

**2021**

**LICENCE AGREEMENT FOR  
THE SHARED USE OF  
SUBIACO OVAL**

**CITY OF SUBIACO**

**Local Government**

**-and-**

**MINISTER FOR EDUCATION**

**Minister**

**-and-**

**WEST AUSTRALIAN FOOTBALL COMMISSION INC**

**WAFC**



Level 8, AMP Building  
140 St Georges Terrace  
Perth WA 6000

GPO Box L890  
Perth WA  
6842

T 08 9321 3755  
F 08 9321 3465  
E [info@kottgunn.com.au](mailto:info@kottgunn.com.au)

[kottgunn.com.au](http://kottgunn.com.au)  
*advoc*

**YOUR LEGAL PARTNER >**

Liability limited by a scheme approved under the Professional Standards Legislation.

## TABLE OF CONTENTS

No	DESCRIPTION	PAGE
	SCHEDULE .....	1
1.	DEFINITIONS AND INTERPRETATION .....	1
2.	GRANT OF LICENCE.....	9
3.	FACILITIES' MAINTENANCE .....	11
4.	RECORDS AND AUDITED ACCOUNTS .....	12
5.	BOOKING OF FACILITIES.....	13
6.	SPORTS CARNIVAL .....	13
7.	ASSIGNMENT .....	13
8.	WAIVER .....	13
9.	VARIATION .....	14
10.	TERMINATION.....	14
11.	NOTICES.....	16
12.	SCHOOL EDUCATION ACT 1999 REMAINS UNAFFECTED.....	16
13.	NOT TO OBSTRUCT OR CAUSE NUISANCE.....	16
14.	COMPLY WITH STATUTES .....	17
15.	REPORT DAMAGE ETC .....	17
16.	DEBTS .....	17
17.	SIGNS.....	17
18.	ALCOHOL .....	18
19.	INSURANCE.....	18
20.	INDEMNITY.....	19
21.	COSTS .....	19
22.	GST .....	22
23.	CONDITIONS PRECEDENT .....	22
24.	DISPUTE RESOLUTION .....	23
25.	MISCELLANEOUS.....	24
26.	OPTION TO RENEW .....	25
27.	USER GROUP COMMITTEE.....	26
	ANNEXURE 1 .....	30
	ANNEXURE 2.....	31
	ANNEXURE 3.....	32
	ANNEXURE 4.....	33

ANNEXURE 5.....	34
ANNEXURE 6.....	35
ANNEXURE 7.....	36

## SCHEDULE

---

**Item 1 (Clause 1.1) Land**

[ ] and being the whole of the land in [Qualified] Certificate of [Crown Land] Title Volume [ ] Folio [ ].

**Item 2 (Clause 1.1) Facilities**

The oval constructed on the Land as is delineated in blue on the plan annexed hereto at Annexure 7.

**Item 3 (Clause 1.1) School**

Bob Hawke College.

**Item 4 (Clause 1.1) Term**

10 years commencing on the Commencement Date and expiring on the day before the 10<sup>th</sup> anniversary of the Commencement Date.

**Item 5A (Clause 1.1) Minister's Further Term**

32 years commencing on the 10<sup>th</sup> anniversary of the Commencement Date and expiring on the day before the 42<sup>nd</sup> anniversary of the Commencement Date.

**Item 5B (Clause 1.1) WAFC's Further Term**

32 years commencing on the 10<sup>th</sup> anniversary of the Commencement Date and expiring on the day before the 42<sup>nd</sup> anniversary of the Commencement Date.

**Item 6 (Clause 1.1) Commencement Date**

The date the Local Government receives written approval from the Minister for Lands to this Agreement.

**Item 7 (Clause 11.1) Notices**

Minister: Asset Planning and Services branch,  
Department of Education  
151 Royal Street  
EAST PERTH WA 6004

WAFC: Chairman  
West Australian Football Commission  
P O Box 275  
SUBIACO WA 6904

Local Government: Chief Executive Officer  
City of Subiaco  
P O Box 270  
SUBIACO WA 6904

THIS AGREEMENT is made the 21<sup>st</sup> day of October 2021

BETWEEN:

**MINISTER FOR EDUCATION** a body corporate pursuant to the provisions of the *School Education Act 1999* of 151 Royal Street, East Perth, Western Australia (**Minister**)

AND

**CITY OF SUBIACO** a local government and body corporate under the *Local Government Act 1995* of 241 Rokeby Road, Subiaco, Western Australia (**Local Government**)

AND

**WEST AUSTRALIAN FOOTBALL COMMISSION INC.** of PO Box 275 Subiaco, Western Australia (**WAFC**)

**RECITALS:**

- A. The Facilities commonly known as Subiaco Oval are situated on the Land.
- B. Upon the satisfaction of the Conditions Precedent in clauses 23.1 and 23.2 of this Agreement, the Local Government will have care, control and management of the Land and the power to lease or licence the land pursuant to the Management Order.
- C. When and while the Local Government has the Management Order the Local Government has agreed to grant to each of the Minister and the WAFC a separate licence to use the Facilities on the terms and conditions contained in this Agreement.
- D. The Parties each acknowledge that while Bob Hawke College is an operational school, the Minister requires access to the Facilities for the purpose of providing sporting and recreational facilities for use by students of Bob Hawke College, a secondary educational school, situated directly adjacent to the Land.

**OPERATIVE PART**

**IT IS HEREBY AGREED:**

## **1. DEFINITIONS AND INTERPRETATION**

---

1.1 In this Agreement unless the contrary intention appears:

**Ad-Hoc Turf Replacement** means replacement of the playing surface to the Grass Standard comprising less than 30 square metres in total area during the peak or off peak season as set out in Annexure 1.

**Adjoining Land** means the land described in the diagram contained in Annexure 7.

**Authorisation** means any approval, agreement, certificate, authorisation, notification, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver, compliance report or environmental consent by any Government Agency required under any Laws, and includes any renewal of, or variation to, any of them but does not include any act or omission by the Minister under this Agreement.

**Building** means the building proposed by the WAFC to be constructed on the Adjoining Land for use as the WAFC's headquarters or principal place of business.

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

**Commencement Date** means the date specified in item 6 of the Schedule.

**Commonwealth** means the Commonwealth of Australia.

**Comprehensive Turf Replacement** means any replacement of the playing surface to the Grass Standard comprising 30 square metres or more in total area.

**Conditions Precedent** means the conditions precedent set out in clause 23.

**CPI** means the consumer price index compiled by the Australian Bureau of Statistics for Perth (Capital City) (all groups index numbers) or any substitute for that index accepted by the Commonwealth from time to time provided that if the index number base adopted by the Australian Statistician for the index number at any time is updated the index number is to be appropriately adjusted as from the same time. If at any time either or both the Consumer Price Index and the index number is discontinued or suspended or, in the reasonable opinion of either Party, substantially altered, there is to be substituted for the Consumer Price Index and the index number the alternative method of computing changes in the cost of living which is mutually agreed in writing between the Local Government and the Minister during the period of 10 Business Days after written notice given by the Local Government to the Minister or, failing that agreement, which in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants in Australia (WA Division) at the request of the Local Government or the Minister or both of them most closely reflects changes in the cost of living for the Perth Metropolitan Region (the costs of that expert being borne by the Local Government and the Minister in equal shares).

**Department** means the Department of Education.

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

**Dispute Notice** means a notice given under clause 24.2.

**Facilities** means the facilities specified in item 2 of the Schedule and includes all improvements to and natural features on or comprising the land which the Facilities are on or part of.

**Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, agency, entity or Parliament and includes any part of, or entity comprising, the State.

**Grass Standard** means natural grass with a uniform coverage and consistent surface suitable for community sports, inclusive of any replacement required due to fair wear and tear in accordance with Annexure 2.

