

Funding Deed

Council wishes to provide funding to the specified Organisation for the Project, in accordance with this deed.

Words or expressions capitalised in the left hand column of the particulars section below have the meaning given in the right hand column when used in this deed.

Particulars

Council	Greater Shepparton City Council ABN 59 835 329 843 of 90 Welsford Street, Shepparton, Victoria 3630.												
Organisation	Greater Valley Calisthenics Club Inc ABN 84 735 107 575 of Youth Club Hall, Vaughan Street, Shepparton, Victoria 3630.												
Funded Amount	\$100,000 (inclusive of any goods and services tax), less any amounts deducted or withheld under this deed.												
Project	The relocation of the Organisation's facilities at Youth Club Hall, Vaughan Street, Shepparton to Chas Johnson Reserve, 12/28-30 Packham Street, Shepparton or alternate premises identified by the Organisation in Shepparton and acceptable to Council, by no later than 1 January 2021. The Funded Amount is to be used solely for the delivery of a relocated calisthenics facility within the prescribed time period.												
Project Objectives	Assisting the Organisation to relocate from Youth Club Hall, Vaughan Street, Shepparton and establishing a relocated calisthenics facility.												
Project Conditions Precedent	<p>(a) The Organisation demonstrates to Council's reasonable satisfaction that the Organisation has secured appropriate alternate premises for relocation purposes.</p> <p>(b) Council and the Organisation agree on a timetable for the Organisation to commence and complete the relocation to the alternate premises.</p>												
Project Commencement Date	As agreed by Council and the Organisation as part of finalising the relocation plan.												
Project Completion Date	1 January 2021 (or if Council permits additional time, the date the Project is completed).												
Payment Instalments	The Funded Amount is to be paid within fourteen days of the Project Conditions Precedent being met or another date agreed by Council and the Organisation.												
Key Reports	<table border="0"> <tr> <td>Report</td> <td>Timin</td> </tr> <tr> <td>Relocation plan</td> <td>A relocation plan acceptable to Council must be provided to Council as part of the Project Conditions Precedent. The plan must detail how the Project will be delivered and timeframes for action, including the date relocation commences and is completed.</td> </tr> <tr> <td>Status updates</td> <td>Status updates, reporting on amounts spent, progress against the relocation plan must be provided to Council on a regular basis.</td> </tr> <tr> <td>events</td> <td>Any event which could reasonably be expected to delay all or part of the Project or which materially alters any representation made to Council must be promptly notified to Council once known or identified by the Organisation.</td> </tr> <tr> <td>Breaches</td> <td>Any breach of this deed must be promptly notified to Council once known or identified by the Organisation.</td> </tr> <tr> <td>Additional report</td> <td>Any additional information reasonably requested by Council in relation to the evaluation of the Project must be provided in a form and manner acceptable to Council.</td> </tr> </table>	Report	Timin	Relocation plan	A relocation plan acceptable to Council must be provided to Council as part of the Project Conditions Precedent. The plan must detail how the Project will be delivered and timeframes for action, including the date relocation commences and is completed.	Status updates	Status updates, reporting on amounts spent, progress against the relocation plan must be provided to Council on a regular basis.	events	Any event which could reasonably be expected to delay all or part of the Project or which materially alters any representation made to Council must be promptly notified to Council once known or identified by the Organisation.	Breaches	Any breach of this deed must be promptly notified to Council once known or identified by the Organisation.	Additional report	Any additional information reasonably requested by Council in relation to the evaluation of the Project must be provided in a form and manner acceptable to Council.
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Additional report	Any additional information reasonably requested by Council in relation to the evaluation of the Project must be provided in a form and manner acceptable to Council.												
Additional Provisions	Not applicable.												

Execution

Council agrees to pay the Funded Amount to the Organisation for the delivery of the Project, and the Organisation agrees to ensure the Funded Amount is applied for the Project, on the terms of this deed (incorporating the attached terms and conditions).

