

Nyabing Kart Track Hire Agreement

Shire of Kent

Great Southern Street Machine Association Inc.



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Details

Parties

Shire of Kent

of 24-26 Richmond Street, Nyabing, Western Australia
(Shire)

Great Southern Street Machine Association Inc.

of T Block, 8 Verdun Street, Nedlands, Western Australia
(Hirer)

Background

- A The Shire is the management body of the Land under the Management Order.
- B Under the Management Order, the Shire has the power to licence the Land for any term not exceeding 21 years.
- C The Hirer is granted permission to use the Racetrack located on the Land for the purpose of conducting a two day racing event, including the erecting of temporary Facilities and conducting racing activities called Drifting, “Go to Whoa” and Motorkhana. The event shall be strictly alcohol free. The exact description of activities are found under the “GSSMA Inc. Proposal” annexed here to as **Annexure 2**.
- D The Event has been endorsed and sanctioned by the Australian Auto Sport Alliance (**AASA**). The Hirer must comply with:
 - (a) all of the AASA Standing Regulations;
 - (b) all of the AASA National Insurance Program, a copy annexed hereto as **Annexure 4**;
 - (c) the Guidelines; and
 - (d) all other Written Laws applicable to the Event and use of the Land and the Racetrack.
- E The Hirer and Hirer's agents enters into this Agreement with the Shire to acknowledge that the Shire since 2013, has not undertaken ongoing maintenance of the Land or the Racetrack and accepts all risk arising out of the use of the Land and Racetrack.
- F The Hirer enters into this Agreement to indemnify the Shire from and against all Liability arising out of the use of, and any activities conducted on the Land and the Racetrack during the Event.

Agreed terms

1. Definitions

In this Agreement, unless otherwise required by the context or subject matter:

Amounts Payable means the Hire Fee and any other money payable by the Hirer under this Agreement;

Agreement means this deed as supplemented, amended or varied from time to time;

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia;

Camping Equipment means those listed in **clause 4.25**;

Commencement Date means the date of commencement of the Term specified in **Item 5** of the Schedule;

Event means:

- (a) any vehicle racing or non-racing activity and show requiring the use of the Land and Racetrack;
- (b) the erection and use of any temporary Facilities permitted on the Land and the Racetrack; and
- (c) any other activity, recreational activity, event, show and spectacle on the Land;

during the Prescribed Hours for the Term.

Facilities means those permitted facilities to be erected on the Land and during the Event, listed in **Annexure 3**;

Guidelines the Guidelines for concerts, events and organised gatherings, December 2009, published by the Health Department of WA;

Hire Fee means the Hire Fee specified in **Item 6** of the Schedule;

Hirer's Agents includes:

- (a) the employees, agents, contractors, invitees and Hirers of the Hirer;
- (b) Race Participants; and
- (c) any person utilising the Land by the authority of a person specified in paragraph (a).

Hirer's Covenants means the covenants, agreements and obligations set out or implied in this Agreement, or imposed by law, to be performed and observed by the Shire;

Land means the land described in **Item 1** of the Schedule;

Liability means and includes claims, costs (including penalties, fines and legal costs), demands, damages, expenses, losses or liability of any type;

Management Order means a management order made by the Minister for Lands under the provisions of the *Land Administration Act* 1995 pursuant to which care, control and management of the Land was vested in the Shire for the purpose of '*Recreation – Go Kart Racing*';

Motor Vehicle means any motor vehicle not exceeding two (2) tonnes in gross weight or 1.9 metres in height owned or used by the Hirer or other persons authorised by the Hirer or a motor vehicle used and owned by a third party;

Notice means each notice, demand, consent or authority given or made to any person under this Agreement;

Party means the Shire or the Hirer according to the context;

Prescribed Hours means those hours specified in **Item 3** of the Schedule;

Racetrack means the Nyabing Kart Track described at **Item 2** of the Schedule and displayed in **Annexure 1**;

Race Participants means any persons involved in the participation and facilitating of the activities during the Event including but not, drivers, co-drivers, pit crew, mechanics, support crew and any team members;

Regulations means the AASA Standing Regulations;

Schedule means the Schedule to this Agreement;

Spectators means any third party visiting the Event, including but not limited to, vendors, third party employees, food and beverage stall operators, merchandise stall operators and more;

Term means the term specified in **Item 4** of the Schedule;

Termination means the date of:

- (a) expiry of the Term or any Further Term by effluxion of time;
- (b) sooner determination of the Term or any Further Term; or
- (c) determination of any period of holding over; and

Written Law includes all acts and statutes (State or Federal) for the time being enacted and all regulations, schemes, ordinances, local laws, by-laws, requisitions, orders or statutory instruments made under any Act from time to time by any statutory, public or other competent authority.