**GST** has the same meaning and usage as that contained in the GST Act.

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

**Input Tax Credit** has the meaning given in section 195-1 of the GST Act.

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

**Law** means all applicable present and future laws including:

- (a) all acts, ordinances, regulations, by-laws, orders, awards and proclamations of the State of Western Australia or the Commonwealth;
- (b) Authorisations; and
- (c) principles of the common law or equity,

whether or not existing at the date of execution of this Agreement.

**Licences** means the licences referred to in clause 2 or either one of them according to context.

**Local Government's Authorised Times of Use** means the times of Priority Use of the Facilities by the Local Government specified in the table of allocated hours contained in Annexure 1.

**LGCNRMM** means the Local Government's costs that relate to, or involve, the carrying out of Non Routine and Major Maintenance and includes:

- (a) all costs and charges paid by the Local Government to third party suppliers; and
- (b) the Local Government's reasonable costs of providing its own staff and resources calculated in accordance with section 6.17 of the *Local Government Act 1995 (WA)*.

**LGCRM** means the Local Government's costs that relate to, or involve, the carrying out of Routine Maintenance and includes:

- (a) all costs and charges paid by the Local Government to third party suppliers; and
- (b) the Local Government's reasonable costs of providing its own staff and resources calculated in accordance with section 6.17 of the *Local Government Act 1995 (WA)*.

**Local Government's Visitors** means all officers, employees, agents, contractors, subcontractors, licensees, invitees or representatives of the Local Government and includes members of the public.

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

**Management Order** means the management order by which the care, control and management of the Land has been placed with the Local Government pursuant to section 46(1) of the *Land Administration Act 1997 (WA)*.

**Minister's Authorised Times of Use** means the times of Priority Use of the Facilities by the Minister specified in the table of allocated hours contained in Annexure 1.

**Minister's Further Term** means the further term specified in item 5A of the Schedule.

**Minister's Permitted Use** means sporting and recreational use by students of the School. It does not include activities of a commercial nature that have the intention of producing profit.

**Minister's Visitors** means all officers, employees, agents, contractors, subcontractors, licensees, invitees or representatives of the Minister.

**Non Routine and Major Maintenance** means any activity carried out on the Facilities including repair and replacement that is not Routine Maintenance including the works items set out in the table contained in Annexure 3.

**Parties' Authorised Times of Use** means, in respect of:

- (a) the Minister, the Minister's Authorised Times of Use;
- (b) the Local Government, the Local Government's Authorised Times of Use; and
- (c) the WAFC, the WAFC's Authorised Times of Use.

**Party** depending on the context means the Local Government, the WAFC or the Minister. Parties means two or more of them.

**Primary Payment** means any payment by the Minister or the WAFC to the Local Government under this Agreement.

**Principal** means the principal or acting principal of the School.

**Priority Use** means having priority over other competing uses.

**Review Date** means each anniversary of the Commencement Date.

**Routine Maintenance** means any maintenance activity carried out on the Facilities set out in the table contained in Annexure 2.

**Schedule** means the schedule annexed to this Agreement.

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

**School Days** means all days on which students are required to attend the School for instruction in accordance with the provisions of the *School Education Act 1999* (WA).

**State** means the State of Western Australia and includes any department, agency or instrumentality of the State of Western Australia, the Parliament and any Minister (including the State), whether body corporate or otherwise and their respective employees, agents, contractors, subcontractors and consultants.

**Taxable Supply** has the meaning given in section 195-1 of the GST Act.

**Tax Invoice** has the meaning given in section 195-1 of the GST Act and in the *A New Tax System (Goods and Services Tax) Regulations 1999*.

**Term** means the term specified in item 4 of the Schedule and where the context so permits includes any extended or renewed term.



**Transition Periods** means the period of school holidays during each calendar year in accordance with the *School Education Act 1999 (WA)* and limited only to the following:

- (a) the conclusion of school term 1 and the commencement of school term 2; and
- (b) the conclusion of school term 3 and the commencement of school term 4.

**W AFC's Authorised Times of Use** means the times of Priority Use of the Facilities by the W AFC specified in the table of allocated hours contained in Annexure 1.

**W AFC's Further Term** means the further term specified in item 5B of the Schedule.

**W AFC's Permitted Use** means and includes the training of junior players under the age of 18 years, umpire training and the conduct of competitive matches for junior players under the age of 18 years and any other use approved by the Local Government from time to time (including under clause 2.3(c)).

**W AFC's Visitors** means all officers, employees, agents, contractors, licensees, invitees or representatives of the W AFC.

1.2 In this Agreement unless a contrary intention appears:

- (a) **(person)**: references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) **(includes)**: the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) **(or)**: the meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities;
- (d) **(party)**: a reference to a "party" is to a party to this Agreement;
- (e) **(other persons)**: a reference to any party or person includes their and each of their legal representatives, executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (f) **(authority)**: a reference to any authority, institute, association or body is:
  - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
  - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially

the same purposes or objects as that authority, institute, association or body;

- (g) **(this Agreement)**: a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (h) **(legislation)**: a reference to any legislation or to any section or provision of it includes any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision;
- (i) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;
- (j) **(obligations)**: a reference to an obligation includes a warranty and a reference to a failure to observe or perform an obligation includes a breach of warranty;
- (k) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (l) **(headings)**: headings are for convenience only and do not affect the interpretation of this Agreement;
- (m) **(clauses)**: a reference to:
  - (i) a clause, schedule or attachment is a reference to a clause, schedule or attachment of this Agreement; and
  - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (n) **(inclusive)**: a reference to this Agreement includes all schedules and attachments to this Agreement, including the Schedule;
- (o) **(defined meaning)**: where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (p) **(\$)**: a reference to "\$" is to Australian currency and any amounts in this Licence are exclusive of GST, unless otherwise specified;
- (q) **(time)**: a reference to time is a reference to Western Australian Standard Time;
- (r) **(language)**: all information and documentation prepared or delivered by the parties under this Agreement will be in English;
- (s) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (t) **(construction)**: no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part;

- (u) **(information)**: any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, designs, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (v) **(policies)**: any reference to a State of Western Australia policy or scheme is deemed to include a reference to such policy or scheme as amended, varied or replaced by the State from time to time;
- (w) **(thing)**: a 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;
- (x) **(consortium)**: if a party consists of a consortium of two or more persons whether by way of partnership or joint venture or otherwise, then:
  - (i) an obligation imposed on a party under this Agreement binds each person who comprises that party jointly and severally;
  - (ii) each person who comprises a party agrees to do all things necessary to enable the obligations imposed on that party under this Agreement to be undertaken; and
  - (iii) the act of one person who comprises a party binds the other person or persons who comprise that party;
- (y) **(jointly and severally)**: an agreement, representation or warranty on the part of or in favour of two or more persons binds, or is for the benefit of, them jointly and severally;
- (z) **(electronic address)**: a reference to a document published at an electronic address is to the document as published at that electronic address on the date of execution of this Agreement;
- (aa) **(liability)** a reference to a liability includes all obligations to pay money and all other Losses, costs and expenses of any kind;
- (bb) **(year)** a reference to a year is to a calendar year; and
- (cc) **(reference to parties)** a reference to:
  - (i) the Minister using the Facilities means and includes use of the Facilities by the Minister or any of the Minister's Visitors; and
  - (ii) the WAFC using the Facilities means and includes use of the Facilities by the WAFC or any of the WAFC's Visitors.

### 1.3 Time

- (a) **(Business Day)**: Where the day on or by which an act is required to be done under this Agreement is not a Business Day, the time for doing that act will be taken to be the next Business Day.
- (b) **(day of event)**: Where time is to be reckoned by reference to a day or event, that day or the day of the event is excluded.