THE COMMON SEAL of the GREATER)
SHEPPARTON CITY COUNCIL was affixed on)
this day)
of 2020 in the)
presence of the Chief Executive Officer being a)
delegated officer pursuant to Local Law No. 2 of)
the Council:)

CHIEF EXECUTIVE OFFICER
Peter Harriott

THE COMMON SEAL of GREATER VALLEY)
CALISTHENICS CLUB INC was affixed on)
this day)
of 28/8/2020 2020 in the)
of AUGUST presence of authorised persons:)

President

Handwritten signature
Secretary

Full Name
Letitia Okely

Full Name
Aimee Brond
1 Gorr Court, Shepparton, 3630
Usual Address

Usual Address
13 Moores Rd Kialla

Date of Execution

50P 19
Presid
Date 28 / 8 / 2020
ry Sig *Handwritten signature*
28 / 8 / 2020
GREATER VALLEY
CALISTHENICS

1 Delivery of the Project

- 1.1 From the Project Commencement Date until the Project Completion Date, the Organisation must carry on and complete the Project:
- 1.1.1 in accordance with applicable laws and any applicable guidelines, policies and procedures notified by Council; and
 - 1.1.2 using a standard of care, skill and diligence that would be reasonably expected from an organisation such as the Organisation,
- so as to achieve the Project Objectives, in a timely and efficient manner.
- 1.2 Without limiting clause 1.1, the Organisation must:
- 1.2.1 maintain the policies of insurance acceptable to Council; and
 - 1.2.2 maintain, so far as is practicable, a working environment for employees, contractors and members of the public that is safe and without risk to health, including without limitation, ensure that contractors engaged in connection with the Project are registered or accredited so as to ensure compliance with occupational health and safety laws and to protect any volunteers working on the site of the Project.

2 Project Governance

The Organisation must establish a steering committee, working party or other similar group acceptable to Council to manage the Project. The activities and terms of reference of the governance structure must accord with Council's directions. A Council representative must be invited to attend and be part of this governance group (although Council is not obliged to participate).

3 Reporting

- 3.1 The Organisation must provide Council with such statements, reports, input and assistance as Council reasonably requires concerning expenditure, costs and commitments concerning the Project and/or for the purposes of capturing and/or evaluating the benefits of the Project. Without limitation, the Organisation must provide Council with the Key Reports.
- 3.2 At Council's request, reports, including the Key Reports, must be prepared by or certified by an auditor engaged by the Organisation, in a form and manner required by Council.

4 Access to and Inspection of Records

The Organisation must:

- 4.1 give Council and its nominees access to premises at which records and materials associated with this deed and/or the Project are stored or work under the Project is undertaken;
- 4.2 allow Council and its nominees to inspect and copy materials that are in the Organisation's possession or control, for the purposes associated with this deed or any review of performance under this deed; and
- 4.3 provide all assistance reasonably requested by Council in respect of any inquiry into or concerning the Project or the Funded Amount.

5 Preservation of Records

Records and materials created or maintained by the Organisation as incident of this deed and/or the Project, must be:

- 5.1 maintained by the Organisation for the duration of the Project and for at least 7 years after the Project Completion Date; and
- 5.2 available for inspection and copying by Council and its nominees on reasonable notice (records to be made available at the Organisation's cost and expense).

6 Conflicts of Interest and Probity

The Organisation must comply with any reasonable written requirements of Council in relation to conflicts of interest and probity arising from or in connection with the Project.

7 Payment of Funding

- 7.1 The Organisation must provide Council with any payment claim forms and supporting documentation, as well as any prescribed reports, required by Council to pay the Funded Amount.

- 7.2 Subject to:

- 7.2.1 any suspension, deduction or retention provided for in this deed; and

- 7.2.2 the Organisation having fulfilled its obligations under this deed, to Council's reasonable satisfaction,

Council will promptly pay each Payment Instalment of the Funded Amount to the Organisation, upon satisfaction of the relevant stage of the Project, including satisfaction of relevant milestones.

8 Use of Funding

The Organisation warrants and covenants that the Funded Amount will be used and applied:

- 8.1 directly to and for the Project, to achieve the Project Objectives; and
- 8.2 in accordance with any directions or requirements of Council notified at the time a payment is made,

and for no other purpose.

9 Project Budget and Project Overruns

The Organisation must develop an appropriate budget for the full implementation of the Project, for Council's approval. The Organisation must meet any Project cost over-runs or funding shortfalls, to achieve satisfactory completion of the Project, by the Project Completion Date.

10 Cessation or Suspension of Payments

Council may, from time to time, cancel or suspend all or part of the payments of the Funded Amount and/or the Payment Instalments if any one or more of the following occur:

- 10.1 the Organisation fails or neglects to perform or observe any of the terms and conditions contained in this deed and the default continues for 7 days after written notice by or on behalf of Council calling on the Organisation to remedy such default;
- 10.2 there is a material change in the structure, type, composition or control of the Organisation;
- 10.3 if the Organisation stops payment of its debts or without the prior written consent of Council ceases or threatens to cease to carry on the whole or a major portion of its business;
- 10.4 if any governmental or other licence, permit, authorisation, consent or exemption required to enable the Organisation to carry out activities in connection with the Project, is withdrawn or

modified in a manner unacceptable to the Council or is not duly granted or received when applied for;

10.5 if it becomes unlawful for the Organisation to perform any of its obligations arising in relation to this deed or any approval for the Organisation to do so is withdrawn, suspended or varied; or

10.6 if Council is not satisfied with the progress or status of the Project.

