

Contract for the provision of services: Jerramungup Public Library

Shire of Jerramungup

Jerramungup Community Resource Centre Inc



McLeods

Barristers & Solicitors

Stirling Law Chambers | 220 Stirling Highway | CLAREMONT WA 6010

Tel- (08) 9383 3133 | Fax- (08) 9383 4935

Email- mcleods@mcleods.com.au

REF: DFN:JERR-46227

Table of Contents

Details	1
Agreed terms	2
1. Defined terms and interpretation	2
1.1 Defined terms	2
1.2 Interpretation	3
2. Agreement	3
2.1 Covenants	3
2.2 Term	4
2.3 Further Term	4
3. Obligations of the Service Recipient	4
3.1 Payment of Contract Price	4
3.2 GST	4
4. Service Provider	5
4.1 Provision of Services	5
4.2 Acknowledgement	5
5. Employment Obligations	5
5.1 Service Provider Responsibility	5
5.2 Service Recipient Responsibility	5
6. Exclusion of liability	5
7. Conduct	6
7.1 Code of Conduct	6
7.2 CEO instruction	6
8. Termination	6
8.1 Expiration of term	6
8.2 Local government reform	6
8.3 Employee contract termination	6

8.4	Default or breakdown of relationship	7
9.	Dispute resolution	7
10.	Miscellaneous	7
10.1	Confidentiality	7
10.2	Entire agreement	7
10.3	Assignment	7
10.4	Notices	8
10.5	Severability	8
10.6	Modification and waiver	8
10.7	Laws of Western Australia apply	8
	Schedule	9
	Signing page	12

Details

Parties

Jerramungup Community Resource Centre Inc

8 Tobruk Road, Jerramungup, Western Australia 6337
(**Service Provider**)

Shire of Jerramungup

8 Vasey Street, Jerramungup, Western Australia 6337
(**Service Recipient**)

Background

- A The Service Recipient wishes to continue to engage the services of the Service Provider for the provision of the Services.
- B The Service Recipient and the Service Provider have agreed to enter into this Contract as evidence of their agreement in respect of the provision of the Services.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Contract –

CEO means the Chief Executive Officer of the Service Provider or the Service Recipient as applicable;

Code of Conduct means a code of conduct adopted under s5.103 of the *Local Government Act 1995*;

Claim means all and any claim, demand, writ, summons, action, suit, prosecution, proceeding, judgment, order, decree, damages, costs (including legal costs), loss and expense of any kind;

Commencement Date means the date specified in **Item 1** of the Schedule;

Contract means this contract;

Contract Price means that part of the Costs payable by the Service Recipient for the provision of the Services, as specified in **Item 2** of the Schedule;

CPI means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics;

Details means the details page at the beginning of the Contract identifying the Parties and the background to the Contract;

Expiry Date means the date of the expiration of the Term;

Further Term means the further term specified in **Item 3** of the Schedule;

Notice means a notice under **clause 10.4**;

Party means a Party to the Contract;

Personnel means any appropriately qualified and skilled person or persons employed by the Service Provider to perform the Services;

Schedule means the schedule to the Contract;

Service Provider means the local government identified as the Service Provider in the Details;

Service Recipient means the local government identified as the Service Recipient in the Details;

Services means the services described in **Item 4** of the Schedule; and

Term means the term of this Contract as specified in **Item 3** of the Schedule and includes, where the context permits, the Further Term.

1.2 Interpretation

In this Contract, unless inconsistent with the context:

- (a) headings and bolding are for convenience only and do not affect the interpretation of the Contract;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to a gender includes a reference to each other gender;
- (d) a reference to a person or individual includes a reference to a firm, corporation or other corporate body, authority, government and governmental agency and vice versa;
- (e) where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning;
- (f) a reference to any written law includes:
 - (i) all written laws amending, consolidating or replacing that written law; and
 - (ii) all regulations, proclamations, planning schemes or local laws made under that written law;
- (g) a reference to a Party includes that Party, its successors, permitted assigns, receivers, administrators, executors, substitutes and liquidators;
- (h) a reference to any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document;
- (i) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (j) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of the Contract or any part of it;
- (k) an obligation, representation or warranty in favour of two or more persons:
 - (i) is for the benefit of them jointly and severally; and
 - (ii) binds them jointly and severally;
- (l) a reference to '\$' or 'dollars' is a reference to Australian dollars; and
- (m) unless expressly stated otherwise, a reference to a Party, clause, sub-clause, paragraph or part, is a reference a Party, clause, sub-clause, paragraph or part of or in the Contract.