- (c) **(month)**: Where time is to be counted in months and the period commences on the 29th, 30th or 31st day of a month and the month at the end of the period does not have a 29th, 30th or 31st day (as applicable), then the period will end on the last day of that month (for example, a period of 2 months which begins on 31 July will end on 30 September; and a period of 2 months which begins 30 July will end on 30 September).

#### 1.4 State's interests and Statutory Functions

- (a) **(State's rights)**: Any right of the Minister may be exercised for the benefit of any other part of the State and any reference in this Agreement to the Loss of, or costs incurred by, the Minister includes direct Losses of, and direct costs incurred by, any other part of the State.
- (b) **(State's interests)**: Except where this Agreement expressly provides otherwise, to the extent permitted by Law nothing in this Agreement gives rise to any duty on the part of the Minister to consider interests other than the Minister's interests (including the public interest) when exercising any of its rights or performing any of its obligations.
- (c) **(fetter)**: Nothing contained in this Agreement or contemplated by this Agreement has the effect of constraining the Minister or any other part of the State or placing any fetter on the Minister's or any other part of the State's statutory rights, duties, powers or functions including any statutory rights, duties, powers or functions conferred or imposed upon the Minister for Education under the *School Education Act 1999* (WA).
- (d) **(Minister's powers, functions and duties)**: Notwithstanding anything contained or implied in this Agreement to the contrary, the parties agree that the Minister is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any Government Agency, or to influence, over-ride or direct any Government Agency in the proper exercise and performance of its legal duties and functions.
- (e) **(no Claim)**: The Local Government is not entitled to make any Claim against the Minister for any Loss relating to any exercise or failure by the Minister to exercise its statutory rights or duties.

#### 1.5 Standards

- (a) **(provisions limiting or excluding liability)**: Any provision of this Agreement which seeks either expressly or by implication to limit or exclude any liability of a party is to be construed as doing so only to the extent permitted by Law.
- (b) **(standards)**: Unless agreed or notified in writing by the Minister, a reference to Standards Australia standards, overseas standards or other similar reference documents in this Agreement is a reference to the edition last published prior to the preparation of the relevant documentation.

## **2. GRANT OF LICENCE**

---

### **2.1 Grant of Licence to Minister**

- (a) Subject to the satisfaction or waiver of the Conditions Precedent, the Local Government grants to the Minister a licence to use the Facilities, for the Minister's Permitted Use, during the Minister's Authorised Times of Use, for the Term or until such time as the Minister divests itself or is divested of its rights over or in the School or until such time as the Local Government divests itself or is divested of its rights over or in the Land (whichever occurs sooner).
- (b) Nothing expressed or implied in this Agreement shall confer a right of exclusive possession of the Facilities to the Minister and the Local Government may at any time and at all times and from time to time exercise all of its rights in respect of the Facilities including its rights to use and possess and enjoy the whole or part of the Facilities save only in so far as such rights shall not:
  - (i) otherwise prevent the operation of the Licence and rights with respect to the use of the Facilities by the Minister granted pursuant to this Agreement; and
  - (ii) be inconsistent with the express provisions of this Agreement.

### **2.2 Minister's Authorised Times of Use**

- (a) Subject to clause 2.2(b), the Minister will have Priority Use of the Facilities during the Minister's Authorised Times of Use, which times are set out in the table contained in Annexure 1.
- (b) Any of the Minister's Authorised Times of Use that fall on days that are not School Days shall revert to the Local Government for the purposes of the table set out in Annexure 1.
- (c) The Local Government agrees not to authorise use of the Facilities by third parties during the Minister's Authorised Times of Use without first obtaining the written approval of the Principal.
- (d) The Minister will ensure that the Principal does not unreasonably delay or withhold his or her approval to a request made under clause 2.2(c) where that proposed use does not materially affect the use of the Facilities for the Minister's Permitted Use.
- (e) During the Minister's Authorised Times of Use, the Principal or any other person responsible for the supervision and safety of students of the School using the Facilities:
  - (i) has the authority to ensure that, whilst students of the School are using the Facilities, anyone else using the Facilities at the same time maintains a safe distance from those students; and
  - (ii) can take all other reasonable measures to ensure the safety of those students provided that such measures do not authorise the installation of any temporary infrastructure including but not

limited to fences, gates or barriers unless first approved in writing by the Local Government.

### **2.3 Grant of Licence to WAFC**

- (a) Subject to the satisfaction or waiver of the Conditions Precedent, the Local Government grants to the WAFC a licence to use the Facilities, for the WAFC's Permitted Use during the WAFC's Authorised Times of Use, for the Term or until such time as the Local Government divests itself or is divested of its rights over or in the Land (whichever occurs sooner).
- (b) Nothing expressed or implied in this Agreement shall confer a right of exclusive possession of the Facilities to the WAFC and the Local Government may at any time and at all times and from time to time exercise all of its rights in respect of the Facilities save only in so far as such rights shall not:
  - (i) prevent the operation of the Licence and rights with respect to the use of the Facilities by WAFC granted pursuant to this Agreement; and
  - (ii) be inconsistent with the express provisions of this Agreement.
- (c) The WAFC may, from time to time, seek the prior written approval of the Local Government to use the Facilities for uses other than the WAFC's Permitted Use (including to host senior (players aged 18 years or over) games or other events) and the Local Government may authorise the discretionary use of the Facilities. The Local Government, in considering a request in accordance with this clause, shall have regard to a range of criteria including but not limited to:
  - (i) the approximate number of visitors that could reasonably be expected to attend the event or game;
  - (ii) the impact of the event or game on other Parties' Authorised Times of Use of the Facilities; and
  - (iii) the impact of the event or game on the Grass Standard.

### **2.4 WAFC Authorised Times of Use**

- (a) Notwithstanding any other provision of this Agreement, the WAFC will have Priority Use of the Facilities during the WAFC's Authorised Times of Use which times are set out in the table contained in Annexure 1.
- (b) The Local Government agrees not to authorise use of the Facilities by third parties during the WAFC's Authorised Times of Use without first obtaining the written approval of the WAFC.
- (c) The WAFC will not unreasonably delay or withhold its approval to a request made under clause 2.4(b) where that proposed use does not materially affect the intended use of the Facilities by the WAFC.
- (d) During the WAFC's Authorised Times of Use, the WAFC:

- (i) has the authority to ensure that, whilst the WAFC is using the Facilities, anyone else using the Facilities at the same time maintains a safe distance from the WAFC's Visitors; and
- (ii) can take all other reasonable measures to ensure the safety of the WAFC's Visitors provided that such measures do not authorise the installation of any temporary infrastructure including but not limited to fences, gates or barriers unless first approved in writing by the Local Government.

### **3. FACILITIES' MAINTENANCE**

---

#### **3.1 Routine Maintenance Program**

The Local Government shall use its best endeavours to carry out the Routine Maintenance program of the Facilities as set out and in accordance with the table contained in Annexure 2.

#### **3.2 Non Routine and Major Maintenance**

The Local Government shall carry out Non Routine and Major Maintenance of the Facilities as set out in the table contained in Annexure 3 from time to time, as and when required.

