

# DEED OF VARIATION

**The Council of the City of Sydney**

**and**

**Belgravia Health and Leisure Group Pty Ltd as  
Trustee for Belgravia Leisure Unit Trust**

**For the management of Gunyama Park Aquatic  
and Recreation Centre**

Sydney2030/Green/Global/Connected

reference:  
CoSVer2/2017 (AS Contracts)

## DEED OF VARIATION

**THIS DEED** is made on **1<sup>st</sup> March 2022**

### PARTIES

- (1) **THE COUNCIL OF THE CITY OF SYDNEY** ABN 22 636 550 790 of Town Hall House, 456 Kent Street Sydney NSW 2000 (**City**);
- (2) **BELGRAVIA HEALTH AND LEISURE GROUP PTY LTD** ACN 005 087 463 **AS TRUSTEE FOR THE BELGRAVIA UNIT TRUST** ABN 18 118 940 063 of 20 Longstaff Road, Bayswater VIC 3153 (**Contractor**)

### BACKGROUND

- A. The City and the Contractor entered into the Management Agreement.
- B. The City and the Contractor have agreed to vary the Management Agreement to extend the term of the agreement; and update the child safety provisions in the Agreement in the manner set out in this Deed.

### THE PARTIES AGREE AS FOLLOWS:

#### 1 INTERPRETATION

1.1 In this Deed, unless the context otherwise requires:

**Deed** means this deed of variation of the Management Agreement and all annexures, schedules, attachments and exhibits.

**GST** means the same as in the GST Law.

**GST Law** means the same as "GST law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Management Agreement** means the agreement between the City and the Contractor entered into on 22 September 2020 for the management of Gunyama Park Aquatic and Recreation Centre.

#### 1.2 Rules for interpreting this Deed

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

- (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (ii) a document (including this document) or contract, or a provision of a document (including this document) or contract, is to that document, contract or provision as amended, supplemented, replaced or novated;

- (iii) a party to this document or to any other document or contract includes a permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
  - (c) A word which suggests one gender includes the other genders.
  - (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
  - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - (f) The words subsidiary, holding company and related body corporate have the same meanings as in the *Corporations Act 2001* (Cth).
  - (g) A reference to dollars or \$ is to an amount in Australian currency.
  - (h) A reference to this document includes the agreement recorded by this document.
  - (i) Words defined in the GST Law have the same meaning in clauses about GST.
  - (j) A reference to a month is to a calendar month.
- 1.3 A reference to a term defined in the Management Agreement has the same meaning when used in this Deed.
  - 1.4 This Deed is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

## **2 VARIATION OF MANAGEMENT AGREEMENT**

The parties agree that on and from the Effective Date, the Management Agreement is varied as follows:

### **2.1 Clause 1.1: Definitions**

In the definition of "**Expiry Date**" delete the words "31 March 2022" and replace with the words "31 March 2024"

Add two new definitions as follows:

**Covid-19** means the disease known as Coronavirus (COVID-19) caused by the virus SARS-CoV-2 which was characterized as a pandemic by the World Health Organisation on 11 March 2020.

**Temporary Covid Holding Fee** means the agreed fee to be paid by the City to the Contractor for essential management and maintenance services to the Facilities as a result of any closure of the Facilities because of a Public Health Order.

## **2.2 Clause 11 3 Personnel and subcontractors**

In clause 11.3 (e)(ii): after the word "Laws" include the words "including all Relevant Child Safety Law" before the words "applicable to".

## **2.3 Clause 12 – Child Safety**

In clause 12.2(e) delete the following words "from time to time" in the last line of the paragraph.

Insert a new clause 12.3 as follows:

### **12.3 Compliance with New Child-Safety Law**

The new Child Safety Law defines contractors and subcontractors doing Child Related Work on behalf of the City as employees of the City which means the City remains ultimately accountable for any child safety incident involving the Contractor or its employees

The following definitions apply to this clause 12.3:

**Annual Child Safety Statement of Compliance** means an annual statement of compliance with relevant Child Safety Law and child safety contractual requirements, including a Local Child Safety Risk Management Plan.

**Child** means an individual(s) under the age of 18 years and Children has a similar meaning.

**Child-Related Personnel** means officers, employees, contractors (including subcontractors), agents and volunteers of the Contractor involved in relation to the operation of the Centre, who as part of that involvement have direct, or more than incidental contact with Children.

**Child Safety Risk Management Plan** means the overarching plan which demonstrates how the Contractor intends to keep Children and Young People safe in its organization and which forms part of the Annual Child Safety Statement of Compliance.

**NSW Child Safe Standards** means the **NSW Child Safe Standards**, which have been endorsed by the NSW Government (available at: <https://www.kidsguardian.nsw.gov.au/child-safe-organisations/training-and-resources/child-safe-standards>) and subsequently, from the time of their enactment as an amendment to the *Children's Guardian Act 2019*.

