

MANAGEMENT CONTRACT
SPLASH CENTRE SWIMMING POOL COMPLEX
CONTRACT NO. 1727

BETWEEN **WHANGANUI DISTRICT COUNCIL** a corporation pursuant to the Local Government Act 1974 (“the Council”)

AND **COMMUNITY RECREATIONAL SERVICES TRUST** (the Contractor) a Charitable Trust governed by the Wanganui Sports Foundation trading as Sport Wanganui

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NOW IT IS AGREED that Council shall engage the Contractor to provide management services in accordance with the provisions of this Contract and the Contractor agrees to provide such management services.

1 INTERPRETATION AND SCOPE

“**Agreement**” means this agreement and any agreement which varies or is supplemental to this agreement.

“**Contract Payment**” means the subsidy payable to the Contractor equal to the Net Operating Cost.

“**Net Operating Cost**” means the operating costs of running the Splash Centre less admission, programme, event, sponsorship, and retail revenues.

“**Break Even**” is the point where the operating costs of the Splash Centre equal the revenue plus subsidy.

“**Pool**” means each of the pools that this Contract covers.

“**Splash Centre**” means the indoor swimming pool and hydroslide complex situated at Springvale Park, Whanganui and associated improvements and activities within the building housing the swimming pools.

“**Swimming Pool(s)**” means the Splash Centre Complex

2 PRINCIPAL OBJECTIVES

The principal objectives of this Contract are:

- 2.1 To provide for all sectors of the community a variety of water based recreational activities at the Splash Centre Complex that are safe and attractive; and
- 2.2 To maximise the number of users of the Splash Centre Complex at the lowest net cost to the ratepayers while providing a quality experience.

Parties to Act in Good Faith

In the eventuality that a matter (being one or more) arises during the course of this agreement, which the agreement did not foresee and is therefore silent about, then the parties agree to enter into negotiations with each other with the intent to resolve the matter(s), where resolution means that no one party is significantly disadvantaged.

The parties shall not do or say anything to harm the other. The parties shall not do anything that is contrary to the best interests of the other.

3 CONTRACT PERIOD

- 3.1 The Contract period shall be for a term of three (3) years from 1 July 2016 and expiring on 30 June 2019, with a right of renewal for a further 3 year term, conditional on satisfactorily achieving the measures as identified in 4.1.
- 3.2 The Contract payments to be paid to the Contractor for each year of the Contract are fixed except in respect of any increases or decreases pursuant to Clause 21.
- 3.3 There shall be a review of the Contract every three (3) months between the Contractor and the Council to ensure that both the Contractor and the Council have an opportunity to discuss the ongoing operation of the Swimming Pool(s) complex or complexes and matters which may either have changed since the Contract was entered into or where new circumstances have arisen that need to be taken into consideration. This review is intended to give both the Contractor and the Council the opportunity to discuss any matters which arise so that both the Contractor and the Council may have a clear understanding of any issues and have them resolved. Should there be any item which cannot be mutually resolved between the parties then the Contract terms shall stand in respect to that item.

4 DUTY TO MANAGE

- 4.1 The Contractor shall dutifully manage and operate the Swimming Pool(s) in a good, proper and careful manner observing all reasonable and available management practices, and as otherwise provided for herein. To this end, the Contractor shall establish and maintain accreditation under the industry standards PoolSafe scheme; carry out an annual customer satisfaction survey with a target Very Satisfied percentage of 63% ; ensure that the number of times that pool temperatures at the Splash Centre fall outside the target range (+/- 2degrees) for longer than an hour and a half do not exceed 4; and will clearly demonstrate that the Contractor's performance meets the requirements of the Contract. Nothing herein shall give a right of operational management to the Council.
- 4.2 The Council wishes to ensure a high standard of behavior from patrons using the Splash Centre and that the anti-social behavior of a few does not impact on the enjoyment of the many. The Contractor will develop and maintain a policy statement governing the behavior of patrons at the Splash Centre and will display the policy statement in prominent locations around the Splash Centre.

5 COMPLIANCE WITH ACTS AND REGULATIONS AND CONTRACTORS LIABILITY

- 5.1 The Contractor shall comply with the provisions of all Acts of Parliament and with all other regulations and local by-laws that may be applicable to respective obligations under the Contract.

- 5.2 The Contractor shall indemnify the Council against all claims, demands, losses or liability of any kind whatsoever that shall or may arise or accrue to Council out of any default on the part of the Contractor in complying with the obligations of the Contractor in terms of this Contract.
- 5.3 The Contractor shall exercise all proper skill and care in the performance of its obligations specifically referred to herein or imposed by necessary implication.
- 5.4 The operation and maintenance of the Swimming Pool and Water Treatment System shall be in accordance with AS/NZS 4441:2008 Swimming Pool Design, AS/NZS 52416.1:2010 Water Safety Signs and Beach Safety Flags plus AS/NZS 52416.3 2010 Water Safety Signs and Beach Safety Flags – Guidance for use, AS/NZS 5823:2005 Specification For Buoyancy Aids & Marine Safety Harnesses & Lines, and NZS 5826:2010 Standards For Pool Water Quality. Where these standards are modified or replaced by standards of the New Zealand Standards Association then the modified or new standard shall apply.
- 5.5 The operation and maintenance of the hydroslide shall be in accordance with the withdrawn AS/NZS 5838: 1986 Code of Practice for the Design, Construction, Maintenance and Operation of Waterslides.