#### **3.3 Timing and Notice for Maintenance**

- (a) The Local Government will carry out Routine Maintenance, Non Routine Maintenance and Major Maintenance activity at such times and in such a manner as to cause minimal disturbance to users of the Facilities so that at all times during the Term in all things:
  - (i) the Facilities will be well cleansed and drained and in good sanitary condition;
  - (ii) all buildings fences gates and other improvements now or hereafter comprising the Facilities will be in good tenable repair order and condition; and
  - (iii) all grassed areas on the Facilities will be maintained to the Grass Standard.
- (b) Except in the case of an emergency, the Local Government will not carry out any Non Routine or Major Maintenance on the Facilities without first:
  - (i) providing the Parties with details in writing of the scope and cost of the Non Routine or Major Maintenance, and
  - (ii) obtaining the Parties prior written approval to carry out same, which approval shall not be unreasonably withheld.
- (c) Subject to clause 3.3(f) the Local Government will not carry out any pest or weed control treatment on the Facilities during the Parties' Authorised Times of Use. The Local Government will give the Parties at least a week's written notice of any proposed weed control treatment to be undertaken.

- (d) Any request for Comprehensive Turf Replacement outside of the Transition Periods shall be paid in full by the Party requesting the Comprehensive Turf Replacement.
- (e) Except in the case of an emergency, the Local Government will ensure that all its employees, agents, workmen, contractors and subcontractors contact the Parties prior to carrying out any maintenance to the Facilities during the Parties' Authorised Times of Use.
- (f) The Parties acknowledge and agree that the Local Government may need to carry out Routine Maintenance, Non Routine Maintenance and Major Maintenance activity during the Parties' Authorised Times of Use during the Transition Periods. The Local Government will use its best endeavours to cause minimal disturbance to the Parties that is reasonably practicable when carrying out any Routine Maintenance, Non Routine Maintenance and Major Maintenance activity undertaken during the Transition Period.

### **3.4 Parties Responsibility after Use**

On expiration of a period of use of the Facilities by a Party or any of that Party's employees agents or invitees (whichever the case may be) that Party shall leave the Facilities in a clean sanitary and tidy condition free from litter waste and rubbish and ready for immediate use by another Party and other persons duly permitted to use the Facilities.

### **3.5 Damage to the Facilities**

The Parties must not cause damage to the Facilities. If such damage is caused (fair wear and tear excepted) then the Party who caused the damage is to pay 100% of the cost of fixing that damage.

## **4. RECORDS AND AUDITED ACCOUNTS**

---

4.1 The Local Government shall keep true, accurate and up-to-date records of its income and expenditure in respect of the Facilities and shall allow the Parties to inspect and/or take copies of those records at any time and from time to time provided that reasonable notice is first given by the Party making the request on each occasion. The Local Government shall, at intervals of no greater than twelve (12) months during the currency of this Agreement, provide the Parties with properly audited accounts of its income and expenditure in respect of the Facilities.

4.2 If a Party requests information, relating to any aspect of this Agreement, from another Party, the second mentioned Party will use all reasonable endeavours:

- (a) to provide that information as soon as reasonably practicable; and
- (b) to ensure that any information so provided is accurate, complete, up-to-date, and sufficiently detailed, and in no way misleading or deceptive.



## **5. BOOKING OF FACILITIES**

---

The Local Government will manage bookings for use of the Facilities outside the Minister's Authorised Times of Use and the WAFC's Authorised Times of Use.

## **6. SPORTS CARNIVAL**

---

- 6.1 The Parties acknowledge that the School will use the Facilities for Sports Carnivals during the Term from time to time but within the Minister's Authorised Times of Use. The Sports Carnivals are for students of the School.
- 6.2 The Principal will notify the Local Government of the date and times for any sports carnivals it intends to hold with no less than one (1) months' prior written notice.
- 6.3 The Principal may request line marking services from the Local Government with the cost, if any, to be determined by the Local Government and payable by the Minister.
- 6.4 The Principal is not obliged to use the Local Government for line marking services and in this instance, any line marking undertaken should be in consultation with the Local Government and should not conflict with line marking for any other Party's use of the Facilities.

## **7. ASSIGNMENT**

---

- 7.1 The Minister shall not without the prior written consent of the Local Government (which consent may be arbitrarily withheld) and the Minister for Lands assign, transfer, encumber or otherwise dispose of the Facilities or any part thereof or the rights, liberties or authorities granted to the Minister under this Agreement.
- 7.2 The WAFC shall not without the prior written consent of the Local Government (which consent may be arbitrarily withheld) and the Minister for Lands assign, transfer, encumber or otherwise dispose of the Facilities or any part thereof or the rights, liberties or authorities granted to the WAFC under this Agreement.

## **8. WAIVER**

---

- 8.1 Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any Law or under this Agreement by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this Agreement.
- 8.2 A waiver given by a Party under this Agreement is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- 8.3 No course of dealings between the Parties removes the requirement under clause 8.2) that a waiver must be in writing to be effective and binding upon the Parties.

- 8.4 No waiver of a breach of a term of this Agreement operates as a waiver of any other breach of that term or of a breach of any other term of this Agreement.

## **9. VARIATION**

---

Any variation of any term of this Agreement must be in writing and signed by the Parties.

## **10. TERMINATION**

---

### **10.1 Minister / WAFC may Terminate for any Reason**

Notwithstanding anything expressed or implied in this Agreement to the contrary, the Minister or the WAFC (as the case may be) may, by giving 6 months' notice in writing to the Local Government, terminate the Minister's or the WAFC's (as the case may be) rights and obligations contained in this Agreement for any reason whatsoever and upon the expiration of that 6 month period, the Minister's or the WAFC's (as the case may be) rights contained in this Agreement shall terminate but any rights of action or claims which accrued or arose to either the Local Government or the Minister or the WAFC (as the case may be) prior to such termination are hereby preserved. For the avoidance of doubt, termination by the Minister under this clause will not result in the termination of the Licence granted to the WAFC and under this Agreement and vice versa.

### **10.2 Minister / WAFC may Terminate for un-remedied Breach**

If the Local Government breaches or fails to comply with any term of this Agreement and after having been served with a written notice by the Minister or the WAFC (as the case may be):

- (a) specifying the breach or failure; and
- (b) requiring that breach or failure to be rectified within a reasonable period specified in the notice (being not less than 14 days) provided that the Minister or the WAFC (as the case may be) must give the Local Government at least 60 days to remedy a default in relation to clause 3.3(a)(iii),

fails or refuses to so rectify that breach or failure within that period, then the Minister or the WAFC (as the case may be) shall be entitled to terminate this Agreement in respect of its rights and obligations under this Agreement and such termination shall take effect immediately upon the service of a notice of termination on the Local Government. For the avoidance of doubt, termination by the Minister under this clause will not result in the termination of the Licence granted to the WAFC and under this Agreement and vice versa.

### **10.3 Local Government may Terminate for un-remedied Breach**

- (a) If the Minister breaches or fails to comply with any term of this Agreement and after having been served with a written notice by the Local Government:
  - (i) specifying the breach or failure; and

- (ii) requiring that breach or failure to be rectified within a reasonable period specified in the notice (being not less than 14 days),

fails or refuses to so rectify that breach or failure within that period, then the Local Government shall be entitled to terminate this Agreement in respect of the Minister's rights and obligations under this Agreement and such termination shall take effect immediately upon the service of a notice of termination on the Minister.

- (b) If the WAFC breaches or fails to comply with any term of this Agreement and after having been served with a written notice by the Local Government:

- (i) specifying the breach or failure; and

- (ii) requiring that breach or failure to be rectified within a reasonable period specified in the notice (being not less than 14 days),

fails or refuses to so rectify that breach or failure within that period, then the Local Government shall be entitled to terminate this Agreement in respect of the WAFC's rights and obligations under this Agreement and such termination shall take effect immediately upon the service of a notice of termination on the WAFC.

