



MEMORANDUM OF UNDERSTANDING

MANAWATU COMMUNITY ATHLETICS TRACK

This AGREEMENT is made on the day of 2020

BETWEEN

PALMERSTON NORTH CITY COUNCIL, a body corporate of Palmerston North (the **Council**)

PALMERSTON NORTH ATHLETIC AND HARRIER CLUB INCORPORATED, an incorporated society of Palmerston North acting on behalf of the User Group

MASSEY UNIVERSITY, a body corporate of Palmerston North (**Massey**)

Each a **Party** and together the **Parties**

BACKGROUND

- A. The Council, Massey and a user group entered into a Memorandum of Understanding dated 22 November 2000 providing for the construction and operation of the Track (defined below).
- B. The Council, Massey and other users entered into a further Memorandum of Understanding dated 21 December 2006 providing for the construction of a meeting room and ancillary facilities to supplement the Track.
- C. The Track and Facilities are owned by Massey and located on lands owned by Massey.
- D. The Parties wish to consolidate and update the two previous Memorandums of Understanding and agree to the terms and conditions on which the Track and Facilities will be funded and operated as set out in this Memorandum of Understanding.

1. Definitions

In this Memorandum unless the context requires otherwise:

Equipment means the athletic track and field and ancillary equipment owned by Massey and used in conjunction with the Track. (Equipment list updated and maintained by Massey);

Facilities means the meeting rooms, change rooms and associated facilities built adjacent to the Track;

Inflation means a weighted average of the Labour Price Index (70%) and Producer Price Index (30%);

MCAT means the track and the Facilities;

MCATAC means the committee described in clause 7;

MoU means this Memorandum of Understanding;

Parties means Palmerston North City Council, Massey University and the Palmerston North Athletic and Harrier Club Incorporated;

Track means the all weather athletic track surface located on Best Rd off Albany Drive on the Massey campus in Palmerston North, it includes the 8 lane running track, jumps, run ups and throws circles, but excludes the in-field within the Track;

User Group means the Palmerston North Athletic and Harrier Club Incorporated, an incorporated society of Palmerston North acting on behalf of Athletic Clubs affiliated to Athletics Manawatu Wanganui, Masters Athletics/Masters Clubs, Manawatu Schools and Sport Manawatu, together an unincorporated group of sporting groups who make use of the MCAT (the User Group).

2. Purpose of the Memorandum of Understanding

This MoU describes how the Parties will contribute to funding and management of the MCAT in accordance with the Principles for use in Schedule A.

3. Term

This MoU will come into effect on the date of the last signature and will remain in force for a period of 5 years with one right of renewal for a further 5-year term by the written agreement of all parties.

4. Vision for the MCAT

To provide a community athletic track and facilities to meet local sport and recreation needs while able to host significant events. The fit for purpose facilities are designed to meet a variety of athletic, community sport, recreation, and winter field sport needs.

5. Objectives

The objectives of the Parties are to ensure:

- the MCAT is used by the Manawatu community including Sport Manawatu, sports clubs, Massey University, schools and other learning institutions as well as casual use by members of the wider community
- that community use of the MCAT continues to be affordable, accessible and appropriately prioritised
- the Track and Facilities are properly managed under the control of Massey.

6. **Ownership**

The ownership of the Track and Facilities are vested in Massey, with Massey managing the facility in accordance with an agreed operating policy for its use approved by the MCATAC and described in Schedule A.

7. **Governance**

(a) The Parties agree to establish a committee, the Manawatu Community Athletics Track Advisory Committee (the **MCATAC**) to oversee management of the MCAT.