6 HEALTH AND SAFETY

- 6.1 The parties to this agreement shall each observe their obligations arising pursuant to the Health and Safety at Work Act 2015 and the Contractor shall at all times have in place in respect of the Swimming Pool(s) a Health and Safety Policy and Procedure approved by Council.
- 6.2 The Contractor shall produce a detailed Safety Plan which must demonstrate clearly that all relevant Acts and Regulations (including the New Zealand Recreation Association Aquatic Facilities Guidelines) will be complied with and how this compliance will be achieved which will be made available to the Council's representative. These include, but are not limited to, preparing normal operating procedures, an emergency action plan, and a risk management and hazard awareness plan.

7 REVENUES

- 7.1 All gross revenues from the facility shall be collected and retained by the Contractor. These include both admission charges, revenue from coaching or learn to swim activities and revenue from hireage and events.
- 7.2 The Contractor shall retain revenue from all retail sales.

- 7.3 The Contractor may determine the level of admission fees PROVIDED THAT the charges to users of the Swimming Pool(s) as at 1 July 2016 shall not exceed the charges below. These maximum charges may be subject to a maximum increase of 10% during the Contract term if approved by Council in accordance with Clause 7.5. No increase will come into effect before 1 July 2017.
- 7.4 All charges are inclusive of GST.

General Admission

Adult	\$5.00
Community Service Card Holder (with ID)	\$4.50
Student (with ID)	\$4.50
Senior Citizen	\$4.00
Child (5—16yrs)	\$3.50
Pre School	\$1.50
Spectators	\$1.00
Hydroslide (Does not include admission into pool)	\$3.00
Family Pass (2 Adults & 2 Pre-schoolers)	\$9.60
Family Pass (2 Adults & 2 Children)	\$12.00
Family Pass (1 Adult & 3 Children)	\$12.00

The above prices include use of the Pools, Sauna, Steam Room, Hot Pools & Fitness Centre (Except Children)

Concession Cards

	A. 20 Sessions	B. 50 Sessions
Adult	\$80.00	\$170.00
Senior Citizen	\$50.00	\$125.00
Child	\$50.00	\$125.00
Community Service Card Holder (with ID)	\$70.00	\$150.00
Student (with ID)	\$70.00	\$150.00

- 7.5 Council shall not unreasonably withhold approval for increased pool entry charges in accordance with Clause 7.3. It shall be reasonable for Council to take into account the charge for similar local authority facilities elsewhere in New Zealand when considering any review of charges.

8 SUPPLY OF INFORMATION TO COUNCIL

- 8.1 The Contractor shall give to Council on request such particulars of use of the Swimming Pool(s) as Council may reasonably require. A detailed report shall also be given to Council for the periods ended 30 September, 31 December, 31 March, and 30 June such reports to be

lodged with Council no later than the 25th day of the month following quarter end. The reports will include:

- (i) Details of all staff currently employed and actively working at the facility, including all relevant qualifications and expiry dates
- (ii) Statistical information regarding numbers and categories of users of the Swimming Pool(s).
- (ii) Details of all maintenance which is either required or has been completed on all plant items.
- (iii) Details of accidents or near misses at each Swimming Pool(s).
- (iv) Details of any work performed on any buildings.
- (v) Details of energy consumption for each Swimming Pool(s).
- (vi) Details of chemical consumption for each Swimming Pool(s).
- (vii) Details of the number of times that pool temperatures fall outside a range of +/- 2% of from the target settings for more than an hour and a half at any one time.

8.2 The Contractor shall be required to keep and maintain a pool log on site at each Swimming Pool(s) which will be available for inspection by the Council at any time and which will record the following information:

- A. Date
- B. Time Swimming Pool(s) opened
- C. Time Swimming Pool(s) closed
- D. Name and times of staff on duty
- E. Plant breakdowns
- F. Plant maintenance (including inspection certificates)
- G. Full water test results for each Swimming Pool
- H. Environmental conditions (readings)
- I. All accidents and incidents
- J. Other information relevant to the management and operation of the Swimming Pool(s).

9 DURATION OF OPERATIONS

9.1 The Contractor shall keep the Splash Centre Complex open to the public during normal opening hours of operation for the entire period of the Contract, except during such minimum periods necessary for annual maintenance of the Swimming Pool(s). Council will not consent to closure of any Swimming Pool(s) except for necessary scheduled maintenance work or emergency work or as specifically provided for herein.

The duration of the annual shutdown period is to be up to 2 weeks per annum, which is also the required timeframe to notify the public of the closure.