#### **10.4 Parties may Terminate for Persistent Breach**

- (a) The Minister or the WAFC (as the case may be) may terminate the Minister's or the WAFC's (as the case may be) rights and obligations contained in the Agreement if the Local Government persistently breaches this Agreement.
- (b) The Local Government may terminate the Minister's rights contained in this Agreement if the Minister persistently breaches this Agreement.
- (c) The Local Government may terminate the WAFC's rights contained in this Agreement if the WAFC persistently breaches this Agreement.
- (d) In this clause "persistent breach" means a material breach of a particular obligation of this Agreement in respect of which the breaching Party has received notice to remedy the breach of that obligation more than 3 times in any year of the Term.

#### **10.5 Local Government may Terminate if WAFC cease to occupy Building**

The Local Government may terminate the WAFC's Term or Further Term at any time if the WAFC cease to occupy the Building as their primary headquarters or principal place of business and such termination shall take effect immediately upon the service of a notice of termination on the WAFC.

#### **10.6 Parties Rights to Terminate at Common Law**

Each Party's rights to terminate this Agreement under the common law are hereby preserved.

## **11. NOTICES**

---

- 11.1 Notices that may or must be sent under or in connection with this Agreement shall be in writing, signed by the Party or representative of the Party giving the notice, and may be delivered by pre-paid post or by hand to the receiving Party:
- (a) at the relevant address set out in item 8 of the Schedule: or
  - (b) to such other address that a party may notify the other party from times to time, in writing, as the address to be used for the purposes of serving notices under this Agreement.
- 11.2 Notices shall be deemed to be received:
- (a) (in the case of delivery by pre-paid post) six Business Days after deposit in the mail; or
  - (b) immediately upon delivery by hand.

## **12. SCHOOL EDUCATION ACT 1999 REMAINS UNAFFECTED**

---

Where the Minister is required by a Law to exercise a right, power or authority, nothing in this Agreement shall affect or be deemed to affect any rights, power authority or duty conferred or imposed upon the Minister under any Law including the *School Education Act 1999 (WA)*.

## **13. NOT TO OBSTRUCT OR CAUSE NUISANCE**

---

- 13.1 The Local Government shall not do or leave undone or allow or suffer to be done or left undone any act matter or thing whereby a nuisance or anything in the nature of or which may be deemed to be a nuisance by any Government Agency acting reasonably or within the meaning of any Law now or hereafter in force may exist arise or continue upon or in connection with Local Government's use of the Facilities and shall forthwith abate any such nuisance or alleged nuisance and shall carry out and comply with all the provisions of every such Law and of every requisition and order of any Government Agency in reference thereto.
- 13.2 The Minister shall not do or leave undone or allow or suffer to be done or left undone any act matter or thing whereby a nuisance or anything in the nature of or which may be deemed to be a nuisance by any Government Agency acting reasonably or within the meaning of any Law now or hereafter in force may exist arise or continue upon or in connection with Minister's use of the Facilities and shall forthwith abate any such nuisance or alleged nuisance and shall carry out and comply with all the provisions of every such Law and of every requisition and order of any Government Agency in reference thereto.
- 13.3 The WAFC shall not do or leave undone or allow or suffer to be done or left undone any act matter or thing whereby a nuisance or anything in the nature of or which may be deemed to be a nuisance by any Government Agency or within the meaning of any Law now or hereafter in force may exist arise or continue upon or in connection with WAFC's use of the Facilities and shall forthwith abate any such nuisance or alleged nuisance and shall carry out and comply with all

the provisions of every such Law and of every requisition and order of any Government Agency in reference thereto.

#### **14. COMPLY WITH STATUTES**

---

Each Party shall:

- (a) use its best endeavours to ensure that its employees agents contractors, subcontractors, licensees and invitees at all times duly and punctually comply with observe and carry out and conform with the provisions of any Law now or hereafter in force and all lawful requirements and orders of any Government Agency which affect the use of the Facilities by that Party; and
- (b) promptly advise the other Parties in writing of any requirements and orders of any Government Agency that it receives or becomes aware of which affect the Facilities.

#### **15. REPORT DAMAGE ETC**

---

The Minister and the WAFC shall promptly report any theft of, damage to, deficiency in, destruction of, or other fault in relation to the Facilities to the Local Government upon becoming aware of the same and do all things and take all steps that are reasonable so as to minimise and mitigate any Loss caused or occasioned thereby.

#### **16. DEBTS**

---

If under this Agreement a Party (**Creditor**) is claiming monies owing as a debt from another Party (**Debtor**), the Creditor will provide the Debtor with true copies of all documentation in support of that debt at the same time as the Creditor gives the Debtor the relevant invoice calling for payment of that debt.

#### **17. SIGNS**

---

##### **17.1 Minister's Signs**

- (a) The Minister shall not affix or cause or permit to be affixed or exhibited anywhere in or on the Facilities any poster signboard neon sign or advertisement except as shall be first approved in writing by the Local Government (which approval must not be unreasonably withheld or delayed).
- (b) The Minister has proposed signage be erected in the following form:

*"Bob Hawke College has priority use of this reserve between the hours of 8.00 am and 4.00 pm on all days that students attend that school by agreement with the City of Subiaco. Staff of Bob Hawke College are empowered to give directions to members of the public using this reserve to ensure the safety of students and staff of that school".*

- (c) The Local Government will consider the proposed form of sign set out in clause 17.1(b) together with its configuration and placement in accordance with clause 17.1(a).

## **17.2 WAFC's Signs**

- (a) The WAFC shall not affix or cause or permit to be affixed or exhibited anywhere in or on the Facilities any poster signboard neon sign or advertisement except as shall be first approved in writing by the Local Government (which approval must not be unreasonably withheld or delayed).

- (b) The WAFC has proposed signage be erected in the following form:

*"The West Australian Football Commission has priority use of this reserve between the hours of [ ] and [ ] on [ . ] by agreement with the City of Subiaco. Staff of the WAFC are empowered to give directions to members of the public using this reserve to ensure the safety of the WAFC and its associates".*

- (c) The Local Government will consider the proposed form of sign set out in clause 17.2(b) together with its configuration and placement in accordance with clause 17.2(a).

## **18. ALCOHOL**

---

The Local Government shall not authorise the consumption of alcoholic beverages on the Facilities during the Minister's Authorised Times of Use unless it has written authorisation from the Principal or an authorised officer of the Department.

## **19. INSURANCE**

---

- 19.1 Each Party must at its own expense during the Term effect, maintain and keep current the following insurances with its self-insurance fund (in the case of Government Agencies) or an insurer authorised by the Australian Prudential Regulation Authority to conduct insurance business in Australia to the reasonable satisfaction of the other Parties:

- (a) public liability insurance in an amount of not less than TWENTY MILLION DOLLARS (\$20,000,000.00) in respect of any one occurrence, unlimited in the aggregate or such amount as shall be determined at the reasonable discretion of the Local Government from time to time to reflect prudent commercial practices;
- (b) property insurance covering loss of or damage to any equipment that a Party provides for use on the Facilities for its full replacement value; and
- (c) workers' compensation insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* including cover for common law liability for an amount of not less than FIFTY MILLION DOLLARS (\$50,000,000.00) for any one event in respect of that Party's workers.

- 19.2 As and when requested a Party must give to the requesting Party sufficient evidence of the existence of the insurances set out in clause 19.1 or provide certificates of currency in respect of those insurances.