2. Agreement

2.1 Covenants

- (1) The parties covenant with each other on the terms and conditions outlined in this Contract.
- (2) In consideration for the payment of the Contract Price by the Service Recipient, the Service Provider covenants with the Service Recipient during the Term to:
 - (a) provide the Services in accordance with the Contract; and

- (b) do and perform all other things that are reasonably necessary for the provision of the Services in accordance with the Contract.

2.2 Term

Subject to **clause 2.3**, the Term of the Contract commences on the Commencement Date and ends on the Expiry Date.

2.3 Further Term

Subject to:

- (a) the Service Provider not being in breach of any provision of this Agreement; and
- (b) the consent of the Service Recipient,

the Service Provider may by written notice to the Service Recipient, given at least one month but not earlier than 6 months prior to expiry of the Term, extend the Term of the Contract for the Further Term.

3. Obligations of the Service Recipient

3.1 Payment of Contract Price

The Service Recipient must pay to the Service Provider the Contract Price in accordance with **Item 2** of the Schedule.

3.2 GST

- (1) In this clause:

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

GST Law means the GST Act and any associated legislation including without limitation delegated legislation.

GST, Registered, supply, tax invoice and any other expression used that is defined in the GST Law has the same meaning as given to it in the GST Law.

- (2) Unless specifically described in the Contract as 'GST-inclusive', any consideration to be paid or provided for a supply made under or in connection with the Contract does not include an amount on account of GST and is 'GST-exclusive'.
- (3) Where, under the GST Law, any supply to be made by a Party (**Supplier**) to another Party (**Recipient**) under or in connection with the Contract is subject to GST (other than a supply the consideration for which is specifically described in the Contract as GST-inclusive), then:
 - (a) the consideration payable or to be provided for that supply under the Contract will be increased by, and the Recipient will pay to the Supplier, an amount equal to the GST calculated according to the GST Law;
 - (b) the Recipient shall pay that additional GST amount at the same time and in the same manner as the GST-exclusive consideration is paid or provided; and
 - (c) a reference to the consideration payable for a supply includes the value of any non-monetary consideration for the provision.

- (4) If the Supplier is Registered or required to be Registered, the Supplier must provide a GST compliant tax invoice in connection with any supply made by it under the Contract, failing which the Recipient will not be obliged to make any payment for that supply until the invoice is provided.

4. Service Provider

4.1 Provision of Services

Subject to **clause 4.2**, the Service Provider must provide Personnel to the Service Recipient to carry out the Services.

4.2 Acknowledgement

The Service Recipient acknowledges:

- (a) that the Personnel are employed by the Service Provider for the purpose of providing the Services for the Service Provider; and
- (b) although the Service Provider will use its best endeavours to ensure that the Personnel are available to perform the Services for the Service Recipient as and when needed, the availability of the Personnel is subject to the Personnel's other obligations and usual conditions of employment including any applicable entitlement to public holidays and sick and annual leave.

5. Employment Obligations

5.1 Service Provider Responsibility

The Personnel are employees of the Service Provider and the Service Provider will be responsible for all employer obligations in regard to the Personnel, including but not limited to:

- (a) all aspects of the remuneration package that the Personnel are entitled to receive under any applicable employment contract with the Service Provider;
- (b) all usual employment related insurances; and
- (c) any public liability, professional indemnity or other insurance required in regard to the actions or omissions of the Personnel.

5.2 Service Recipient Responsibility

The Service Recipient will pay a contribution to the Service Provider for the cost of the Service Provider's employment obligations through the Contract Price.

6. Exclusion of liability

- (1) The Service Provider will not be liable for any action or omission of the Personnel that arises from any instruction, action or omission of the Service Recipient, or any person representing the Service Recipient.
- (2) The Service Recipient agrees to indemnify the Service Provider and to keep the Service Provider indemnified at all times against any Claim arising from a matter for which the Service Provider is not liable under **clause 6(1)**.

7. Conduct

7.1 Code of Conduct

- (1) It is a condition of employment of any employee of the Service Provider that the employee comply with the Service Provider's Code of Conduct and the Personnel are expected to comply with that Code when performing any function for the Service Recipient.
- (2) Providing the Service Recipient provides a copy of any such code to the Personnel, the Personnel are also expected to comply with any Code of Conduct adopted by the Service Recipient that applies to employees, while the Personnel are performing a function for the Service Recipient.