- 9.2 Routine maintenance shall be programmed for off peak periods so as to minimise any inconvenience to the public or various groups using the Swimming Pool(s).
- 9.3 Except as provided for herein, any financial loss from reduced patronage due to the unplanned closure of any Swimming Pool(s) is the sole responsibility of the Contractor.

10 OPENING HOURS TO PUBLIC

- 10.1 Subject to Clause 9, the Contractor shall ensure that the Splash Centre Complex is open to the public (apart from the maintenance period referred to above) on a daily basis, commencing at 6.00am on each day and closing not earlier than 7.00pm Monday to Friday. On Saturdays and Sundays the Splash Centre Complex shall be open to the public at 8.00am and close not earlier than 6.00pm except for those occasions where the approval of the Council has been obtained for the Swimming Pool(s) complex to close during any part of the above hours. On public holidays the Splash Centre shall be open to the public at 12.00pm and close not earlier than 6.00pm except for Good Friday and Christmas day when it shall be closed.
- 10.3 With the exception of Good Friday and Christmas day, the Contractor may extend the hours of operation beyond these times but shall not reduce them without the consent of Council.

11 ACCESS BY SWIMMING CLUBS, SCHOOLS & OTHER USER GROUPS

- 11.1 The following is the basis upon which swimming clubs, schools and other user groups in Wanganui shall be allowed access to the Swimming Pool(s) for club training and club nights (after payment to the Contractor of the agreed charges which shall be no more than the charges set out in Clause 7). In these clauses “day” shall mean during normal hours of operation, and “night” shall mean after 8.00pm in the case of the Splash Centre Complex.
- 11.2 The intention of this contract is to allow user group’s uninterrupted access to the Swimming Pool(s) or part of the Swimming Pool(s), to participate in their normal activities. To this end, the Contractor shall negotiate with all current and potential user groups so that they may have continued access to the Swimming Pool(s) at mutually agreed times and prices (subject to maximum charges as set out in Clause 7).
- 11.3 The Contractor shall facilitate the use of the Swimming Pool(s) for community, charity, or club fundraising events. This contribution by the Contractor may be in the form of reduced entry fees, free entry or some other concession as deemed appropriate by the Contractor.

- 11.4 Nothing herein will preclude the Contractor and the relevant clubs or user groups from coming to such other arrangements, as they shall agree on.
- 11.5 The Contractor shall from time to time develop a timetable whereby the Swimming Pool(s), or any part of any Swimming Pool(s), will be available for exclusive use by any user group during the hours required to be open pursuant to Clause 10. It is the intention to be flexible in this regard, recognising both the necessity for certain user groups to have exclusive use and the right of the general public to have access as often as possible. The Contractor shall liaise directly with those groups and others as required, regarding the requirements of the use of the Swimming Pool(s).
- 11.6 Outside of those hours specifically set out in the timetable, the Contractor may hire out the Swimming Pool(s) Complex for private functions but shall not engage or permit any activities where such activities are unlawful or likely to adversely affect neighbours.

12 OWNERSHIP OF FITTINGS & CHATTELS

- 12.1 All items of plant, fittings, and facility related chattels (“the Equipment”) located at the Swimming Pool(s), other than club property, are the property of Council but may be used by the Contractor. Any items of Equipment that may be replaced, repaired or purchased for the safe efficient running of the Swimming Pool(s), irrespective of any cost share arrangement, shall be deemed to be the property of Council notwithstanding the replacement, repair or purchase. The Contractor shall not remove any of the equipment other than the movement of such equipment between the Swimming Pools. All non-facility related chattels (office furniture, IT equipment, etc.) which are owned by the Contractor and which are located at the Swimming Pool(s) shall be at all times properly identified as belonging to the Contractor. The Contractor shall not use the property owned by clubs or user groups unless mutual agreement has been reached. A schedule of the Council owned equipment as at the date of this Contract is set out in Appendix B.

13 MAINTENANCE - COUNCIL RESPONSIBILITIES

- 13.1 Council shall be responsible for the following maintenance:
- (i) Structural integrity of the buildings, pools, and surrounds.
 - (ii) A planned maintenance programme for the buildings, pools, and surrounds as scheduled by Council (and provided that the routine maintenance by the Contractor, as set out in Appendix A, is strictly adhered to).
 - (iii) Replacement of plant e.g. motors, pumps, filtration and heating equipment as a direct result of age or fair wear and tear

(provided that the routine maintenance by the Contractor is strictly adhered to).

- (iv) Ensuring the means of sewage disposal and supplies of mains water.
- (v) Resealing of sealed areas.

13.2 Destruction of Swimming Pool(s)

In the event that any Swimming Pool(s) shall be destroyed or damaged such as to be rendered unusable in Council's sole opinion, as a result of earthquake or other natural or manmade disaster, then:

- (i) The Contractor shall be entitled to receive from Council, in respect to the damaged pool, only such amounts required to maintain existing staff levels, and direct outgoing costs, which keep the maintenance (as far as necessary) up-to-date, provided that such costs do not mean the total payable by Council exceeds three (3) monthly payments of financial obligations for that Pool under Clause 20.
- (ii) Council may take out insurance to cover those continuing payments.

