause:

“GST”, “input tax credit”, and “taxable supply” have the meaning they bear in A New Tax System (Goods and Services Tax) Act 1999 (“the GST Act”).

“GST rate” means a percentage equal to the rate of GST imposed on a taxable supply by the GST Act.

- (2) The parties acknowledge that GST is payable in respect of each taxable supply made under this Agreement.
- (3) All amounts payable under any provision of this Agreement (other than a reimbursement for any GST inclusive payment or outgoing made by the reimbursed party and in respect of which the reimbursed party is entitled to an input tax credit) are expressed in amounts that do not include the GST payable.
- (4) In respect of each taxable supply made under this Agreement the provider of the supply must pay any GST required to be paid for that taxable supply.
- (5) The Centre will be registered as a separate entity for GST purposes.

7. NO EMPLOYMENT OR PARTNERSHIP

The YMCA is an independent manager and:

- (1) is not, and shall not hold the YMCA out to be, an agent, employee, partners or joint venture of the Shire or hold the YMCA out as otherwise associated with the Shire;
- (2) shall not have or hold the YMCA out as having the authority to pledge the credit of the Shire;
- (3) shall not accept or purport to accept orders, contractually bind or enter into any agreement or arrangement on behalf of the Shire;
- (4) shall not make any representation or statement, express or implied, whether oral or in writing in relation to or on behalf of the Shire or any of the products or services of the Shire ;and
- (5) all persons employed by it in the management of the Centre or in the performance of its obligations pursuant to this Agreement are employees and/or Contractors/Consultants of the YMCA and not the Shire.

8. DEFAULT

- (1) **Termination on Default by YMCA**

If the YMCA defaults in the performance of or compliance with a provision of this Agreement and fails to remedy that default within 28 days after the date of receipt by the YMCA of a written notice from the Shire specifying that default or if:

- (a) an application is filed or an order is made or a resolution is passed for the winding up of the YMCA or if any meeting may be convened for the purpose of considering any such resolution; or
- (b) an administrator is appointed to the YMCA or such appointment is threatened or proposed or if the YMCA enters into any arrangement, reconstruction or composition with its creditors or any of them or proposes to do so; or
- (c) a receiver and manager is appointed over the YMCA or the holder of an encumbrance takes possession of any property of the YMCA;
- (d) the YMCA has, without the consent of the Shire, materially amended its constitution so as to be inconsistent with its duties pursuant to this Agreement;
- (e) the Board of the YMCA is found guilty of fraud by any court, or misappropriation of any funds,
- (f) The YMCA has been found to be wilfully negligent in exercising due care to provide safe and healthy recreation and work environments in conformity with relevant Australian Standards, applicable legislation and generally accepted good management practices.

the Shire may at its option terminate this Agreement giving 30 days notice to the YMCA without prejudice to the rights of the Shire to claim damages or to pursue other remedies it may have pursuant to this Agreement or otherwise.

(2) **Termination on Default by the Shire**

If the Shire defaults in the performance of or compliance with a provision of this Agreement and fails to remedy that default within 28 days after the date of receipt by the Shire of a written notice from the YMCA specifying that default the YMCA may at its option terminate this Agreement giving 30 days notice to the Shire without prejudice to the rights of the YMCA to claim damages or to pursue and other remedies it may have pursuant to this Agreement or otherwise

9. DISPUTE RESOLUTION

(1) Primary Dispute Resolution

If a dispute arises between any of the parties in relation to interpretation of this Agreement, the dispute shall be determined by the following process:

- (a) Reference to the Management Committee within 21 days;

- (b) Failing agreement under **clause 9(1)(a)**, the dispute shall be referred as soon as practicable to a joint meeting of the Board of Directors of the YMCA and the Council of the Shire.
- (c) Should resolution not be achieved within sixty (60) days of the reference to the joint meeting under **clause 9(1)(b)**:
 - (i) this Agreement may be terminated by either party and any amounts owing under this Agreement to any party, will be paid within seven (7) days of the termination of this Agreement; or
 - (ii) the matter may be by agreement referred to arbitration.

(2) Arbitration

The rights or obligations of either party hereunder or in respect of any matter which by the provisions of this Agreement is to be referred to arbitration shall be referred to a single arbitrator under and in accordance with the provisions of the Commercial Arbitration Act 1985.

If the parties are unable to agree upon the arbitrator, an arbitrator shall be appointed by the President of the Law Society of Western Australia for the time being, whose appointment is final.

Provided always that until the parties resolve their dispute in accordance with the dispute resolution process, all other rights and obligations of the parties pursuant to the Agreement remain in force.