## 20. INDEMNITY

---

- 20.1 Each Party shall indemnify and keep indemnified the other Parties (including their officers, employees, agents, contractors, subcontractors, licensees, invitees or representatives) and the Minister for Lands from 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 wrongful 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, subcontractors, licensees, invitees or representatives.
- 20.2 In clause 20.1 Loss refers to any Loss arising out of, from or in connection with:
- (a) any damage to the Facilities or other property of any person whatsoever;  
or
  - (b) the death of, or injury or illness to, any person whatsoever.
- 20.3 For the purposes of clause 20.1, neither the Local Government nor any of the Local Government's Visitors is, or shall be considered or deemed to be, a licensee or invitee of the Minister or the WAFC.
- 20.4 For the purposes of clause 20.1, neither the Minister nor any of the Minister's Visitors is, or shall be considered or deemed to be, a licensee or invitee of the Local Government or the WAFC.
- 20.5 For the purposes of clause 20.1, neither the WAFC nor any of the WAFC's Visitors is, or shall be considered or deemed to be, a licensee or invitee of the Local Government or of the Minister.
- 20.6 The indemnity contained in this clause 200 is a continuing obligation and remains in force and effect notwithstanding the expiry of the Term or the early termination of this Agreement irrespective of how it is terminated or who terminated it.

## 21. COSTS

---

### 21.1 Routine Maintenance program.

- (a) The costs of the Local Government in carrying out the Routine Maintenance program (**LGCRM**) shall be shared between the Parties in accordance with the percentage shares and basis set out in the table contained in Annexure 4.
- (b) The Parties respective shares of the LGCRM shall be paid to the Local Government annually in arrears commencing on the first anniversary of the Commencement Date within 30 days after receiving a Tax Invoice from the Local Government.



- (c) The Local Government shall, if required by the Parties, provide to the Parties evidence of its costs on the Routine Maintenance program for the Facilities;
- (i) for the previous 12 months after the first year of the Term;
  - (ii) for the previous 2 years after the second year of the Term; and
  - (iii) for the previous 3 years after the third year of the term and all subsequent years of the Term;

in such manner and form as agreed between the Parties.

- (d) The Parties acknowledge that the Local Government will be at liberty, at any time, to seek and recover third party contributions towards its share of Routine Maintenance costs from other users licensed to use the Facilities by the Local Government outside of the Minister's Authorised Times of Use and the WAFC's Authorised times of Use.
- (e) If, at any time, the Minister or the WAFC cease to be a licensee of the Facilities under this Agreement, then their share of Routine Maintenance costs shall be:
- (i) apportioned on a pro rata basis in the financial year in which their Licence terminates; and
  - (ii) otherwise the balance of their pro rata share and future financial year shares shall become payable by the Local Government.

### **21.2 Minister's Cap on Routine Maintenance**

- (a) Notwithstanding any other provision of this Agreement, but subject to clause 21.2(b) the Minister's share of the LGCRM shall, for the second and each subsequent year of the Term, not exceed \$20,000 per annum including GST.
- (b) On each anniversary of the Commencement Date, the cap on the Minister's share of the LGCRM referred to in clause 21.2(a) shall be reviewed and adjusted in accordance with the change in the CPI between the quarterly CPI figure immediately prior to the relevant anniversary of the Commencement Date and the quarterly CPI figure immediately prior to 12 months before the relevant anniversary of the Commencement Date.

### **21.3 Non Routine and Major Maintenance**

- (a) The costs of the Local Government in carrying out Non Routine and Major Maintenance (**LGCNRM**) shall be shared between the Parties in accordance with the percentage shares set out in the table contained in Annexure 5.
- (b) The Parties shall pay their percentage shares of the Local Government's costs of Non Routine and Major Maintenance within 30 days after receiving a Tax Invoice from the Local Government.



- (c) The Parties acknowledge that the Local Government will be at liberty, at any time, to seek and recover third party contributions towards its share of Non Routine and Major Maintenance costs from other users licensed to use the Facilities by the Local Government outside of the Minister's Authorised Times of Use and the WAFC's Authorised times of Use.

#### **21.4 Utilities and Service Charges**

- (a) Subject to clause 21.4(b) the Local Government shall pay all assessments relating to utilities and services levied against the Land and Facilities and once paid may seek the assessment and invoicing for the Parties share of utilities or services calculated in accordance with the percentage shares set out in the table contained in Annexure 6.
- (b) Where any Party's utility or service consumption is separately metered or assessed then that Party shall be directly responsible for payment to the utility or service provider for the separately metered or assessed consumption.
- (c) If, at any time, the Minister or the WAFC cease to be a licensee of the Facilities under this Agreement, then their share of utilities and service charges shall be
  - (i) apportioned on a pro rata basis in the financial year in which their licence terminates; and
  - (ii) otherwise the balance of their pro rata share and future financial year shares shall become payable by the Local Government.
- (d) Notwithstanding the provisions of this clause 21.4 the Minister shall at no time be liable for any electrical service or consumption charges incurred for operating lighting on the Facilities.

#### **21.5 Legal Costs of Agreement**

Each Party shall pay its own legal costs in connection with the negotiation and preparation of this Agreement.

#### **21.6 Costs upon Default**

- (a) The Minister shall pay 100% of all of the Local Government's costs which the Local Government incurs in consequence of or in connection with any default by the Minister in performing or observing any covenants conditions or stipulations herein contained or implied and on the part of the Minister to be performed or observed except to the extent that the same was caused or contributed to by any tortious or other wrongful act or omission (including breach of a contractual term, condition or warranty) by the Local Government.
- (b) The WAFC shall pay 100% of all costs charges and expenses which the Local Government incurs in consequence of or in connection with any default by the WAFC in performing or observing any covenants conditions or stipulations herein contained or implied and on the part of the WAFC to be performed or observed except to the extent that the

same was caused or contributed to by any tortious or other wrongful act or omission (including breach of a contractual term, condition or warranty) by the Local Government.

### **21.7 Variations to Costs Sharing**

- (a) The Parties acknowledge that this Agreement may endure for an extended period of time, and that consequently circumstances including the extent and nature of the Parties use of the Facilities may change.
- (b) Accordingly, the Parties undertake to consider and negotiate in good faith and acting reasonably any future variation to costs sharing that the Parties deem to be reasonable.

## **22. GST**

---

- 22.1 The amount of all Primary Payments specified in this Agreement are exclusive of GST except where stated otherwise.
- 22.2 If GST is payable by the Local Government in respect of a Primary Payment or any part in connection with a Taxable Supply provided under this Agreement:
  - (a) the Primary Payment is increased by an amount equal to the applicable GST; and
  - (b) the Minister or the WAFC (as the case may be) must pay the amount of the increase in the same manner and on the same date as the Minister or the WAFC (as the case may be) is required to pay the Primary Payment.
- 22.3 If the Primary Payment consists (wholly or partly) of the recovery by the Local Government of all or a portion of the Local Government's Costs, the Primary Payment is to be reduced by the amount (or corresponding proportion) of the Input Tax Credits available to the Local Government in respect of these costs and then increased by any applicable GST payable under clause 22.2.
- 22.4 If a Primary Payment is to be increased to account for GST under clause 22.2 the Local Government must, at least one month before the date on which the increased Primary Payment is to be paid, issue a Tax Invoice to the Minister or the WAFC (as the case may be).

## **23. CONDITIONS PRECEDENT**

---

### **23.1 Management Order**

This Agreement is subject to and conditional upon the Minister for Lands vesting a management order with the Local Government for the care, control and management of the Land in accordance with section 46 of the *Land Administration Act 1997 (WA)*.

### **23.2 Minister for Lands Approval**

If the approval of the Minister for Lands to this Agreement is required pursuant to section 18 of the *Land Administration Act 1997 (WA)*, then this Agreement is subject to and conditional upon that approval being obtained by the Local Government prior to the Commencement Date.

### 23.3 WA Planning Commission Approval

If the approval of the Western Australian Planning Commission to this Agreement is required pursuant to section 136 of the *Planning and Development Act 2005 (WA)*, then this Agreement is subject to and conditional upon that approval being obtained by the Local Government prior to the Commencement Date.

### 23.4 Satisfaction of Conditions Precedent

Each Party must cooperate with each other Party and use its best endeavours to ensure the Conditions Precedent are satisfied as soon as reasonably possible following the date of this Agreement.