2. Hire of the Racetrack

Subject to the other provisions of this Agreement, the Shire grants to the Hirer during the Prescribed Hours for the Term the right to use the Racetrack and the non-exclusive right to use those parts of the Land in common with others required for the Event and the Facilities.

3. Hire Fee

3.1 Payment of Hire Fee

The Hirer covenants and agrees to pay the Hire Fee in the manner set out in **Item 6** of the Schedule on and from the Commencement Date clear of any deductions.

4. Conducting the Event and the Use of the Land and Racetrack

4.1 Event only

During the Term of this Agreement, the Hirer COVENANTS agrees to only use the Land for the sole purpose of conducting the Event during the Term in accordance with the Regulations.

4.2 Control of Motor Vehicles

The Hirer COVENANTS and agrees with the Shire that all Motor Vehicles on the Land during the Event are under its control and is responsible for all acts arising from the use of these Motor Vehicles in accordance with the Regulations.

4.3 Maintenance

The Hirer ACKNOWLEDGES that the Land has not been maintained by the Shire and may not be suitable for use in connection with the Event and the Shire is under no obligation to maintain the Land to ensure it is fit for purpose for the Event.

4.4 Release and indemnity

The Hirer COVENANTS and agrees to release and indemnify the Shire from all risk arising from the use of the Land and the Racetrack for the Event. The Hirer must comply with all applicable Written Laws and bear all costs associated to ensure the Land and Racetrack are fit for the purpose of the Event.

4.5 Comply with Written Laws

The Hirer COVENANTS and agrees with the Shire that in staging the Event it will comply with all Written Laws applicable to the Event and the Hirer's use of the Land associated with the Event, including but not limited to:

- (a) ensure that any noise levels shall comply within *Environmental Protection (Noise) Regulations 1997* (WA);
- (b) ensure that all food stalls and all food premises on the Land shall comply with the *Food Act 2008* (WA) and the *Food Regulations 2009* (WA); and
- (c) comply with the *Health (Public Building) Regulations 1992* (WA).

4.6 Comply with Guidelines

The Hirer will comply with all reasonable Guidelines made from time to time and applicable to the Event and the use of the Land.

4.7 Limitation on fuel

The Hirer COVENANTS and agrees with the Shire that it shall ensure that any fuel which is stored on the Land is stored in accordance with any guidelines of the Department of Minerals & Energy.

4.8 Race Participants and Motor Vehicles

The Hirer COVENANTS and agrees that it must:

- (a) ensure that all Race Participants are properly qualified and meet the standards and regulations of all Written Law applicable to them to participate in the Event; and
- (b) ensure that all Motor Vehicles participating in the Event and the activities, meet all relevant Written Law standards and compliances.

4.9 No alterations

The Hirer COVENANTS and agrees that it must not:

- (a) make or allow to be made any alteration, addition or improvement to or demolish any part of the Land and the Racetrack without the prior consent of the Shire;
- (b) erect or construct any building on the Land and the Racetrack without the prior consent of the Shire; or

- (c) remove, alter or add to any fixtures, fittings or facilities in or on the Land and the Racetrack without the prior consent of the Shire.

4.10 No signs without approval

The Hirer must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on the Land and the Racetrack without the prior consent of the Shire.

4.11 First Aid

The Hirer must provide sufficient first aid posts and first aid staff to comply with the requirements of the Guidelines.

4.12 Evacuation Plan

The Hirer shall no later than [Shire to stipulate date] provide an evacuation plan for the Event to the local Police Department and the Shire. The evacuation plan shall:

- (a) identify the procedure or method of allowing patrons to safely exit the Racetrack or any hazardous area in the quickest possible time;
- (b) be satisfactory to both the local Police Department and the Shire; and
- (c) prior to the Event the Hirer shall brief all security staff engaged for the Event regarding the details of the evacuation plan.