10. NOTICES

(1) General

A notice, demand, certification, process or other communication relating to this Agreement shall be written in English and may be given by an agent of the sender.

(2) Method of Service

In addition to any lawful means, a communication may be given by:

- (a) being personally served on a party;
- (b) being left at the party's current address for service;
- (c) being sent to the party's current address for service by pre-paid ordinary mail;
- (d) facsimile to the party's current number for service.

(3) Particulars of Service

Shire: Chief Executive Officer
SHIRE OF SERPENTINE JARRAHDALÉ

Address: 6 Paterson Street,
Mundijong WA 6123

Facsimile: (08) 9526 5441

YMCA: Chief Executive Officer
YMCA of Perth (Inc)

Address: 201 Star Street
Welshpool WA 6106

Facsimile: (08) 9227 6738

(a) Each party may change from time to time its particulars for service by notice to each other party.

(4) Shire's Contact Details for Daily Operational and Financial Issues

(a) Operational Issues: Director Corporate Services

(b) Financial Issues: Manager Accounting Services

(5) YMCA Contact Details

(a) Operational Issues: Centre Manager

(b) Financial Issues: Finance Manager, YMCA Head Office

11. MISCELLANEOUS

(1) Entire Agreement

The parties agree that this Agreement comprises the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior arrangements or agreements between them. There are no oral understandings, terms or conditions and neither party has relied on any representation, express or implied, not contained in this Agreement.

(2) Waiver and Exercise of Rights

(a) A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.

(b) A party will not be liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

(3) Rights Cumulative

Subject to any express provision in this Agreement to the contrary, the rights of the party under this Agreement are cumulative and are in addition to any other rights of that party.

(4) Further Assurance

Each party shall promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement any transaction contemplated by it.

(5) **Computation of Time**

Where time is to be reckoned by reference to a day or event, that day or that event shall be excluded.

(6) **Costs**

Each party shall pay its own costs in the preparation and execution of this Agreement.

(7) **Confidentiality**

The Parties acknowledge that the terms of this Agreement are and shall remain confidential and shall not be disclosed to any person other than the Parties' legal advisers without the written consent of the other party or unless such disclosure is required by law or necessary for the purposes of seeking redress in relation to a breach, or failure to comply with the terms, of this Agreement by any of the Parties..

(8) **Governing Law and Jurisdiction**

- (a) This Agreement is governed by and is to be constructed in accordance with the laws in force in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts in Western Australia and any Courts which have jurisdiction to hear appeals from any of those Courts and waives any right to object to any proceedings being brought in those Courts.

(9) **Amendment of Agreement**

This Agreement may be amended from time to time in writing executed by both parties.

(10) **Construction**

Unless expressed to the contrary;

- (a) words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) any gender include the other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and assigns;

- (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (iv) a right includes a benefit, remedy, discretion, authority or power;
- (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (vi) provisions or terms of this document include a reference to both express and implied provisions and terms;
- (vii) time is to local time in Perth;
- (viii) "\$" or "dollars" is a reference to the lawful currency of Australia;
- (ix) this document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
- (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
- (xi) any thing (including, without limitation, any amount) 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.

(11) Headings

Headings do not affect the interpretation of this document.

12. DESTRUCTION OF THE CENTRE

If the Centre is demolished, destroyed or damaged, or decays so as to be or is declared by any Department or other competent authority to be unfit for use for the purpose for which it was intended to be used and the Management Committee or Shire of Serpentine Jarrahdale decides not to reinstate or rebuild the Centre, either party may terminate this Agreement by notice in writing to the effect to the other party and neither party shall have any rights against the party terminating this Agreement in respect of such termination except for in relation to any antecedent breaches of the terms of this Agreement..

Executed by the parties as a Deed.

THE COMMON SEAL of SHIRE OF)
SERPENTINE-JARRAHDALÉ was)
hereunto affixed in the presence of:)

PRESIDENT

(PRINT FULL NAME)

CHIEF EXECUTIVE OFFICER

(Print Full Name)

THE COMMON SEAL of YMCA)
PERTH INC. was hereunto affixed by)
authority of the Directors)
in the presence of:

PRESIDENT/DIRECTOR

(PRINT FULL NAME)

DIRECTOR

(Print Full Name)

SCHEDULE ONE

SERPENTINE JARRAHDALÉ COMMUNITY RECREATION CENTRE MANAGEMENT GROUP

Terms of Reference

1. Introduction

- 1.1 The Serpentine Jarrahdale Community Recreation Centre Management Group (hereinafter called the SJCRC Management Group) is established through a resolution of the Council of the Shire
- 1.2 The SJCRC Management Group will conduct its business in accordance with the provisions of the Local Government Act 1995, Local Government Regulations, the shire's local laws and policies and this document.

