

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF JOONDALUP

AND

CITY OF STIRLING

FOR

CARINE OPEN SPACE SKATEPARK JOINT VENTURE

MEMORANDUM OF UNDERSTANDING FOR CARINE OPEN SPACE SKATEPARK JOINT VENTURE

1. PARTIES

This document constitutes a Memorandum of Understanding (MOU) between the City of Stirling with its office at Civic Place, Stirling and the City of Joondalup with its office at Boas Avenue, Joondalup for a Joint Venture for Carine Open Space Skatepark in accordance with the terms and conditions stated in this document.

2. PURPOSE

The proposal is for the provision of an innovative joint venture Skatepark Facility, herein known as the "Facility", located in Carine Open Space, within the City of Stirling, that can be utilised by community members of both parties.

This Memorandum of Understanding (MOU) sets out in broad terms the respective roles, responsibilities, accountabilities and commitments agreed upon by both parties, incorporating the design and construction phase of the Facility, as well as the future management of the completed project. It provides that the City of Stirling be the host organisation, on behalf of both parties, in relation to order of authority and completion of design and specification documentation, including, but not limited to, building licence applications, tender and contract documentation.

3. COMMITMENTS AND PROTOCOLS

- (a) **Approach:** Both parties agree to adopt a team approach to service delivery to the communities of the Stirling and Joondalup region. This approach demonstrates a commitment between the parties for the purpose of achieving specific business objectives by maximising the effectiveness of co-operation.

This MOU is based on the spirit of a cohesive team to assist the community in the region and the fundamental human value concepts of common sense, respect, trust, integrity and commitment. Under this MOU, all participants to this agreement have understood mutual goals, established mechanisms for communication and developed formal problem solving and dispute avoidance strategies.

- (b) **Principles:** The agreed principles for both parties to this MOU is:

"The City of Stirling and City of Joondalup will co-operatively provide value for money services to satisfy community expectations and maintain levels of service to the community to withstand statutory provisions and audit trail so that the successful administration of the Carine Open Space Skatepark Facility is completed."

4. DISPUTE RESOLUTION

Both parties seek to resolve issues, problems and conflicts at the lowest possible management level within functional areas. To commence the dispute resolution process the interested party must provide a written notice to the other giving details of dispute and intention to settle it through the dispute resolution mechanism. Both parties will demonstrate its true intention to resolve the dispute amicably. If the dispute remains unresolved after 28 days of the notice of dispute resolution then either party may opt to escalate the dispute to higher level. If the dispute still unresolved for another 30 days at the higher level then the Chief Executive Officers of both parties will deal with the dispute. If both the Chief Executive Officers can not resolve a dispute within 30 calendar days from the date when the matter is brought to their attention, then either party may take the dispute to a mediator or an arbitrator as nominated by the Chairperson of Institution of Arbitrators and Mediators, Australia WA Chapter. Parties will share the cost of mediation equally and the cost of arbitration will be borne by as directed by the arbitrator.

5. REVIEW

The conditions of this MOU shall be subject to a review by both parties upon the expiry of a period of two (2) years from the commencement date and thereafter every five (5) years. During such review the parties agree to meet together and negotiate in good faith.

6. COSTS

Both parties agree to equally share, on equal sharing basis, all capital costs associated with the development of the facility, up to an amount of no greater than \$75,000 each. The City of Stirling will hold the contributions from each party in a trust fund. Any interest accrued from that fund will be vested into that fund. All expenses for the Skate Park Project will be disbursed from the trust fund. At the conclusion or termination of this Memorandum of Understanding the balance of the fund if any, will be refunded to each of the parties on the basis of its contribution.

Capital costs include, but are not limited to, all community consultations, design and construction, legal, insurance, advertising / promotion and signage and safety measures.

7. INSURANCE

Both parties will protect themselves and indemnify each other through appropriate insurances under the legislative provision.

8. MAINTENANCE

City of Stirling will be responsible for any required maintenance and or repairs to the Facility. Both parties however are responsible for all operational expenditure, on a 50/50-share basis, for ongoing maintenance and replacement of fittings to the Facility only. All work carried out is to be in accordance with Occupational Safety and Health standards of relevant legislation.

The City of Stirling is solely responsible for any other maintenance associated within the immediate vicinity including, but not limited to, car parking, wetlands, ovals and clubrooms.