11 Repayment

If Council determines that all or part of the Funded Amount has been used, spent or committed by the Organisation other than in accordance with this deed, Council may require repayment of the relevant amount by the Organisation, and the Organisation must immediately pay to Council (without deduction) the amount notified by Council.

12 Surrender of Karibok Park Facilities

12.1 On the sooner of the date on which the Organisation has relocated in accordance with this deed and the termination or expiration of the agreement for use between Council and the Organisation in respect of the Youth Club Hall, Karibok Park, Shepparton (known as 130 Rowe Street) (**surrender date**), the Organisation surrenders to Council and Council will accept a surrender of all of the Organisation's estate, right, title and interest in the facilities occupied by the Organisation at Karibok Park and the agreement for use between Council and the Organisation, with the intent that at that time all such estate, right, title and interest merges and is extinguished.

12.2 On the surrender date under clause 12.1, the Organisation must:

12.2.1 vacate the Karibok Park premises and yield them up to Council in good order and repair, with the Organisation's property removed, and otherwise as required under the terms of the agreement for use between Council and the Organisation; and

12.2.2 provide Council with all keys and security devices within the possession or control of the Organisation or its employees or agents.

13 Organisation to Meet Own Costs

The Organisation must pay all fees, charges and costs incurred in the performance of its obligations under this deed, except as expressly stated otherwise in this deed.

14 Sub-contracting

14.1 The Organisation may sub-contract elements of the Project without obtaining Council's prior approval if:

14.1.1 the value of the sub-contracted work does not exceed a sum notified by Council;

14.1.2 the nature of the work has not been prescribed by Council as work the Organisation must directly undertake;

14.1.3 the sub-contractor evidences insurance cover equivalent to that to be maintained by the Organisation under this deed; and

14.1.4 the sub-contract includes provisions that enable the Organisation to comply with the Organisation's obligations under this deed.

14.2 Sub-contracting does not relieve the Organisation from any liability or obligation under this deed, including the Organisation's work health and safety obligations.

- 14.3 The Organisation must ensure that each sub-contractor complies with the terms of this deed.
- 14.4 The Organisation will be responsible for the acts and omissions of any sub-contractor, or any of the sub-contractor's personnel, as if they were the acts or omissions of the Organisation.

15 Council's Maximum Liability

To the extent permitted by law:

- 15.1 Council's aggregate liability to the Organisation arising out of all claims brought by or on behalf of the Organisation for loss or liability suffered or incurred by the Organisation in connection with this deed or the Project (including without limitation as a result of any negligent act or omission of Council) is limited to the Funded Amount payable to the Organisation under this deed; and
- 15.2 Council is not liable for any indirect or consequential loss, damage, costs or expenses awarded against, or incurred by, the Organisation under, or as a result of this deed or the Project (including any such loss, damage, costs or expenses arising from the Council's negligence), including without limitation, loss of revenue or profits, loss of goodwill, loss of information or failure to realise anticipated benefits or savings.

16 Funding Acknowledgements, Publicity and Communications Plan

- 16.1 Any publicity concerning the Project, including public announcements, are to be as agreed between Council and the Organisation from time to time.
- 16.2 At the request of Council or the Organisation, Council and the Organisation must agree in good faith on a communications plan which identifies, without limitation, the various milestones where media will be appropriate or required. An agreed communications plan must be adhered to.
- 16.1 The funding contribution of Council for the Project must be acknowledged, recognised and promoted by the Organisation in accordance with Council's reasonable directions. Without limitation, the Organisation must allow Council and/or its nominees to attend and speak at public functions, announcements or openings concerning the Project.
- 16.2 The Organisation acknowledges that unless expressly provided for under this deed or expressly agreed in writing by Council on a case-by-case basis, the Organisation is not entitled to promote its association with Council or use the trade marks or logos of Council.

17 Evidence of Compliance

At the request of Council, the Organisation must evidence compliance with its obligations under this deed, to Council's satisfaction.