## 24. DISPUTE RESOLUTION

---

### 24.1 Compliance with Clause

The Parties agree that unless and until a Party has complied with the formal requirements of this clause 24.1, a Party may not commence any court proceedings in respect of any Dispute except if that Party seeks urgent interlocutory injunctive or urgent interlocutory declaratory relief.

### 24.2 Meeting to seek Resolution

- (a) If a Dispute arises the Parties in dispute agree to meet to resolve that Dispute within 10 Business Days after one Party notifies another of the Dispute.
- (b) If a Dispute is not resolved at the meeting referred to in clause 24.2(a) then a Party may, by notice (**Dispute Notice**) to the other Party to the Dispute, refer that Dispute for resolution to the Principal or an officer from the Capital Works and Maintenance division of the Department and a nominated senior representative of the Local Government or of the WAFC (as the case may be).
- (c) A Dispute Notice under this clause 24.2 must:
  - (i) state that it is a Dispute Notice under this clause 24.2; and
  - (ii) include or be accompanied by detailed particulars of the Dispute.
- (d) If a Dispute is referred to the relevant persons set out in clause 24.2(b), then these persons must meet within 10 Business Days after the date on which the Dispute Notice is received (or such later date as the Parties in dispute may agree) and endeavour in good faith to resolve (in whole or in part) and negotiate a settlement of the Dispute.
- (e) A Party in compliance with this clause 24.2 may (unless the Parties in dispute agree to submit the Dispute to mediation under clause 24.3)

terminate the Dispute resolution process by notice to the other Party to the dispute at any time after 30 Business Days following reference of the Dispute to the persons specified in clause 24.2(b) above, and following such termination either of the Parties in dispute may commence court proceedings in relation to the Dispute in accordance with clause 25.8 of this Agreement.

### **24.3 Mediation**

- (a) The Parties in dispute may, if mutually agreed following the meeting required by clause 24.2(d), submit the Dispute to mediation in accordance with the Mediation Rules of the Institute of Arbitrators and Mediators Australia as applicable at the date of the Dispute.
- (b) The mediator will be a dispute resolution practitioner with legal qualifications and at least 10 years' experience in the legal profession, as agreed between the Parties in dispute or, failing agreement, a mediator satisfying the requirements of this clause 24.3(b) will be appointed by the President of the Institute of Arbitrators and Mediators Australia.
- (c) Any mediation meetings and proceedings under this clause 24.3 must be held in Perth, Western Australia.
- (d) The costs of any mediation meetings and proceedings under this clause 24.3 will be shared equally between the Parties in dispute.

### **24.4 Court Proceedings**

If the Dispute is submitted to mediation and 20 Business Days (or any other period agreed to in writing between the Parties in dispute) after the appointment of a mediator under clause 24.3 the Dispute remains unresolved (whether in whole or in part), either of the Parties in dispute may commence court proceedings in relation to the Dispute in accordance with clause 25.8 of this Agreement.

### **24.5 Performance of Obligations to Continue**

The Parties in dispute must continue to perform their obligations under this Agreement despite the existence of that Dispute. The Parties in dispute may exercise any rights under this Agreement, including any rights under clause 10, notwithstanding the existence of any Dispute.

## **25. MISCELLANEOUS**

---

- 25.1 Each Party must do all things and execute all further documents necessary to give full effect to this Agreement.
- 25.2 Nothing in this Agreement may be construed to make a Party a partner, agent, employee or joint venturer of any other Party.

- 25.3 The Local Government must not represent that the Local Government or any of its personnel are the employees, agents, partners or joint venturers of the Minister.
- 25.4 The Minister must not represent that the Minister or any of its personnel are the employees, agents, partners or joint venturers of the Local Government.
- 25.5 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.
- 25.6 This Agreement states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.
- 25.7 The Parties agree that Part IF of the *Civil Liability Act 2002 (WA)* is excluded and does not apply to the Parties' liabilities under this Agreement.
- 25.8 This Agreement is governed by the Law in force in Western Australia.
- 25.9 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.
- 25.10 Each Party represents and warrants to the other that it has full power to enter into and perform its obligations under this Agreement and that when executed this Agreement will constitute legal, valid, and binding obligations under its terms.
- 25.11 The Local Government must immediately notify the Minister and the WAFC in writing if it forms the opinion that it will be unable to, or be unlikely to be able to, satisfy any of its obligations in relation to this Agreement from the financial resources available, or likely to be available, to it, at the time the obligation is due.
- 25.12 The provisions of the Schedule are terms of this Agreement and therefore are enforceable in accordance with their terms.

## **26. OPTION TO RENEW**

---

### **26.1 Minister's Further Term**

If, and only if, no earlier than nine (9) months and no later than three (3) months before the date of expiration of the Term, the Minister gives notice to the Local Government that it wants to extend this Agreement for the Minister's Further Term, and the Local Government is satisfied that:

- (a) there are no Primary Payments or other money payable under this Agreement which are due but unpaid; and
- (b) there is no un-remedied breach of the Minister's obligations at the date of expiration of the Term,

the Local Government will grant the Minister a licence of the Facilities for the Minister's Further Term on the same terms and conditions of this Agreement except for this provision of renewal.

## 26.2 WAFC's Further Term

If, and only if:

- (a) the WAFC achieves practical completion of construction of the Building on the Adjoining Land within the Term; and
- (b) no earlier than nine (9) months and no later than three (3) months before the date of expiration of the Term the WAFC gives notice to the Local Government that it wants to extend this Agreement for the WAFC's Further Term,

and the Local Government is satisfied that:

- (a) there are no Primary Payments or other money payable under this Agreement which are due but unpaid; and
- (b) there is no un-remedied breach of the WAFC's obligations at the date of expiration of the Term,

the Local Government will grant the WAFC a licence of the Facilities for the WAFC's Further Term on the same terms and conditions of this Agreement except for this provision of renewal.

## 27. USER GROUP COMMITTEE

---

27.1 The Parties agree to establish a committee as follows:

- (a) Upon the execution by the parties of this Agreement a committee shall be established known as the "Subiaco Oval User Group Committee" (**Committee**).
- (b) The Parties shall each nominate a representative for membership of the Committee and may revoke and make alternative nominations from time to time in their absolute discretion. In the case of the Local Government the CEO shall nominate its representative for the Committee.
- (c) The Committee shall arrange and attend their inaugural meeting within 4 weeks of the parties signing of this Agreement. At the inaugural meeting the Committee shall determine:
  - (i) any standing orders, rules or procedures by which meetings will be governed; and
  - (ii) the frequency of Committee meetings.
- (d) The purpose of the Committee will be to:
  - (i) assist the Parties to administer this Agreement;

- (ii) form recommendations to the Parties on any potential variations to the Agreement that the Committee deem may be desirable; and
- (iii) discuss and resolve where possible any day to day operational issues that may arise.

EXECUTED by the Parties.