**Relevant Child-Safety Law** means any child-related legislation in force, including but not limited to the below:

- (a) *Children's Guardian Act 2019*;
- (b) *Child Protection (Working with Children) Act 2012*
- (c) *Child Protection (Working with Children) Regulation 2013*
- (d) *Child Protection (Working with Children) Amendment (Statutory Review) Act 2018*;

- (e) *Children and Young Persons (Care and Protection) Act 1998*
- (f) *Crimes Act 1900*
- (g) *Civil Liability Amendment (Organisational Child Abuse Liability) Act 2018*;  
and
- (h) *Civil Liability Act 2002*

**Reportable Conduct Scheme** means the scheme which monitors how the City as a relevant entity investigates and reports on types of conduct (reportable allegations or reportable convictions) made against its employees, volunteers and certain contractors who provide Child-Related Services. The City retains responsibilities under the *Children's Guardian Act 2019* to notify and investigate any allegations of Reportable Conduct against the Child Related Personnel of the Contractor.

**Working With Children Check or WWCC** means the process in place pursuant to the *Child Protection (Working with Children) Act 2012* to screen an individual for fitness to work with Children.

**(a) Relevant Child Safety Law**

The Contractor must:

- (i) comply with all Relevant Child Safety Law;
- (ii) comply with all Relevant Child-Safety Law relating to the employment or engagement of Child-Related Personnel, including ensuring that all Child Related Personnel hold and maintain valid Working With Children Checks; and
- (iii) ensure that all Child-Related Personnel comply with all Relevant Child-Safety Law for the duration of their involvement in the operation of the Centre.

**(b) NSW Child Safe Standards**

- (i) under the *Children's Guardian Act 2019* (Act) the City is classified as a "Child Safe Organisation" and as such is responsible for the Contractor's compliance with the NSW Child Safe Standards.
- (ii) the Children's Guardian Amendment (Child Safe Scheme) Bill 2021 is currently before the legislative assembly. The Bill expands on the definition of a "Child Safe Organisation" to include "a club or other body providing programs or services of a recreational or sporting nature for Children and Young People and in which employees are required to hold a Working with Children Check". Once the Bill is passed the Contractor will become part of the Child Safe Scheme and will be required to comply with the NSW Child Safe Standards in its own right, under direct regulation by the Office of the Children's Guardian.
- (iii) the City requires the Contractor to submit the relevant child safety policies and plans to demonstrate that they can meet the requirements under the Act, including an Annual Child Safety Statement of Compliance.

Therefore the Contractor must:

- (iv) supply a plan by 31 December 2021 detailing work to be undertaken by the Contractor with time frames to meet the NSW Child Safe Standards;
- (v) ensure that all Child-Related Personnel are aware of, understand and comply with the NSW Child Safe Standards;
- (vi) supply relevant child safety policies and procedures as required by the NSW Child Safe Scheme including:
  - (A) a statement of the Contractor's commitment to child safety;
  - (B) a Child Safe Policy;
  - (C) a Code of Conduct applying to Child Related Personnel;
  - (D) a Child focussed Complaint Management Policy and Procedure, which includes procedures around Reportable Conduct;
  - (E) a Human Resources Policy – detailing child safe recruitment and employment management practices; and
  - (F) a Risk Management Plan – detailing how potential risks of abuse and harm to Children and Young People will be managed and mitigated by the Contractor.
- (vii) ensure that the NSW Child Safe Standards and relevant policies are implemented, and provide evidence of such implementation, by 31 December 2022;
- (viii) co-operate with the City in any review conducted by the City of the Contractor's implementation of the NSW Child Safe Standards or compliance with this clause 12; and
- (ix) promptly, and at the Contractor's cost, take such action as is necessary to rectify, to the City's satisfaction, any failure to implement the NSW Child Safe Standards.

**(c) Child Safety Recruitment**

The Contractor must:

- (i) ensure staff are recruited and employed in line with safe recruitment practices and checks. These checks may include but are not limited to:
  - (A) ensuring safe recruitment training is in place for managers involved in recruitment;
  - (B) conducting face to face interviews;
  - (C) undertaking criminal record checks;
  - (D) checking references before confirmation of appointments;

- (E) ensuring a probationary and supervision period for new staff;
- (F) conducting personal development reviews; and
- (G) conducting in-role risk assessments.

**(d) Child Safety Training and Induction**

The Contractor must:

- (i) establish within 12 months of this Deed, and maintain, a system of training and induction to ensure all officers, employees and contractors (including subcontractors):
  - (A) are aware of and implement the NSW Child Safe Standards;
  - (B) are aware of and comply with the Contractor's Child Safety Risk Management Plan;
  - (C) are aware of and comply with Relevant Child-Safety Laws relating to requirements for working with Children, including Working With Children Checks;
  - (D) understand their obligations under the relevant Code of Conduct relating to Child safety and any penalties or consequences that may apply;
  - (E) understand their reporting obligations and know how to make a report;
- (ii) ensure that all relevant Child Related Personnel where applicable to the role have skills and training to:
  - (A) conduct a risk assessment to develop and implement child safety risk management practices;
  - (B) review child safety risk management practices following incidents;
  - (C) respond appropriately to allegations of Reportable Conduct and other child safety incidents; and
  - (D) notify relevant child protection agencies, including the NSW Police Service, and meet other reporting requirements including notifying allegations of Reportable Conduct.