4.13 Emergency Services

The Hirer shall confirm in writing the date and duration of the Event to the local Police, the Fire Brigade and the St John Ambulance of the Event no later than 17 July 2023.

An authorised ambulance service must be present and ready at all times during the Event and during Prescribed Hours and for the Term.

4.14 Toilets and effluent disposal

The Hirer COVENANTS and agrees with the Shire that it shall:

- (a) Provide three (3) of single sex portable toilets and one unisex portable toilet in addition to any toilet facilities already in existence on the Land; and
- (b) arrange for all existing and portable toilets on the Land to be cleaned when necessary throughout the duration of the Event, to the satisfaction of the Environmental Health Officer of the Shire.

4.15 Exits

The Hirer COVENANTS and agrees with the Shire that it shall:

- (a) Two (2) exits from the Land are provided, each with an aggregate width of 10,000mm;
- (b) all exit signs are illuminated and clearly visible and comply with AS2293;
- (c) all paths of travel to exit ways are kept clear of obstructions and electrical apparatus; and
- (d) all exits are secured in open position at all times for the duration of the Term.

4.16 Structural specifications and electrical installations

- (a) The Hirer shall arrange for all Facilities, spectator stands, stages and lighting rigs to be certified by a practising structural engineer as being constructed to an appropriate standard for the use for which they will be put.
- (b) All electrical installations both existing and temporary including all power leads, must be certified by an electrical contractor as complying with the *Health (Public Building) Regulations 1992* (WA).
- (c) The wiring and control systems for all stage and production lighting must be independent of the main lighting system. The main lighting system will be controlled from a central position, in accordance with plans approved by the Shire.
- (d) The certificates required pursuant to **sub-clauses 4.16(a) and 4.16(b)** and shall be addressed to the Chief Executive Officer of the Shire, and shall be forwarded to the Shire no later than 17 July 2023.

4.17 Fireworks etc

The Hirer COVENANTS and agrees with the Shire that no lasers, fireworks, pyrotechnics or any related or similar thing shall be permitted at the Event.

4.18 Food and Non – Alcoholic drinks

The Hirer COVENANTS and agrees with the Shire that it shall:

- (a) make arrangements to supply sufficient amounts of food and non-alcoholic drinks for sale to the public for the duration of the Event;
- (b) comply with all Written laws with respect to food handling;
- (c) obtain approval from the Shire's Manager Health and Ranger services for locations of food and drink outlets;
- (d) ensure that all food and drink is served in plastic containers (glass and crockery is not permitted); and
- (e) not allow any person, Hirer's Agents, Race Participants or Spectators to bring or consume any alcoholic beverage or glass onto the Land.

4.19 Directions of Environmental Health Officer

- (a) The Hirer and Hirer's Agents will obey every lawful direction of the Shire's Environmental Health Officer whether such direction touches a provision of this Agreement or not.
- (b) Notice given by the Shire's Environmental Health Officer to the Hirers pursuant to any provision of this Agreement shall be sufficient notice if given orally to the Hirer's or the Hirer's Agents.
- (c) Any decision made by the Shire's Environmental Health Officer pursuant to this Agreement shall be final.
- (d) The Hirer authorise the Environmental Health Officer or a Police Officer to stop the Event if noise levels exceeds assigned levels pursuant to the *Environmental Protection Act 1986* (WA) and the *Environmental Protection (Noise) Regulations 1997* (WA).

- (e) Without limitation to **sub-clause 4.19(d)**, the Shire's Environmental Health Officer shall be entitled to stop the Event if noise levels, as measured by the Shire's Environmental Health Officer exceed 100 dB(c) at the Racetrack.

4.20 Removal of structures

All structures and Facilities erected for the purpose of the Event must be removed from the Land by the Hirer at its expense by 5pm on Sunday 23rd July 2023.