14 CONTRACTOR'S RESPONSIBILITIES

14.1 The Contractor shall be responsible to meet the following obligations in respect of each Swimming Pool(s) at the Contractor's sole cost.

- (i) The routine maintenance of the buildings, pools and surrounds as set out in Appendix A.
- (ii) The routine maintenance of the plant e.g. motors, pumps, filtration and heating equipment as set out in the supplier's/manufacturers specification.
- (iii) Items that are subject to manufacturer's or supplier's instruction or recommendation are to be maintained and/or repaired to that instruction or recommendation, unless that item is subject to a more onerous statutory maintenance regulation. Certificates of Inspection are to be held available for inspection.
- (iv) Compliance with statutory maintenance regulations for all equipment, for example – non-return valves. Certificates of Inspection are to be held available for inspection.
- (v) Items of equipment and furniture that are not subject to any regulation or recommendation will be inspected on a weekly basis to ensure a clean, tidy and safe condition is maintained.

- (vi) The maintenance, repair or replacement where appropriate of those parts of the equipment not included in paragraphs (i) and (ii) of this subclause.
- 14.2 The Contractor shall not enter into any maintenance agreement with a supplier of equipment:
- (i) Beyond the term of the Contract without the written consent of Council.
 - (ii) During the term of the Contract, which may create rights to a third party either in respect of that equipment, or against Council, without the written consent of Council.
- 14.3 Defibrillator and associated lifesaving equipment is to be operative and tested once per week in accordance with the manufacturer's requirements.
- 14.4 Any item of building, plant or equipment found to be damaged or defective, including damage due to the presence of condensation due to the failure of the Contractor to honor obligations as stated in (i) through to (vi) of Clause 14.1 or by the Contractor's failure to maintain the correct environmental conditions within the Splash Centre Complex building, shall be repaired or replaced at the expense of the Contractor.
- 14.5 Council will not be responsible for the loss of income as a result of the Contractor's failure to honour obligations as listed in (i) through to (vi) of Clause 14.1.
- 14.6 All maintenance shall be carried out in a proper and tradesman like manner to maintain the facilities at a standard no less than the standard current at the commencement of this Contract.
- 14.7 The Contractor shall be responsible for ensuring that connections for electricity, gas, and external telephone communications at the Swimming Pool(s), and all security systems, are maintained and will be responsible for the prompt payment of all charges in connection with the provision of these services during the period of the Contract. The Contractor shall be responsible for all costs arising from the interruption to supplies that are due to the Contractor's failure to make payments for accounts or to make service agreements.

15 NOTIFICATION OF DEFECTS

- 15.1 The Contractor shall within 24 hours notify the Council of any material defects in the building, plant or equipment at the Splash Centre Complex.

16 OPERATING COSTS

- 16.1 The Contractor shall meet all the costs of operation of the Swimming Pool(s) including, (but not affecting the generality of the Contractor's obligations);
- (i) Works necessary to ensure that the pools, grounds, buildings, plant and machinery are kept in good repair and working condition.
 - (ii) All consumable items such as fuels and lubricants, filters, pump seals, valve packing, bearings, refrigerant, chlorinator kits, lamps and ballasts, and fuses.
 - (iii) The employment of staff.
 - (iv) Chemicals.
 - (v) Energy.
 - (vi) The cost of advertising and publicity.
 - (vii) Minor painting maintenance required to keep up the day to day appearance of the Swimming Pool(s) Complex, but excluding the complete repainting of the buildings and fences.
 - (viii) Re-glazing work caused by accidental damage or vandalism.
- 16.2 The Contractor shall not make any alterations or improvements to the Swimming Pool(s) Complex without first obtaining written consent from Council.

17 CLEANING

- 17.1 The Contractor shall be responsible for cleaning of the Swimming Pool(s) and all the internal cleaning inclusive of the pool hall, changing rooms, reception, plant room, offices, windows, footpaths, barbecues and other ancillary parts of the buildings to ensure a clean and healthy environment. At all times the Contractor shall ensure that high standards of hygiene are maintained.
- 17.2 The Contractor shall provide at their cost all the necessary cleaning equipment and materials, tools, appliances and other things that are reasonably necessary for the day to day maintenance and cleaning operations of the Swimming Pool(s).
- 17.3 The Council shall maintain the outside garden beds surrounding the Splash Centre.

- 17.4 The Contractor shall not carry out any major changes to the landscape or gardens at any Swimming Pool(s) without prior written approval from Council.

18 SITE MANAGER

- 18.1 When any Swimming Pool(s) is open to the public, the Contractor shall have a designated Site Manager or a designated deputy available at all times. Such person shall have the qualifications, experience and standing as listed in Clause 18.2
- 18.2 Council may at its complete discretion accept an equivalent qualification to those required in this Clause, provided that Council is satisfied with the substitute qualification and that the Contractor gains the relevant qualification within six (6) months of the Contract commencing.