7.2 CEO instruction

While performing a function for the Service Recipient under this Contract the Personnel must comply with any instruction from the Service Recipient's CEO, or Deputy Chief Executive Officer, that is reasonable in the circumstances.

8. Termination

8.1 Expiration of term

This Contract will expire at the expiration of the Term and neither Party will have any further obligation under the Contract with the exception of any obligation that accrued prior to termination and remains outstanding (or which survives termination of the Contract).

8.2 Local government reform

- (1) If the Service Recipient is amalgamated with another local government, or the boundaries of the Service Recipient are changed in any manner that affects the provision of the Services in a material way, this Contract will terminate on the date that any such amalgamation or boundary change comes into effect, and neither Party will have any further obligation under the Contract with the exception of any obligation that accrued prior to termination and remains outstanding (or which survives termination of the Contract).
- (2) If the Service Provider is impacted by State Government funding reform for Community Resources Centres or its constitution requires change in any manner that affects the provision of the Services in a material way, this Contract will terminate on the date that any such change comes into effect, and neither Party will have any further obligation under the Contract with the exception of any obligation that accrued prior to termination and remains outstanding (or which survives termination of the Contract).

8.3 Employee contract termination

- (1) If the employment contract of any Personnel is terminated for any reason, the Service Provider will endeavour to replace the Personnel with another employee who is suitably qualified for, and willing to provide, the Services, in the meantime provision of the Services may be suspended until a replacement employee commences employment.
- (2) If the Service Provider is unable to replace the Personnel under **clause 8.3(1)**, the Contract will be deemed to have terminated from the date of the end of the Personnel's employment contract, and neither Party will have any further obligation under the Contract with the exception of any obligation that accrued prior to termination and remains outstanding (or which survives termination of the Contract).

8.4 Default or breakdown of relationship

- (1) If either Party considers that the other Party is in breach of the Contract, or is failing to perform the Contract in good faith, the aggrieved Party may access the dispute resolution process in **clause 9** and, if after following that process, the aggrieved Party remains aggrieved that Party may serve Notice on the other Party that it wishes to terminate the Contract.
- (2) If Notice is served under **clause 8.4(1)** the Parties must meet and endeavour to determine from what date the Contract should be terminated and how any remaining obligations (other than those that extend beyond the expiration of the Contract, which will remain in force) are to be fulfilled.
- (3) Subject to compliance with **clauses 8.4(1)** and **8.4(2)**, neither Party is prevented from accessing any legal remedy that may be available to a Party as a result of a breach of the Contract.

9. Dispute resolution

- (1) If either Party is concerned about any aspect of the performance of the Contract and is unable to have that concern addressed through informal means, prior to taking any other action or exercising any legal right, the CEO of the concerned Party must first raise the concern by serving a Notice on the CEO of the other Party.
- (2) Any notice served on a CEO under **clause 9(1)** must clearly identify the matter of concern.
- (3) On receipt of such a Notice the CEO of the concerned Party must meet with, or conduct a teleconference with the CEO of the other Party, within 7 days of receipt of the Notice (or within such longer time that is agreed to by both CEOs).
- (4) The CEO of each Party must, acting in good faith, use their best endeavours to agree to a practical solution in regard to a concern that has been raised under this **clause 9**.
- (5) If agreement is reached under **clause 9(4)**, each CEO must use his or her best endeavours to ensure that the agreed practical solution is implemented.
- (6) If agreement is not reached under **clause 9(4)**, or either CEO fails to participate in reaching any such agreement, a concerned Party may access any legal means available to enforce the Contract, or may give Notice to the other Party under **clause 8.4** without prejudicing the capacity of either Party to access any legal means available to enforce this Contract.

10. Miscellaneous

10.1 Confidentiality

The Parties must ensure that, subject to overriding disclosure requirements (such as those in the *Freedom of Information Act 1992*), documents and other information, that are supplied and clearly identified as confidential, are kept confidential. If required in writing by a Party, the other Party must enter into a separate agreement not to disclose to anyone else any confidential matter after the Expiry Date or earlier termination of the Contract.

10.2 Entire agreement

The Parties agree that the Contract constitutes the whole and entire agreement between them and supersedes all previous negotiations and agreements written or oral.

10.3 Assignment

Neither Party may assign the benefit of this Contract to another Party.

10.4 Notices

A notice under this Contract must be in writing and served on the recipient by:

- (a) hand delivery;
- (b) email;
- (c) facsimile; or
- (d) post.

10.5 Severability

In the event of part of this Contract being or becoming void or unenforceable then that part shall be severed from the Contract with the intention that the balance of the Contract is to remain in full force and effect, unaffected by the severance.