4.21 Removal of rubbish

The Hirer COVENANTS and agrees with the Shire that:

- (a) it must provide sufficient bins or other receptacles for rubbish, to accommodate rubbish created by patrons of the Event;
- (b) the Land and the Racetrack must be cleaned at the expense of Hirer to the satisfaction of the Environmental Health Officer, by 5pm on Sunday 23rd July 2023 and such cleaning will include the emptying of all bins or other receptacles for rubbish on the Land, removing all temporary bins or receptacles for rubbish from the Land and removing from the grounds of the Land all rubbish not contained in bins or other receptacles;
- (c) submit to the Shire a waste and litter management plan 7 days prior to the staging of the Event which plan shall be to the satisfaction of the Director of Sustainable Development of the Shire (**Litter Plan**); and
- (d) implement the Litter Plan during the course of the Event to the satisfaction of the Shire.

4.22 Traffic and parking

The Hirer COVENANTS and agrees with the Shire that it shall:

- (a) prepare and submit to the Council of the Shire a local traffic management plan (**Traffic Management Plan**) within one weeks of the date of the event;
- (b) implement the Traffic Management Plan prior to and during the course of the Event to the satisfaction of the Shire; and
- (c) in addition to any responsibilities under the Traffic Management Plan, be responsible for arranging traffic control and parking facilities for the Event to the satisfaction of the Shire, and shall bear any costs thereof, and shall re-imburse the Shire for any costs it may incur in the event that the Shire undertakes any of Hirer responsibilities under this clause.

4.23 Noise management plan

The Hirer COVENANTS and agrees with the Shire that it shall:

- (a) prepare and submit to the Council of the Shire a noise management plan to the satisfaction of the Director of Sustainable Development of the Shire which addresses the commissioning, decommissioning and operation of the service park on the Land (**Noise Management Plan**) within one week of the date of the event; and
- (b) implement the Noise Management Plan prior to and during the course of the Event to the satisfaction of the Shire.

4.24 Vehicle repairs and maintenance

The Hirer COVENANTS and agrees with the Shire that it shall:

- (a) ensure that any vehicle awaiting repair or to undergo repair is parked on any streets not forming part of the Land the subject of this Agreement; and
- (b) ensure any person conducting vehicle repairs and maintenance during the Event, to conduct themselves in a safe and proper manner ensuring any other person in the Land and those outside, but in close proximity to the Land, are kept safe any damage to property of, or injury or death through an act or omission.

4.25 Camping

The Hirer, Hirer's agents, Race Participants and Spectators may:

- (a) set up or erect camping tents, swags, rooftop tents and other similar structures;
- (b) set up a caravan or other similar vehicles; and
- (c) set up or erect any accommodation structure;

with a view to camp, sleep or stay overnight on the Land for the Term and in accordance with any Written Law applicable, specifically but not restricted to *Regulation 11* of the *Caravan Parks and Camping Grounds Regulations 1997* (WA).

5. Insurance and indemnity

5.1 Insurance

- (1) The Hirer must at its own expense during the Term effect, maintain and keep current with the AASA National Insurance Program, a copy annexed hereto as **Annexure 4**:
 - (a) public liability insurance for a sum not less than \$25,000,000;
 - (b) participant liability insurance for a sum not less than \$5,000,000;
 - (c) professional liability insurance for a sum not less than \$2,000,000;

and as otherwise, COVENANTS and agrees with the Shire to fully comply with the AASA National Insurance Program.

- (2) The Hirer must at its own expense during the Term effect, maintain and keep current with the Western Australian government's self-insurance fund public liability insurance for a sum not less than \$20,000,000; and
- (3) As and when requested by the Shire, the Hirer must give to the Shire's reasonable satisfaction sufficient evidence of the existence of those insurances or provide certificates of currency in respect of those insurances.

5.2 Indemnity

The Hirer uses the Land at its own risk and releases and indemnifies the Shire from and against all Liability directly or indirectly relating to:

- (a) any breach by the Hirer of its obligations under this Agreement;
- (b) any damage or injury caused by any Motor Vehicle owned or used by the Hirer or any Hirer's Agents, Race Participants and Spectators while at the Land and the Racetrack;