18 Dispute Resolution

- 18.1 Council's and the Organisation's appointed representatives for the purposes of this deed must promptly enter into good faith discussions to resolve any dispute concerning this deed.
- 18.2 If Council or the Organisation believes that a dispute cannot be resolved through informal discussions, either party must initiate the following formal dispute resolution process before commencing any legal proceedings in respect of the dispute:
- 18.2.1 the party claiming that a dispute has arisen must provide the other party with written particulars of the dispute, incorporating reasonable particulars of the matter in dispute and detail of what, in the opinion of the notifying party, need occur for the dispute to be resolved (**Dispute Notice**);

- 18.2.2 within 14 days after receipt of the Dispute Notice the parties must appoint and convene a meeting between senior officers to discuss and try and resolve the dispute, with any agreed outcome to be final and binding;
- 18.2.3 if the dispute is not resolved within 21 days after receipt of the Dispute Notice, either party may within 7 days after that date request that the dispute be referred to mediation (**Mediation Notice**);
- 18.2.4 if a Mediation Notice is issued, a mediator is to be appointed by agreement or failing agreement within 7 days after receipt of the Mediation Notice, either party may request the president for the time being of the Law Institute of Victoria or their delegate to nominate a mediator who is independent of the parties;
- 18.2.5 the parties must participate in a mediation with the nominated mediator as soon as reasonably practicable, at an agreed venue, or failing agreement, at a venue directed by the mediator, with a review to resolving the dispute in good faith, with the rules for mediation as follows:
- (a) complete confidentiality will be preserved in respect of the mediation and any documents and information used at or in relation to the mediation, which cannot be used by a receiving party in any legal proceedings;
 - (b) all discussion will be without prejudice and each party may be legally represented if they so wish;
 - (c) the mediator may only co-opt other expert assistance with the agreement of the parties; and
 - (d) each party must bear their respective costs of the mediation, provided that the mediator's fee, fees for mediation rooms and costs of shared equipment facilities and services of the mediation must be shared equally; and
- 18.2.6 if the dispute is not resolved within 14 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.
- 18.3 The dispute resolution procedures do not:
- 18.3.1 deny a party the right to seek urgent injunctive or interlocutory relief from an appropriate court where failure to obtain such relief would cause irreparable damage to that party; or
 - 18.3.2 apply to events giving rise to a determination under or termination of this deed or the suspension or reduction of payments to the Organisation, where such events are clearly specified in this deed and there is no legitimate dispute as to the interpretation of their meaning or factors giving rise to such events.
- 18.4 Despite the existence of a dispute Council and the Organisation must continue to perform their obligations under this deed.

19 Indemnity

The Organisation must indemnify, keep indemnified and hold harmless Council and its councillors, employees and agents from and against all claims, losses and liabilities (including, without limitation, all legal costs on a full indemnity basis) consequent upon, occasioned by or arising from:

- 19.1 its performance, purported performance or non-performance of its obligations under this deed;
- 19.2 its negligent acts or omissions; or

- 19.3 wilful misconduct or illegal acts or omissions of the Organisation or the officers, members, employees, agents or contractor's of the Organisation.

20 Relationship Between the Parties

Nothing in this deed or in the transactions contemplated by it will create or be deemed to create a relationship of partnership or agency between Council and the Organisation.

21 Local Government Act

Nothing contained in this deed limits, waives or derogates Council's rights and obligations under the *Local Government Act 1989* (Vic) or any prior agreement or deed between Council and the Organisation and to the extent that:

- 21.1 a part of this deed is inconsistent with such rights and obligations; or
- 21.2 the performance of an obligation by Council under this deed is subject to Council following a procedure under the Act,

Council's obligations are to be read down and construed accordingly or read subject to Council satisfying that procedure

22 Further Assurances

Each party must use all reasonable efforts to do all things necessary and desirable to give effect to this deed and refrain from doing anything that might hinder the performance of this deed.

23 Additional Provisions

This deed is subject to any additional provisions in the particulars. If there is an inconsistency between an additional provision and another provision of this deed, the additional provision prevails.

24 Governing Law

This Deed is governed by and construed in accordance with the laws of Victoria.

25 Interpretation

In this deed, unless the contrary intention appears:

- 25.1 the singular includes the plural and vice versa;
- 25.2 words importing one gender include other genders;
- 25.3 a reference to a document or instrument, including this deed, includes that document or instrument as novated, altered or replaced from time to time;
- 25.4 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 25.5 other grammatical forms of defined words or expressions have corresponding meanings;
- 25.6 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 25.7 a recital, schedule, annexure or description of the parties forms part of this deed; and
- 25.8 a reference to an authority, institution, association or body that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to

another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity.