SIGNED for and on behalf of the )  
MINISTER FOR EDUCATION by )  
JAY TIMOTHY PECKITT )  
A/Deputy Director General of the )  
Department of Education, )  
the officer delegated this authority )  
pursuant to section 230 of the )  
of the *School Education Act 1999 (WA)* )  
in the presence of )

*[Handwritten Signature]*

21/10/2021

*[Handwritten Signature]*

Witness signature

\_\_\_\_\_  
Witness Full Name (Please print)

Joanne Elizabeth Balalas  
Executive Assistant

\_\_\_\_\_  
Witness address (Please print)

Department of Education  
151 Royal St East Perth WA 6004

\_\_\_\_\_  
Witness occupation (Please print)

THE COMMON SEAL of )  
WEST AUSTRALIAN FOOTBALL )  
COMMISSION INC )  
was affixed by authority of the )  
Board or of a Committee of the Board )  
authorised by the Board in that regards )  
in the presence of : )



*[Handwritten Signature]*  
\_\_\_\_\_  
Signature of Commissioner

*[Handwritten Signature]*  
\_\_\_\_\_  
Signature of Commissioner/Chief Executive Officer

DIXIE MARSHALL

Print Full Name

MICHAEL ROBERTS

Print Full Name





THE COMMON SEAL of the  
CITY OF SUBIACO was hereunto  
affixed in the presence of

)  
)  
)

Jim Taylor  
Mayor

[Signature]  
Chief Executive Officer

Penelope May Mitchell Taylor.  
Print full name

Colin Lindsay CAMERON  
Print full name

## ANNEXURE 1

## AUTHORISED TIMES OF USE

PEAK (March - October inclusive)							
	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Pre 8am	City	City	City	City	City	City	City
8 - 9 am	BHC	BHC	BHC	BHC	BHC	City	City
9 - 10 am	BHC	BHC	BHC	BHC	BHC	WAFC*	City
10 - 11am	BHC	BHC	BHC	BHC	BHC	WAFC*	City
11-12pm	BHC	BHC	BHC	BHC	BHC	WAFC*	City
12 - 1pm	BHC	BHC	BHC	BHC	BHC	WAFC*	City
1 - 2pm	BHC	BHC	BHC	BHC	BHC	City	City
2 - 3pm	BHC	BHC	BHC	BHC	BHC	City	City
3 - 4pm	BHC	BHC	BHC	BHC	BHC	City	City
4 - 5pm	City	City	City	WAFC	City	City	City
5 - 6pm	City	City	City	WAFC	City	City	City
6 - 7pm	WAFC	WAFC	WAFC	WAFC	City	City	City
7 - 8pm	WAFC	WAFC	WAFC	WAFC	City	City	City
8 - 9pm	WAFC	WAFC	WAFC	WAFC	City	City	City
<i>*WAFC Saturday fixtures not required every week</i>							

OFFPEAK (November - February inclusive)							
	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Pre 8am	City	City	City	City	City	City	City
8 - 9 am	BHC	BHC	BHC	BHC	BHC	City	WAFC
9 - 10 am	BHC	BHC	BHC	BHC	BHC	City	WAFC
10 - 11am	BHC	BHC	BHC	BHC	BHC	City	City
11-12pm	BHC	BHC	BHC	BHC	BHC	City	City
12 - 1pm	BHC	BHC	BHC	BHC	BHC	City	City
1 - 2pm	BHC	BHC	BHC	BHC	BHC	City	City
2 - 3pm	BHC	BHC	BHC	BHC	BHC	City	City
3 - 4pm	BHC	BHC	BHC	BHC	BHC	City	City
4 - 5pm	WAFC	City	WAFC	City	City	City	City
5 - 6pm	WAFC	City	WAFC	City	City	City	City
6 - 7pm	WAFC	City	WAFC	City	City	City	City
7 - 8pm	WAFC	City	WAFC	City	City	City	City
8 - 9pm	WAFC	City	WAFC	City	City	City	City

## ANNEXURE 2

## ROUTINE MAINTENANCE PROGRAM

Routine Maintenance	Frequency
<b>Turf</b>	
Mowing Summer	Twice per week
Mowing Winter	Once per fortnight (as required)
Line Marking (subject to clause 6)	Once per week
Soil nutrient testing	Twice annually
Leaf tissue nutrient testing	Twice annually
Whipper snipping	Once per fortnight
Edging	Once per fortnight
Blowing	Twice per week
Top dressing	As required
Turf plugging	As required
Turf inspection safety	Once per week
Winter sweeping (Damaged turf)	Once per fortnight
Renovation reports	2 Reports (winter and summer season)
<b>Irrigation</b>	
Irrigation checks summer	Once per fortnight
Irrigation checks winter	Once per month
Irrigation repairs (minor)	As required
Bore filter checks	Ten times annually
Bore flow meter testing and running costs	Once annually
Meter calibration	Once annually
Water quality testing	Twice annually
<b>Annual Turf Renovations</b>	
Hollow Tining	Twice annually
Sweep remove debris	Twice annually
5mm of sand smudged	Twice annually
Broad leaf weed control	Twice annually
Pest and disease control	As required
Soil wetter	Three times annually
Granular fertiliser	Six times annually
Liquid fertiliser	Approximately five times annually
Ad-Hoc Turf Replacement	As required with fair wear and tear
Comprehensive Turf Replacement (subject to clause 3.3 (d))	Twice annually during Transition Periods, if required
Solid Tining	Four times annually
Vertimowing	Once annually
Sprinkler mark out	As required
<b>General</b>	
Plant Maintenance	Once per week
Litter / Rubbish collection	Twice per week

**ANNEXURE 3****NON ROUTINE AND MAJOR MAINTENANCE**

<b>Works Items</b>	<b>Frequency</b>
Rectification to a significant degree of the grass dying	As required
Major maintenance of the reticulation servicing the Facilities	As required
Major maintenance and/or replacement of the bore used to water the Facilities	As required
Any maintenance activity or repairs, including replacement, that are not part of the Routine Maintenance Program	As required

## ANNEXURE 4

## SHARE CONTRIBUTION FOR ROUTINE MAINTENANCE

Year	Minister	WAFC	Local Government
<b>1<sup>st</sup> year of Term</b>	\$18,925.00	50% of the balance of the LGCRM incurred in the 1 <sup>st</sup> year after deduction of the Minister's share	50% of the balance of the LGCRM incurred in the 1 <sup>st</sup> year after deduction of the Minister's share
<b>2<sup>nd</sup> year of Term</b>	20% of the average annual amount of the LGCRM for the first 2 years of the Term; or  the capped amount referred to in clause 22.2, whichever is the lesser  <i>21.2 MC</i>	40% of the average annual amount of the LGCRM for the first 2 years of the Term; or  50% of the balance of the average annual amount of the LGCRM for the first 2 years of the Term after deduction of the Minister's share where the Minister's Cap is used	40% of the average annual amount of the LGCRM for the first 2 years of the Term; or  50% of the balance of the average annual amount of the LGCRM for the first 2 years of the Term after deduction of the Minister's share where the Minister's Cap is used
<b>3rd and subsequent years of Term</b>	20% of the average annual amount of the LGCRM for the previous 3 years of the Term;  or the capped amount referred to in clause 22.2 whichever is the lesser	40% of the average annual amount of the LGCRM for the previous 3 years of the Term; or  50% of the balance of the average annual amount of the LGCRM for the previous 3 years of the Term after deduction of the Minister's share where the Minister's Cap is used	40% of the average annual amount of the LGCRM for the previous 3 years of the Term; or  50% of the balance of the average annual amount of the LGCRM for the previous 3 years of the Term after deduction of the Minister's share where the Minister's Cap is used

**ANNEXURE 5****SHARE CONTRIBUTION FOR NON ROUTINE AND MAJOR MAINTENANCE**

<b>Year</b>	<b>Minister</b>	<b>WAFC</b>	<b>Local Government</b>
All years of the Term	20%	40%	40%

**ANNEXURE 6****SHARE CONTRIBUTION FOR UTILITIES AND SERVICE CHARGES**

<b>Year</b>	<b>Minister</b>	<b>WAFC</b>	<b>Local Government</b>
All years of the Term	20% of actual amounts incurred by Local Government	40% of the actual amounts incurred by Local Government	40% of the actual amounts incurred by Local Government



ANNEXURE 7

DIAGRAM OF THE ADJOINING LAND



 = Subiaco Oval Boundary

 = Adjoining Land for future WAFC Building