- (c) the theft of any Motor Vehicle (or any parts, equipment or contents of any motor vehicle) owned or used by the Hirer or any Hirer's Agents, Race Participants and Spectators while at the Land and the Racetrack;
- (d) any damage to property of, or injury or death to, the Hirer or any Hirer's Agents, resulting from the use of the Land and the Racetrack by the Race Participants or any Spectator during and immediately the Event.;
- (e) any damage to property of, or injury or death to, any Spectators resulting from the use of the Land and the Racetrack by the Hirer or any Hirer's Agents or Race Participants during and immediately the Event;
- (f) any damage to property of, or injury or death to, any Race Participants resulting from the use of the Land and the Racetrack by the Hirer or any Hirer's Agents or Spectators during and immediately after the Event;

but, in each case, excluding any Liability to the extent caused or contributed to by improper conduct, negligent act or omissions, or breach of this Agreement by the Shire or its officers, employees, contractors or agents.

6. Shire's rights and obligations

6.1 Maintenance

The Shire is under no obligation to maintain the Land or the Racetrack at any time during the Event.

6.2 Shire may relocate Facilities

The Shire shall at any time have the right to request to the Hirer to relocate the position of any structure or Facilities to such other position within the Land as the Shire shall (acting reasonably) determine.

6.3 Shire's right to pipes

The Shire reserves its right to all gas pipes, water pipes, electrical and other pipes, mains, wires, flues and drains now or hereafter to be laid or constructed by the Shire in through and under the Land and the free and uninterrupted use of the same.

6.4 Right to repair

- (1) Subject to first providing the Hirer with reasonable prior written notice the Shire will be entitled to restrict the times to which the Hirer may exercise the rights granted by this Agreement to the extent reasonably necessary to enable the Shire to carry out maintenance or repairs to the Land, or the pipes referred to **clause 6.3**. If access or use of part of the Land is restricted, the daily fee shall be reduced proportionately to the period of time in which those parts are inaccessible.
- (2) The Shire may in its absolute discretion, close the access ways into and out of the Land outside of the Prescribed Hours.

7. Rights personal to Hirer

The rights in this Agreement are personal to the Hirer and the Hirer must not transfer or sub-hire use of any of the Land to any person other than authorised permit holders.

8. Obligations upon Termination

8.1 Peacefully surrender

On the expiration of the Term or within one (1) month after the earlier determination of this Agreement, the Hirer must:

(a) surrender peaceably and yield up the Land to the Shire:

- (i) clean;
- (ii) free from rubbish, debris and other material;
- (iii) in a state of repair and condition,

consistent with the performance by the Hirer of the Hirer's Obligations, fair wear and tear excluded, under this Agreement and give to the Shire all keys and security devices and combinations for locks providing access to or within the Land held by the Hirer whether or not provided by the Shire;

(b) remove all:

- (i) improvements, buildings, Facilities and fixtures constructed or located on the Land which are not the property of the Shire;
- (ii) property of the Hirer including the Hirer's signs, fittings and fixtures, equipment and other articles upon the Land or brought upon the Land by the Hirer; and
- (iii) property of the Race Participants and Spectators on the Land including equipment, Motor Vehicle, Camping Equipment and all other articles upon the Land or brought upon the Land by the Race Participants and Spectators,

and promptly make good to the reasonable satisfaction of the Shire any damage caused by the removal in **clause 8.1(b)** and restore the Land to a condition consistent with the condition of the Land prior to the Event and/or the erection of any such improvements, the buildings and fixtures at the Hirer's cost.

8.2 Failure to remove or restore

If the Hirer fails to comply with **clause 8.1**, the Shire may at its option:

- (a) remove and dispose of all structures, building, fixtures and property and recover the cost of doing so from the Hirer as a liquidated debt payable on demand; and
- (b) restore the Land and surrounding area to a condition consistent with the condition of the land prior to the Event and/or the erection of such improvements, the buildings and fixtures at the Hirer's cost and recover the cost of doing so from the Hirer as a liquidated debt payable on demand.

8.3 Obligations to continue

The Hirer's obligations under this **clause 8** will continue, notwithstanding the end or Termination of this Agreement.

9. Termination for default

9.1 Events of default

- (1) Either Party may immediately terminate this Agreement by written notice to the other party if the other party commits a material breach of any of its obligations and has not remedied that breach within 30 days of receiving written notice of the breach.
- (2) Termination of this Agreement does not affect the rights or liabilities of the parties in relation to any cause of action accruing prior to termination.