Qualifications

- (i) National Certificate in Recreation and Sport – Aquatics (Pool Operations) Level 3.
- (ii) Water Quality Monitoring and Management NZQA Unit Standards 20046, 25980, 25981 and 25982.
- (iii) First Aid Certificate NZQA Unit Standards 6400, 6401 and 6402, with particular experience in cardiopulmonary (heart, lung) resuscitation methods to ambulance driver level.
- (iv) The Pool Lifeguard Practicing Certificate

Experience and Standing

- (iv) Experience in crowd control.
 - (v) Proven competence and experience in dealing with young people and any associated problems.
 - (vi) A high standard of skill in public relations and negotiations.
 - (vii) A high standard of moral integrity.
- 18.3 Each designated Site Manager will be readily identifiable and responsible for the total management and operation of the Swimming Pool(s), including all staff and operatives employed by the Contractor in carrying out the Contractor's obligations under the Contract.
- 18.4 The Contractor shall at all times have a level of staffing at the Swimming Pool(s) sufficient to ensure safety for all users of the facilities, and in particular to adhere to the practices set out in AS/NZS 5835: 1986 with regard to hydroslide use at the Splash Centre. To this

end the Contractor shall from time to time consult with the Department of Labour or such other Government agency responsible for administration of public safety at Swimming Pool(s) to ensure a familiarity with current legislation and standards which may impact on the facility management.

19 LIFEGUARDS/STAFF

- 19.1 All lifeguards employed at the Swimming Pool(s) shall be competent in the systems of work for supervision and emergency rescue procedures inclusive of swimming rescue skills and resuscitation skills.
- 19.2 The Contractor will employ lifeguards who must hold a **current** Pool Lifeguard Practicing Certificate, and in all circumstances, all prospective employees for a lifeguard position will be subjected to a test of competence, by a qualified assessor, before being offered employment. The Contractor will be responsible for arranging and paying for this test. The Contractor shall maintain records of tests and these shall be available at all times for inspection by the Council.
- 19.3 All lifeguards shall carry out quarterly training to ensure that they meet the standards required and be trained to carry out both expired air resuscitation and external cardiac compression resuscitation techniques, and any other relevant life saving and resuscitation or first aid techniques.
- 19.4 The Contractor shall prepare and have available to staff and Council, a Safety and Emergency Procedures Code that shall provide for proper and safe procedures.
- 19.5 All staff employed at the Swimming Pool(s) shall undergo mandatory Police Vetting.

20 MANAGER NOT TO INCUR CREDIT – OPERATING COSTS

- 20.1 The Contractor shall not be considered or construed to be an agent, legal representative, joint venture, partner, employee or servant of Council. The Contractor shall not attempt to act directly, or indirectly as an agent of Council, or to bind Council in any way whatsoever.
- 20.2 The Contractor shall not incur credit on behalf of Council.

21 FINANCE

- 21.1 The Contractor shall be responsible for the security of all monies received, cash collection, banking and the security of the same whilst in the possession of the Contractor or their employees. Monies left on the premises, whether in a secure safe or not, will be deemed to be in the possession of the Contractor.
- 21.2 In the event of any loss of monies, whether accidental or not, this will be at the sole risk of the Contractor.

Baseline Subsidy

- 21.3 Provided that the Contractor meets its obligations hereunder Council shall pay an initial annual baseline subsidy of seven hundred and eighty thousand dollars (\$780,000) for the financial year 1 July 2016 to 30 June 2017, which shall be paid to the Contractor monthly in equal installments in advance at the start of each month.

The baseline subsidy includes a management fee of fifty thousand dollars (\$50,000) per annum.

Goods and Services Tax shall be paid by Council on the baseline subsidy and shall be calculated on each instalment and paid at the time of payment of each such instalment. The Contractor shall provide Council with a tax invoice in respect to each monthly instalment on or before the 1st day of the month in which the payment is due and Council shall not be obliged to pay a monthly instalment until a tax invoice is received.

- 21.4 The contract will be run on an open-book basis and the Contractor will provide the Council with a monthly financial report of income and expenditure.

Quarterly Review

- 21.5 The parties agree that they will undertake a formal review of the running of the Centre on a quarterly basis. The purpose of the review will be to ensure that the contract objectives are being met and the Centre is being run as efficiently as possible. The review team will consist of Council's GM Property, Council's Representative, the Chief Executive of the Sport Whanganui, and the Splash Centre Manager.

- 21.6 The Council in consultation with the Contractor may make adjustments to the contract payment following the contract review as required.

Contract Payment Variations

- 21.7 Following the quarterly review if agreed net operating costs are higher than budgeted, the contract payment will be adjusted upward to the projected breakeven position.
- 21.8 Following a quarterly review, where the net operating costs are lower than budgeted, the contract payment shall continue at the previous quarter's subsidy level and the surplus funds shall be held in reserve by the Contractor pending the end of year result. Any end of year surplus will be paid to the Council in the month following finalization of the annual accounts for the Splash Centre.