10.6 Modification and waiver

- (1) The Contract may not be modified, amended or varied except by a document in writing signed by or on behalf of each of the Parties.
- (2) Any modification to a term or condition of the Contract, or waiver or relinquishment of the performance of any term or condition of the Contract, will be effective only if made in writing and executed by or on behalf of the Party granting the waiver.
- (3) No waiver of any one breach of any term or condition of the Contract is to operate as a waiver of any other breach of the same or other term or condition of the Contract.

10.7 Laws of Western Australia apply

The Contract is to be construed and interpreted in accordance with the laws of the State of Western Australia and the Parties agree to submit to the jurisdiction of the courts of that State and of courts competent to hear appeals from them.

Schedule

Item 1 Commencement Date

1 July 2023

Item 2 Contract Price

- (a) An annual amount of thirty thousand dollars (\$30,000) plus GST reviewed and paid in accordance with this Item 2.
- (b) The Service Provider will invoice the Service Recipient quarterly for four equal instalments of seven thousand five hundred dollars (\$7,500) plus GST on the quarterly payment dates of 30 September, 31 December, 31 March and 30 June.
- (c) The Service Recipient must pay the amount specified in the quarterly invoice within 14 days of receipt of the invoice.
- (d) The Contract Price is to be reviewed on each anniversary of the Commencement Date during the Term and any Further Term on the basis of CPI so that the Contract Price is increased in accordance with the annual percentage increase in CPI assessed in the March quarter.

Item 3 Term & Further Term

Term

3 years from the Commencement Date.

Further Term

3 years from the expiration of the Term

Item 4 Services

- (a) Efficient and effective delivery, at the direction of the Deputy Chief Executive Officer of the Service Recipient (**Executive Manager**), of all Library services associated with the Jerramungup library branch.
- (b) Within the context of (a) above:
 - (i) process memberships and loans and reservations of library materials and maintain records and statistics;
 - (ii) sort and shelve library materials and maintain shelf order;
 - (iii) generate and issue overdue and reservation notice and pursue return of overdue items;
 - (iv) assist users in the use of library services and in location information using internal and external resources;

- (v) provide a computer for use free of charge to the community for searching the library's catalogue and to undertake private library based research;
 - (vi) provide full details of lost and damaged items to LISWA for processing. Amounts not recovered through this process will be funded from the new book provision in item xiii;
 - (vii) arrange inter-library loans, subject requests and special loans for patrons;
 - (viii) participate in the statewide inter-library loan services by sending required items to their libraries;
 - (ix) process incoming library stock and exchanges including the control of electronic stock management systems;
 - (x) select, discard, pack and dispatch return library stock exchanges;
 - (xi) maintain library collections and resources in an accessible and orderly manner;
 - (xii) maintain effective networks with other community libraries to enhance service delivery and keep abreast of new trends;
 - (xiii) utilise \$1,000 annually from the contract price to purchase new books and resources for the library. Acquittal of these funds is required at the end of the financial year with unspent funds returned to the Service Recipient;
 - (xiv) repair of books;
 - (xv) promote the use of library services and library resources within the community;
 - (xvi) utilise \$500 annually from the Contract Price for the training of library volunteers, Community Resource Centre staff and Personnel in the delivery of the duties listed in Item 4 of the Schedule. Acquittal of these funds is required at the end of the financial year with unspent funds returned to the Service Recipient;
 - (xvii) attend regional library meetings and workshops as necessary and as part of the annual training budget for the Personnel;
 - (xviii) development of activities and services to increase awareness and utilisation of the library facilities;
 - (xix) provide an annual statement of library statistics for Council information; and
 - (xx) maintain the security and safety of the library building and its resources.
- (c) Provision of responses to internal and external customer enquiries and complaints relating to the delivery of Library services.
- (d) Performance of other duties necessary to the delivery of the duties in accordance with the services as described in this **Item 4** of the Schedule.

Signing page

EXECUTED on

2023

The **COMMON SEAL** of the **Shire of Jerramungup** was hereunto affixed by authority of a resolution of the Council in the presence of:

SHIRE PRESIDENT

(Print Full Name)

CHIEF EXECUTIVE OFFICER

(Print Full Name)

The **COMMON SEAL** of the **Jerramungup Community Resource Centre Inc** was hereunto affixed by authority of Management Committee in the presence of:

CHAIRPERSON

(Print Full Name)

COORDINATOR

(Print Full Name)