9.2 Shire may remedy Hirer's default

If the Hirer:

- (a) fails or neglects to pay the Hire Fee by the Hirer under this Agreement; or
- (b) does or fails to do anything which constitutes a breach of the Hirer's Covenants,

then, after the Shire has given to the Hirer notice of the breach and the Hirer has failed to rectify the breach within a reasonable time, the Shire may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Hirer and the Hirer must pay to the Shire on demand the Shire's cost and expenses of remedying each breach or default.

9.3 Acceptance of Amount Payable by Shire

Demand for or acceptance of the Hire Fee by the Shire after an event of default has occurred will not affect the exercise by the Shire of the rights and powers of the Shire by the terms of the Agreement or at law and will not operate as an election by the Shire to exercise or not to exercise any right or power.

9.4 Essential terms

Each of the Hirer's Covenants in **clause 2** (Hire of the Racetrack), **3** (Hire Fee), **4** (Conducting the Event and the Use of the Land and Racetrack), **5** (Insurance and indemnity), is an essential term of this Agreement but this **clause 9.4** does not mean or imply that there are no other essential terms in this Agreement.

9.5 Breach of essential terms

- (1) If the Hirer breaches an essential term of this Agreement then, in addition to any other remedy or entitlement of the Shire:
 - (a) the Hirer must compensate the Shire for the loss or damage suffered by reason of the breach of that essential term;
 - (b) the Shire will be entitled to recover damages against the Hirer in respect of the breach of an essential term; and
 - (c) the Hirer agrees with the Shire that if the Term is determined:
 - (i) for breach of an essential term or the acceptance by the Shire of a repudiation of this Agreement by the Hirer; or
 - (ii) following the failure by the Hirer to comply with any notice given to the Hirer to remedy any default,

the Hirer must pay to the Shire on demand the total of the Hire Fee under this Agreement which would have been payable by the Hirer for the unexpired balance of the Term as if the Term had expired by lapse of time together with the losses incurred or reasonably expected to be incurred by the Shire as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Land.

- (2) The Hirer agrees that the obligation set out in this **clause 9.5(1)(c)** will survive termination or any deemed surrender at law of the estate granted by this Agreement.
- (3) The Shire must take reasonable steps to mitigate its losses and endeavour to re-let the Land at a reasonable rent and on reasonable terms but the Shire is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Agreement.

10. Extension of term

The parties agree that they may by mutual agreement, recorded by way of exchange of letters, extend the term of this Agreement for a prescribed additional term.

11. Nature of agreement

The Hirer acknowledges that:

- (a) this Agreement does not confer any estate or interest in the Land;
- (b) other than the rights granted under this Agreement, the grant of this Agreement does not create or confer upon the Hirer any tenancy or any other estate or interest in the Land;
- (c) this Agreement does not confer any exclusive rights;
- (d) the rights of the Hirer lie in contract only; and
- (e) subject to any existing encumbrances, the Shire retains possession and control of the Land.

12. Costs

The Hirer shall pay the costs of and incidental to the preparation, engrossment and stamping of this Agreement, including the Shire's solicitors' costs for preparation of this Agreement and all duties payable hereon.

13. GST

13.1 Definitions

The following definitions apply for the purpose of this clause:

- (a) **Act** means the *Commonwealth's A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation;
- (b) **Consideration** means the Amounts Payable or any other money payable to the Shire under this Agreement, but does not include the amount of the GST which may apply to the Amounts Payable or other money payable under the Act;
- (c) **GST** means a tax under the Act levied on a Supply including but not limited to the Amounts Payable or other money payable to the Shire for goods or services or property or any other thing under this Agreement; and

- (d) **Supply** means a good or service or any other thing supplied by the Shire under this Agreement and includes but is not limited to a grant of a right to use the Land and .

13.2 Hirer to pay GST

- (1) The Consideration will be increased by the amount of the GST, if any, which the Shire is required under the Act to pay on any Supply made under this Agreement;
- (2) The Hirer must pay any increase referred to in **clause 13.2(1)** whether it is the Hirer or any other person who takes the benefit of any Supply; and
- (3) The Hirer must pay the amount of the GST to the Shire at the same time and in the same manner as the Hirer is required to pay the Consideration under this Agreement.