2. Purpose

- 2.1 The Management Group will oversee the management, financial performance and program delivery of the Serpentine Jarrahdale Community Recreation Centre.

3. Objectives

- 3.1 To oversee the strategic delivery of recreation services to the community through its Recreation Centre located at Briggs Park, Byford.
- 3.2 To provide advice to Council to ensure the recreational needs of the community are considered in the shire's forward financial planning.
- 3.3 To monitor and report on the performance of the Service Provider engaged by the shire to operate the Recreation Centre.

4. Membership

- 4.1 Appointments to the Management Group shall be made by Council and are effective for a period of two years (the first expiration of membership shall be 31 March 2007).
- 4.2 Two members shall be appointed from Expressions of Interest called from the general community.
- 4.3 Two members shall be Councillors of the Shire.
- 4.4 One member shall be the Director Asset Services or his/her representative.
- 4.5 One member shall be the Director Corporate Services or his/her representative.

- 4.6 The Service Provider engaged to operate the Recreation Centre shall nominate an employee to report to the Management Group but this person will not be considered a member.

5. Meetings

- 5.1 A Chairperson shall be elected by the Management Group. In the absence of the Chairperson the Management Group shall appoint an Acting Chairperson for that particular meeting.
- 5.2 Meetings of the Management Group shall be held at least four times in each financial year with one meeting held in May of each year to prepare a recommended operating budget to Council.
- 5.3 The Chairperson at each meeting shall ensure minutes are kept of the meeting's proceedings and include:
- 5.3.1 The names of members present at each meeting.
 - 5.3.2 Details of each motion moved at the meeting, the mover and the outcome of the motion.
 - 5.3.3 Details of each decision made at the meeting.
- 5.4 A copy of minutes shall be sent to all Management Group members within 14 days of the meeting and forwarded to the Council Committee responsible for Community and Recreation Development by the next calendar month.

6. Quorum

- 6.1 The quorum for the Management Group shall be 4 members, one of which shall be a Councillor.

7. Powers of Management Group

- 7.1 The Management Group is an advisory body only and as such does not have delegation to make any decision for or on behalf of Council.

SCHEDULE TWO

FINANCIAL ARRANGEMENTS

1. The YMCA will maintain an appropriate system of accounting based on double entry bookkeeping principles made up of a minimum of a cash book, a ledger, an asset register and journals on an accrual basis of accounting in conformity with Australian Accounting Standards and generally accepted good financial management principles and practices.
2. The Centre operating bank account will be maintained as part of the YMCA of Perth bank accounts, in a separate bank account under the name of "Serpentine Jarrahdale Community Recreation Centre" ("Bank Account").
3. Transaction on the Bank Account and cheques drawn by the YMCA will only occur on the approval of the Centre Manager and in a manner to be agreed between the YMCA and Shire of Serpentine Jarrahdale within the budgets recommended to and approved by Council.
4. The YMCA must be able to draw down funds from the bank account in sufficient time to ensure its capacity to meet all of its obligations pursuant to the Management Agreement.
5. All income will be banked by the YMCA into categories consistent with the approved budget and a full audit of the operation of the Centre will be carried out annually by the auditor as mutually agreed between Shire of Serpentine Jarrahdale and YMCA of Perth.
6. The YMCA will present a detailed financial report monthly to the Centre Management Committee for Council's ratification and forward such reports to all members of the Management Committee five (5) days prior to the management committee meeting convened in accordance with **Schedule 1 - Clause 5** and no less than ten working days after the end of the month.
7. The YMCA will immediately inform the Management Committee of any major budget variations.
8. Preparation of end of year accounts for the Centre will be the responsibility of the YMCA of Perth. The auditing of the accounts will be carried out annually by an independent auditor as mutually agreed between Shire of Serpentine Jarrahdale and the YMCA of Perth.
9. The Annual Financial Report will take the form of a General Purpose Financial Report, specifically for the Centre, in conformity with the provisions of SAC1 (Statement of Accounting Concepts 1) and conform to all relevant Australian Accounting Standards and be available as a public document.
10. All orders and authorities for expenditure at the Centre will be approved by the Centre Manager within the operating policies and procedures of the YMCA.

11. For the purposes of this agreement budgeted or actual deficit or surplus shall be calculated in accordance with standard accounting principles and shall exclude items of a capital nature, interest on borrowings by either party and depreciation.