9. REPORT DAMAGES AND OTHER ITEMS

Both parties, shall as soon as practicable after becoming aware of any theft of, damage to, deficiency in, destruction of, vandalism including graffiti or other fault in relation to the Facility, report the same to the City of Stirling's nominate officer. City of Stirling will do all things and take all steps that are reasonable so as to minimise and mitigate any loss caused or occasioned thereby and City of Joondalup without any prejudice, will collaborate with the City of Stirling to achieve this.

10. SUPERVISION / SURVEILLANCE OF THE FACILITY

The Facility will be a 'cost-free' activity to all users, similar to that of Council playground equipment. It will be open for any person/s within the community to enjoy and share. There will be no Council supervision of users skating at this Facility on a day to day basis. However, if and when, the Facility is utilised for a skate competition, organised and managed by an appropriate authority, such as either of the City's Youth Services, then a supervisor must be present and accountable throughout the duration of the event.

All users utilising the Facility do so at their own risk. Safety equipment and appliances as required, to minimise injury and prevent accidents, is to be worn at all times by all Facility users.

Surveillance of the Facility to be undertaken by City of Stirling's Ranger Services or an office appointed by the City of Stirling for this purpose. There is to be a higher than average number of ranger patrols within the initial opening months of operation of the Facility. This is to deter and minimise any form of anti-social behaviour that may impact on the users of the Facility and or the surrounding parks and ovals, as well as the local residents.

11. FACILITY BOOKINGS

City of Stirling shall appoint an officer to manage bookings and general enquiries in relation to the Facility. Bookings will only be required if an appropriately supervised, organised event or competition is planned which requires exclusive use of the Facility for any period of time. These types of events have priority use of the Facility, during that given period, over general community use.

Booking priority will be on a 'first come, first served' basis.

There will be no charge for bookings made on behalf of both respective parties. A fee, to be mutually agreed by both parties, will be applied to any booking of the Facility made on behalf of a commercial operator.

City of Stirling to receive all monies generated from hiring the Facility, in lieu of resources spent in managing the Facility.

City of Stirling shall provide adequate records of such bookings and make them available for inspection by City of Joondalup or any auditor appointed by either Party with a written notice of 7 calendar days.

12. MEDIA AND PUBLICITY

Any form of formal promotion of the Facility will specify that the Facility is a 'joint venture' project between both parties.

Any formal media and or publicity regarding the Facility will be subject to liaison between an approved representative from each party.

Both parties may, at their own cost and expense, be responsible for advertising the Facility and otherwise promoting community awareness of, and interest in, the same from time to time, except in the case where both parties are jointly involved in any such activities, e.g. Official opening of the Facility.

13. SIGNAGE

Both parties shall agree on all appropriate signage and where that said signage shall be affixed or exhibited in or on the Facility subject to the Local Laws prevailing at the place of installation.

14. TERMINATION

If either party:

- (a) breaches or fails to comply with any term of the MOU; and
- (b) after having been served with a written notice:
 - (i) specifying the breach or failure; and
 - (ii) requiring that breach or failure to be rectified within a reasonable period of time.

fails or refuses to so rectify that breach or failure within the period provided under such written notices, then the other party shall be entitled to terminate this MOU and such termination shall take effect immediately upon the first mentioned party being served with notice of termination.

Either party may terminate this MOU at any time with a written three months' notice signed by its Chief Executive Officer.

Both parties will agree on any compensation, which is due, legal, reasonable and mutually agreed.

15. CLOSURE OR DESTRUCTION OF FACILITY

Both parties have to agree to any closure or part closure of the Facility, as well as the ultimate destruction, or part thereof, of the Facility, before any work is carried out for the above mentioned.

16. VARIATION

This MOU may only be varied by agreement signed in writing by both parties.

17. JURISDICTION

The laws of the State of Western Australia shall govern this MOU.

EXECUTION

EXECUTED on the date set out at the commencement of this Memorandum of Understanding:

The Common seal of the City of Joondalup was hereunto affixed and signed by the authority of a resolution (item CJ163-07/00) of the Council in the presence of:

JOHN BOMBAK JP
Mayor

DENIS SMITH
Chief Executive Officer

The Common seal of the City of Stirling was hereunto affixed and signed by :

TONY VALLELONGA JP
Mayor

LINDSAY DELAHAUNTY
Chief Executive Officer