The Contractor must provide evidence that its officers, employees and contractors (including subcontractors) have been fully inducted and undertaken relevant training.

**(e) Reportable Conduct Scheme**

- (i) the Contractor is subject to the Reportable Conduct Scheme as an "employee" of the City;

- (ii) the City's Chief Executive Officer is responsible as Head of Entity under the *Children's Guardian Act 2019* to notify and investigate any allegations of Reportable Conduct against any Child Related Personnel of the Contractor

The Contractor must:

- (iii) develop and implement within 6 months of this Deed a Reportable Conduct Policy and procedure which details processes to meet the requirements of the Reportable Conduct Scheme including:
  - (A) notifying the Contract Manager or the City's Manager Corporate Human Resources as soon as it becomes aware of an allegation of Reportable Conduct in relation to any Child Related Personnel in line with the requirements set out in the City's procedure entitled "Reportable Conduct Procedure – Management Agreements" (a copy of which will be provided to the Contractor by the City);
  - (B) co-operate with any investigation into Reportable Conduct initiated by the City and conducted either by an independent investigator appointed on behalf of the City, or any other relevant child protection authority; and
  - (C) address any remedial actions identified following an Investigation, within the timeframe set out by the City.

**(f) Reporting requirements of the Contractor to the City**

The Contractor must:

- (i) put into place and update, annually, an appropriate Child Safety Risk Management Plan;
- (ii) provide the City with an Annual Child Safety Statement of Compliance;
- (iii) notify the City that it has complied with all notification obligations under the applicable Relevant Child-Safety Law; and
- (iv) notify the City in accordance with the Reportable Incident Notification and Reporting Standard Operating Procedure (SOP-03), at the time, of any other reported child safety incident.

**2.3 Insert a new clause 44 Public Health Orders**

**44. Public Health Orders**

- 44.1 In this clause 44, "Public Health Order" means an order made by the Minister for Health and Medical Research under section 7 of the Public Health Act 2010 (NSW), as amended, updated, replaced or superseded.



44.2 This clause 44 takes priority over every other clause in this Agreement. To the extent of any inconsistency between this clause and any other clause of this Agreement, this clause prevails.

44.3 The Contractor must:

- (a) at all times, comply with any Public Health Order issued that is applicable to the provision of the Services; and
- (b) immediately comply with and follow any of the City's directions in order for the City to comply with any Public Health Order.

## **2.4 SPECIFICATION –**

### **Clause 10.5 Monthly financial reconciliations-**

Delete all references in clause 10.5 (including the clause heading) to the word "monthly" and replace with the word "quarterly".

## **3 NO OTHER CHANGE**

The parties confirm that the Management Agreement will continue in full force and effect as varied by this Deed. Nothing in this Deed will be read or construed as implying any form of variation or waiver other than as expressly set out in this Deed.

## **4 FURTHER ASSURANCE**

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed.

## **5 LEGAL COSTS**

Each party will bear its own legal costs in relation to the preparation and execution of this Deed.

## **6 GENERAL**

6.1 This Deed contains the entire agreement between the parties and any previous negotiations, contracts, representations or warranties relating to the subject matter of this Deed are of no effect.

6.2 A right may only be waived in writing, signed by the party giving the waiver, and:

- 6.2.1.1 no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- 6.2.1.2 a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- 6.2.1.3 the exercise of a right does not prevent any further exercise of that right or of any other right.

6.3 Nothing in this Deed in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

- 6.4 The invalidity, illegality or unenforceability of any provisions of this Deed will not affect the validity or enforceability of any other provisions.
- 6.5 This Deed may only be varied in writing by the agreement of the parties.
- 6.6 This Deed is governed by and construed in accordance with the law of the State of New South Wales.
- 6.7 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under, or relating to, this Deed.

## EXECUTION

Executed as a deed on

Signed for and on behalf of **THE COUNCIL OF THE CITY OF SYDNEY** by its duly authorised officer in the presence of:

Witness:

  
JOEL JOHNSON


Name (printed):

Signature:

  
Veronica Lee

Name of Authorised Officer:

Signed by **BELGRAVIA HEALTH AND LEISURE GROUP PTY LTD** as **TRUSTEE FOR THE BELGRAVIA LEISURE UNIT TRUST** in accordance with section 127 of the Corporations Act:

  
Signature of Director

GEORGEY F. LORD  
Full Name (printed):

  
Signature of Director/Secretary:

ALEXANDER LORD  
Full Name (printed):

## **ANNEXURE A MANAGEMENT AGREEMENT**