13.3 Consideration in kind

If consideration in kind is accepted by the Shire for any Supply made under this Agreement, the GST amount payable to the Shire under **clause 13.2(1)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Shire.

13.4 No contribution from Shire

If the Hirer is required under this Agreement to make any payment of money or give other consideration to a third party for outgoings, goods, services and benefits of any kind, the Hirer is not entitled to any contribution from the Shire for any GST payable by it to any person.

13.5 Statement of GST paid is conclusive

A written statement given to the Hirer by the Shire of the amount of the GST that the Shire pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

13.6 Tax invoices

For each payment by the Hirer under this clause and as per **Item 6** of the Schedule, the Shire agrees to promptly deliver to the Hirer, tax invoices (as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth)), as required under the Act, and adjustment notes in a form which complies with the Act, so as to enable the Hirer to claim input tax credits or decreasing adjustments for Supplies.

13.7 Reciprocity

If the Hirer furnishes any Supplies to the Shire under this Agreement, then the requirements set out in this clause with respect to the Hirer will apply to the Shire with the necessary changes.

14. General provisions

14.1 Variation

A variation to this Agreement must be in writing and signed by the parties.

14.2 Notice

- (1) Any notice to be given under this Agreement by one of the parties to the other must be in writing and is given for all purposes by delivery in person, by prepaid post or by facsimile addressed to the receiving party at the address set out in this Agreement.

- (2) Any notice given in accordance with this Agreement will be deemed to be duly served in a case of posting at the expiration of three (3) Business Days after the date of posting and in the case of facsimile, on the first Business Day after the date of transmission (providing the sending party receives a facsimile machine verification report indicating that the notice has been transmitted).

14.3 Dispute resolution

14.3.1 No litigation pending possible resolution.

Subject to **clause 14.3.5** and **clause 9** of this Agreement, the Parties agree that unless and until a Party has complied with the requirements of this **clause 14.3**, a Party may not commence any court proceedings in respect of any dispute.

14.3.2 Referral to Parties' Representatives.

If at any time a dispute exists:

- (a) between the Shire and the Hirer either party to the dispute may refer the dispute to the relevant Parties' representatives appointed in writing for resolution; and
- (b) the relevant Parties' representatives will consider the dispute referred to them and in doing so, give due consideration to submissions by the parties in connection with the dispute.

14.3.3 Further referral

- (a) If a dispute remains unresolved 10 Business Days after the referral of the dispute to the relevant Parties' representatives under **clause 14.3.2**, a Party may give a written notice to the other party in accordance with this **clause 14.2 (Notice)**.
- (b) The Notice must:
 - (i) describe the nature of the dispute; and
 - (ii) nominate the Party's authorised officer for resolution of the dispute (**Authorised Officer**).
 - (iii) state that the Notice is given under this **clause 14.3.3**;
- (c) Within 2 Business Days after receipt of a Notice, the recipient Party must give a written notice to the other Party nominating its Authorised Officer.
- (d) The Parties must ensure that their Authorised Officers meet and negotiate with a view to resolving the dispute within 5 Business Days after the receipt of the Notice referred to paragraph (c).
- (e) If the Parties' Authorised Officers fail to resolve the dispute within 10 Business Days after receipt of the Notice given by a Party in accordance with paragraph (c), the Parties' Authorised Officers may agree a dispute resolution process for the resolution of the dispute in which case the dispute will be resolved in accordance with such process.
- (f) Either Party may commence litigation if:
 - (i) the Parties fail to resolve the dispute in accordance with paragraph (d) and fail to agree a dispute resolution process in accordance with paragraph (e) within 10 Business Days after the receipt of a Notice given by a Party in accordance with paragraph (e);
 - (ii) either Party fails to comply with any of the requirements of this **clause 14.3**; or

- (iii) either Party fails to comply with any dispute resolution process agreed in accordance with paragraph (e).

14.3.4 Continue to perform obligations

The Parties must continue to perform their obligations under the Agreement as the case may be despite the existence of any dispute.

14.3.5 No application of clause

This clause does not apply where the Shire or a Hirer as the case may be considers that **clause 9** of this Agreement applies.