- 21.9 In addition to the quarterly review, the parties agree to review the contract payment if any new legislation imposes an increased cost of compliance and if such cost increase is greater than \$5,000 per annum the Council agrees to increase the contract payment to meet the additional cost of compliance.

Performance Incentive

- 21.10 If the total annual revenue of the Centre plus the initial annual baseline subsidy payment exceeds the annual operational costs (the surplus annual revenue) the Contractor will receive as a performance incentive the first \$15,000 of surplus revenue in addition to its annual fixed fee, all figures being GST exclusive.
- 21.11 The Contractor will receive as a further incentive ten (10) percent of any additional surplus revenue in excess of the aforementioned \$15,000.
- 21.12 Any additional surplus annual revenue over and above payment of the Contractor's performance incentives will be payable to the Council.

Audit

- 21.13 The Council, at its discretion, may undertake an audit of the finances and operation of the Contractor and Splash Centre at any time during the term of this agreement but no more than once in and twelve (12) month period.

22 COUNCIL REPRESENTATIVE

- 22.1 Council shall from time to time designate a member of its staff as the Council's liaison officer, who shall be the Council's representative on all matters.

23 ACCESS FOR INSPECTION

- 23.1 The Contractor shall provide access to all Council officers, as nominated by Council's representative, for inspection of any part of the Swimming Pool(s) during normal working hours. This access for inspection shall relate to the carrying out of the Contractor's obligations under the terms of this Contract.

24 RATES

- 24.1 No rates will be payable on any Swimming Pool(s) by the Contractor as Council will meet all such charges itself.

25 INSURANCES

- 25.1 Council will insure the buildings, plant and equipment owned by Council which are located on the site of the Swimming Pool(s).

- 25.2 The Contractor shall at the Contractor's own expense effect and maintain during the term of this Contract a public and Statutory liability insurance policy to the value of TWO MILLION DOLLARS (\$2,000,000.00) and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) respectively for any one (1) claim, and unlimited in the aggregate of claims during the currency of the policy. Included within the Public Liability policy should be a Punitive & Exemplary Damage extension of no less the ONE MILLION DOLLARS (\$1,000,000.00)
- 25.3 The Contractor shall provide annually and on request furnish evidence to the Council of a current & statutory public liability insurance certificate from the Contractor's insurer and stands in the names of the Contractor and includes a principals extension in respect of the vicarious liability of the Whanganui District Council arising out of the performance of the Contractor.
- 25.4 The Contractor shall at the Contractor's own expense effect and maintain during the term of this Contract (or any subsequent renewal) insurance against all loss or damage from whatever cause to all materials, plant and other things brought onto the site by the Contractor or the Contractor's operations.

26 PUBLIC STATEMENTS

- 26.1 All public statements relating to the operations of the Swimming Pool(s), and dealing with possible conflict or dispute between the parties, whether made to the press or other public body, shall be made in the joint names of Council and the Contractor. No statements shall be made by the Contractor without having been approved in writing by Council prior to issue. For the avoidance of doubt this clause does not extend to any communication related to the advertising and promotion of the Splash Centre and associated programmes and events.

27 CUSTOMER CARE

- 27.1 Council has a positive policy regarding customer care to ensure that members of the public using facilities provided by Council are treated properly and effectively with due regard to their personal dignity. In the case of disabled or wheelchair-bound customers, every effort shall be made by the Contractor to meet their needs and to take account of personal circumstances.
- 27.2 The Swimming Pool(s) must be made available for use by special user groups at times to be negotiated.
- 27.3 The Contractor shall not discourage use by special needs or minority groups, disabled or wheelchair-bound customers.

28 ENVIRONMENTAL CONDITIONS

- 28.1 The Contractor shall ensure that all access points to and from the Swimming Pool(s) are kept clear of all equipment and at all times are in a safe and satisfactory condition with all handrails securely fixed in position.
- 28.2 Under no circumstances is any area of a Swimming Pool(s) to be open to the public if any of the access points are unsafe or under repair.
- 28.3 The agents of Council, as nominated by Council's representative, may from time to time take water samples from the Swimming Pool(s), for the purpose of verifying the condition of the water. Entry to all facilities shall be allowed to Council's agents to enable these samples to be taken. Copies of all results taken by Council's agents will be available to the Contractor, together with a copy of any report thereon.
- 28.4 At the Splash Centre Complex the mechanical tempered air ventilation system has been designed to limit condensation occurring on the inner surfaces, to maintain satisfactory humidity and to maintain space temperature approaching the Swimming Pool(s) water temperature. The principal factor in achieving this is the relative temperatures of the various elements of the complex. The Contractor shall maintain the temperature within the complex within 2 deg. C of the design temperatures provided that the difference in temperature between the various components remains constant.

The design/set point temperatures are:

Main Pool temperature	28.8 deg. C
Teaching Pool temperature	32.8 deg. C
Toddlers Pool	33.0 deg. C
Leisure/Lazy River Pool	32.8 deg. C
Spa 1	39.0 deg. C
Spa 2	37.5 deg. C
Hydroslides	29.0 deg. C
25m Pool	28.5 deg. C
Hydrotherapy Pool	37.0 deg. C
Pool Hall temperature	26.0 deg. C
Office temperature	24.0 deg. C
Shower Water temperature	42.0 deg. C

- 28.5 To ensure that hygienic standards are maintained within the Swimming Pool(s), the Contractor shall enforce the following regulations:
- (i) No smoking is to be permitted.
 - (ii) No animals or pets are to be allowed into a Swimming Pool(s), with the exception of guide dogs for the blind accompanied by their owners; guide dogs will be allowed into the reception and social areas only.

- (iii) No person shall be allowed to enter the Swimming Pool(s) water that is:
 - (a) Obviously ill with a contagious disease.
 - (b) Has an open wound or sore.
 - (c) Is wearing a bandage.
 - (d) Has obvious sores, infected eyes or skin complaints.
 - (e) Has a discharge from ears or nose.
 - (f) Within 2 weeks of suffering from diarrhea.

- (iv) No person shall be allowed admission to any Swimming Pool(s) Complex who:
 - (a) Appears to be under the influence of alcohol or drugs.
 - (b) Is under the age of eight (8) years old unless actively supervised by a responsible person aged 14 years or above.

29 EXISTING AGREEMENTS

- 29.1 The Contractor shall honour all existing sponsorship arrangements at the Splash Centre Complex e.g hydro slide

30 ADVERTISING

- 30.1 The Contractor is free to negotiate additional advertising contracts at the Splash Centre.
The Contractor may retain the income from such contracts which will be included in the gross revenue of the Splash Centre.

31 TERMINATION

- 31.1 Without affecting the rights of the parties at common law, and notwithstanding Clause 33 (arbitration) the following criteria shall be grounds for terminating this Contract before the expiration of the term referred to in Clause 3.
 - 31.1.1 By Council if the Contractor or any guarantor is placed in receivership or liquidation or bankruptcy or if the Contractor fails to meet their financial obligations in accordance with reasonable trade commercial practices.
 - 31.1.2 By Council if the Contractor fails to observe or perform any of its obligations defined under the Contract where the Council has given written notice to the Contractor and the Contractor has failed to remedy the defaults within fifteen (14) working days.
 - 31.2.3 By the Contractor if Council fails to make the payments due hereunder.
 - 31.2.4 By Council in the event of application of Clause 13.2.

- 31.2 Upon termination of this agreement, should the Contractor wish to sell some of its chattels and equipment, the Council will have the first right of refusal to purchase at either market or book value, whichever is the higher.
- 31.3 The Contractor, in entering into this agreement, acknowledges and accepts that the Council may approach its Splash Centre staff about direct employment if this agreement is terminated or at the end of the contract period. The Council shall provide written notice to the Contractor and the staff concerned.

32 ASSIGNMENT PROHIBITED

- 32.1 The Contractor shall not assign this agreement or all or any of its obligations or any benefits or interests hereunder.
- 32.2 Council may waive the prohibition in this clause and approve an assignment subject to such terms and conditions as it may at its discretion impose.

33 RESOLUTION OF DISPUTES

- 33.1 Subject to Clause 31 (termination) and the provisions of this Clause 33 if any dispute or disagreement shall arise between the Contractor and Council or if this agreement shall be silent or inadequate to deal with any matter arising out of its operation then all such matters shall be considered and resolved via mediation.
- 33.2 The Contractor and Council shall endeavour to agree on who is appointed as mediator. If the parties cannot agree on a mediator they will refer the matter to the President of the Arbitrators' and Mediators' Institute of New Zealand for the appointment of a mediator. The mediator shall discuss any dispute with the Contractor and Council and endeavour to resolve it with agreement of the Contractor and Council. All discussions in conciliation shall be without prejudice, and shall not be referred to in any later proceedings.
- 33.3 Failing agreement, the mediator may by written decision determine the matter. The mediator's determination shall be binding on both parties unless within ten (10) working days either party notifies the other in writing that it rejects the mediator's determination. The Contractor and the Council shall bear their own cost in the mediation and shall each pay half the costs of the mediator.
- 33.4 If:-
- (i) Mediation has not been requested, or if requested, has not been agreed upon within ten (10) working days of the request, or

- (ii) Parties have agreed upon mediation but have been unable within ten (10) working days of such agreement to agree upon a mediator, or
- (iii) No agreement has been reached in mediation and no determination has been issued by the mediator within two (2) months of the request for mediation, or within such a further period of time as the parties may agree, or
- (iv) Either party has within the prescribed time rejected the mediator's determination then the matter in dispute shall be referred to arbitration in accordance with the Arbitration Act 1996. In respect of matters where the arbitrator considers the provisions of this Contract are insufficient to enable the arbitrator to produce a conclusion by reference to the terms of this Contract the parties authorise the arbitrator to produce a fair and equitable commercial result having regard to the relationship between the parties and the objective and scope of this Contract.