14.4 Acts by agents

All acts and things which the Shire is required to do under this Agreement may be done by the Shire, the Chief Executive Officer, an officer or the agent, solicitor, contractor or employee of the Shire.

14.5 Severance

If any part of this Agreement is, or becomes, void or unenforceable that part is or will be, severed from this Agreement to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

14.6 Waiver

The parties mutually covenant and agree that:

- (a) no right under this Agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right;
- (b) a waiver by one party under paragraph (a) of this clause does not prejudice its rights in respect of any subsequent breach of this Agreement by the other party; and
- (c) a party does not waive its rights under this Agreement because it grants an extension or forbearance to the other party.

14.7 Further assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions of this Agreement.

14.8 Applicable law

This Agreement shall be governed by the laws of the State of Western Australia, and where applicable the Commonwealth of Australia.

14.9 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) Words importing:
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and

- (iii) any gender includes each gender;
- (b) A reference to:
 - (i) a natural person includes a body corporate or local government;
 - (ii) a body corporate or local government includes a natural person;
 - (iii) a professional body includes a successor to or substitute for that body;
 - (iv) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
 - (v) a statute, includes an ordinance, code, regulation, award, Shire planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
 - (vi) a right includes a benefit, remedy, discretion, authority or power;
 - (vii) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (viii) this Agreement or provisions of this Agreement or any other deed, agreement, instrument or contract includes a reference to:
 - (A) (A)both express and implied provisions; and
 - (B) (B)that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
 - (x) anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
 - (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Agreement;
- (c) The covenants and obligations on the part of the Hirer not to do or omit to do any act or thing include:
 - (i) covenants not to permit that act or thing to be done or omitted to be done by an authorised person; and
 - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- (d) Except in the Schedule, headings do not affect the interpretation of this Agreement; and
- (e) If a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally, and may be enforced against any one or more of them.

Schedule

Item 1 Land

Reserve 39189, Lot 60 on Deposited Plan 155603 being the whole of the land comprised in Crown Land Title Volume LR3148 Folio 471;

Reserve 39189, Lot 61 on Deposited Plan 155603 being the whole of the land comprised in Crown Land Title Volume LR3148 Folio 472;

Reserve 39189, Lot 62 on Deposited Plan 155603 being the whole of the land comprised in Crown Land Title Volume LR3148 Folio 473;

Reserve 39189, Lot 65 on Deposited Plan 155603 being the whole of the land comprised in Crown Land Title Volume LR3148 Folio 474;

Reserve 39189, Lot 66 on Deposited Plan 155603 being the whole of the land comprised in Crown Land Title Volume LR3148 Folio 475; and

Reserve 39189, Lot 67 on Deposited Plan 155603 being the whole of the land comprised in Crown Land Title Volume LR3148 Folio 476.

Item 2 Racetrack

The Nyabing Kart Track located within the Land as shown in **Annexure 1**, or as otherwise specified by the Shire from time to time.

Item 3 Prescribed Hours

Saturday 8 August 2026: 10:30am to 5:00pm.

Sunday 9 August 2026: 8:30am to 1:00pm.

Item 4 Term

A two day term commencing on Saturday 8 August 2026 and expiring on Sunday 9 August 2026.

Item 5 Commencement Date

8 August 2026.

Item 6 Hire Fee

\$0 plus GST and payable in advance and within 30 days of receipt of a tax invoice from the Shire.

Signing page

EXECUTED by the parties as a deed

2026

Executed by the **SHIRE OF KENT** pursuant to section 9.49A(4) of the *Local Government Act 1995* by its authorised officer.

Signature of Chief Executive Officer

Full Name of Chief Executive Officer

THE COMMON SEAL of the GREAT SOUTHERN STREET MACHINE ASSOCIATION INC was hereunto affixed pursuant to the constitution of the Great Southern Street Machine Association Inc in the presence of each of the undersigned each of whom hereby declares by the execution of this document that he or she holds the office in the Great Southern Street Machine Association Inc indicated under his or her name:

Office Holder Sign

Office Holder Sign

Full Name

Full Name

Address

Address

Office Held

Office Held

Annexure 1 – Racetrack

Annexure 2 – GSSMA Inc. Proposal

Annexure 3 – Facilities

Annexure 4 – AASA National Insurance Program