34 VARIATIONS

- 34.1 There shall be no variation to this Contract unless recorded by writing and signed by all parties.

35 COUNCIL'S STATUTORY POWERS

- 35.1 All rights and duties which Council has as a Local Authority or which Council officers have as Local Authority Officers are expressly reserved.

36 CONFIDENTIALITY

- 36.1 Subject to any obligations under the Local Government Official Information and Meetings Act 1987 the information shared between the Council and the Contractor shall be treated as and remain confidential and will not be disclosed to, or in any way made available to any third party.
- 36.2 The Council may use the information it has gained from the management of this agreement for determining the basis of any future management arrangements for the Splash Centre.

37 ADDRESS FOR SERVICE

37.1 Any notice required to be given pursuant to this Contract shall be deemed effectively given if delivered to the following addresses:

“Council” - Whanganui District Council
101 Guyton Street
WANGANUI

Attention: Keith Smith

Telephone: (06) 349 3064

Email: keith.smith@whanganui.govt.nz

“Contractor” - Community Recreational Services Trust
40 Maria Place Extension
WHANGANUI

Attention: Danny Jonas

Telephone: (06) 349 2300

Email: danny@sportwhanganui.co.nz

37.2 The Contractor shall maintain the following means of communication:

37.2.1 At all times a telephone link with Council’s Representative.

37.2.2 At all times an email link with Council’s Representative.

DATED the 15th day of July 2016.

SIGNED on behalf of)

)
)
)
Director

Community Recreational Services Trust)
in the presence of:

Director/Authorised person

.....
Signature
Name STEPHANIE BISHOP
Address WHANGANUI
Occupation LEGAL EXECUTIVE

The Common Seal of)
WHANGANUI DISTRICT COUNCIL)
was hereunto affixed in the presence)
of:)



.....
Mayor

.....
Chief Executive Officer

APPENDIX "A"

(Contractor Maintenance)

Repair of damage, to a tradesman like standard, to any internal or external walls, floors and ceilings, seating, shade structures to include woodwork, masonry, concrete, tiles, paintwork, glazing or any other building materials that may have been used.

The routine maintenance of any internal or external walls, floors, ceilings, windows, doors, frames, hardware, pool surrounds, seating, shade structure, plumbing, electrical fittings, appliances, removal of graffiti, minor painting requirements to ensure that the efficient operation and overall aesthetics of the complex is maintained.

APPENDIX "B"

(Council owned Equipment)

Splash Centre Complex Chattels

2	Rubber mats (Risean)
3	Display boards. Glass and perspex
7	Rubbish bins, plastic 1x metre high
5	Toilet roll holders / dispensers
4	Motorised hot air hand dryers
2	Speakers – changing rooms
5	Speakers above main pool
2	Mirrors – 1 x 1.5mt
1	Stainless steel bench – Ladies toilet
2	Sets of 4 x 12 space lockers
3	Sets of 3 x 4 space lockers
2	Ordinary clocks
2	Pace clock
8	Starting blocks
8	Advertising signs
4	Sign boards
3	Hose reel fireboxes and safety hoses
1	Surf lifesaving buoy
1	Security system
1	Battery emergency power lighting system – Anglo with 4 bulbs
1	Spare pump – water, perfecter circulation pump
1	Vacuum cleaner hose
3	Fire extinguishers large – main office, boiler room & plant room
2	Fire extinguishers small – staff room & laundry
1	Gantry hoist – plant room
1	Tool kit – plant room
1	Torch – plant room
1	First aid kit – plant room
2	Canoes
1	Gas barbecue and bottle
1	Wet & dry vacuum cleaner
1	Domestic vacuum cleaner
1	50mm white washdown hose – 50mt
4	Yellow picket fence
1	50mt extension cord
2	30mt extension cords
1	Raised decking – carpeted
1	Clothes line – extendaline
1	White board (beside plant room door)
1	Aluminium ladder
20m	Backstroke flags
8	Aluminium flag lane poles
50	Kick boards
2	Dolphin vacuum cleaners
1	Microphone – Toshiba ER700
1	Fridge/freezer – 920 Kelvinator

2 Grey screens
 1 Hospital bed, pillows, blankets, sheets, mattress
 1 Rubbish bin – staff room
 1 Domestic wash tub
 1 Cartoon picture – boiler room
 2 Main pool covers & rollers
 1 Learner pool cover & roller
 4 Commemorative plaques
 4 Small lane markers
 2 Lane board advertising markers
 1 Garden hose
 96 Chairs
 12 Tables
 1 Puritan manual resuscitator
 3 Polystyrene barbells
 3 Typing desks
 1 Safe
 1 Self standing notice board and letter kit
 1 Amplifier
 1 Shower chair – Disabled / family facility
 1 Hydraulic bed - Disabled / family facility
 3 Aqua lift
 7 Lane ropes
 1 Jug
 • Assorted lengths of rubber tube matting
 • Assorted chemistry gear and testing equipment
 • Kitchen sink & bench
 • Assorted crockery & cutlery
 • Carpet – staff room