(b) The MCATAC has responsibility to:

- oversee the management and operations of the MCAT to ensure stakeholder interests are being met
- approve an annual budget for operation and maintenance of the MCAT
- approve the fees to be charged for use of the Track, Facilities and Equipment
- establish policy relating to the use of the Track consistent with the purposes for which the Track was constructed and in accordance with the guiding principles outlined in Schedule A
- ensure continued regional community access to the MCAT and participation which contributes to promotion and growth of athletics, associated sport use and casual use by the community
- consider issues relating to signage, promotion and branding of the Track
- consider future renewal requirements for items including but not limited to track replacement, irrigation and lighting systems as well as ongoing maintenance costs
- ensure that all activities undertaken at the Track and Facilities comply with all relevant laws and regulations, including without limitation the Health and Safety at Work Act 2015
- ensure an Athletic Track & Facility Health & Safety Manual is developed and its procedures are applied to all bookings
- provide annual reports on usage to Massey University, the Council and the User Group.

(c) The MCATAC will consist of:

- A Chair appointed by Massey's Executive Director Operations and Campus Experience.
- Two (2) Council representatives appointed by the Council, one being an elected member of the Council and the other appointed by the CEO of the Council
- Two (2) Massey University staff appointed by Massey's Executive Director Operations and Campus Experience.
- Three (3) User Group representatives appointed by the User Group.

All members serve for a period of 3 years and may be reappointed for further terms.

(d) Any of the Parties may replace their members of the MCATAC on written notice to the other Parties.

(e) If there is a vacancy in the MCATAC which continues for more than 2 consecutive meetings the Chair of the MCATAC may appoint a replacement to fill that vacancy.

(f) The MCATAC will operate in accordance with the following:

- the MCATAC will meet regularly as agreed among the Parties and no less frequently than every 3 months
- meetings may be conducted by way of video or teleconference
- a quorum of the MCATAC is one representative from each Party.
- no decisions may be made unless a quorum is present at the meeting.
- each member of the MCATAC has one vote. The chairperson does not have a casting vote.
- decisions of the MCATAC must be a majority and if any matter cannot be agreed on it will be referred to disputes resolution under clause 13
- the Parties will ensure that minutes of each MCATAC meeting are taken and circulated among the Parties promptly after each meeting.

8. Operation of the MCAT

(a) Massey will carry out the day to day operations of the MCAT including:

- providing the necessary day-to-day administration, management, maintenance and security.
- promoting the use of the Track and Facility
- paying all the rates or levies pertaining to the land on which the Track and Facility is located.
- providing insurance cover in respect of the Track and Facility (but not the Equipment) including public liability insurance as Massey considers prudent.
- managing the ongoing maintenance of the Track and Facilities
- invoicing all users of the Track, Facilities and/or Equipment, including lights and cleaning charges and collecting the fees invoiced.

9. Funding

(a) The Council and Massey will share equally the cost of the maintenance and renewal of the Track and Facility with each contributing \$78,900 plus GST (if any) per annum, adjusted for Inflation. (See clause 10 for specific annual renewal and maintenance costs).

(b) All users of the MCAT will pay for the lighting and cleaning costs of the Track and Facilities through the fees charged for use of the MCAT. Secondary users who share the track alongside an existing booking of the MCAT will be charged a percentage of the total booking cost.

(c) Repair, replacement and maintenance of all Equipment will be funded through the fees paid for use of the Equipment. If the fees are insufficient, the User Group will

pay any further amount to ensure all the Equipment is replaced as needed and is good condition.

- (d) Massey may use the facility booking fee collected for use of the MCAT (less any amount specified in the budget for replacement of the Track surface) to meet the costs of operating and maintaining the Track and Facilities (including lighting and cleaning costs).

10. Obligations of Stakeholders

(a) The Council shall:

- share equally with Massey the cost of the Operational expenses of the Track and Facility. Starting in 2021 each contributing \$33,500 plus GST (if any) per annum, adjusted for Inflation.
- contribute \$45,400 plus GST (if any) per annum towards a forecast renewal in 2029, adjusted for Inflation.
- support the User Group in their efforts to raise funding for future projects.
- contribute to discussion on future specifications for design and other works at Track.

(b) The User Group shall:

- be responsible for the repair, replacement and maintenance of all Equipment.
- recommend to the MCATAC a fee schedule for hire of Equipment.
- ensure the orderly storage of Athletic Track and Facility Equipment.
- organise and/or support community activities promoting the use of the Track and Facility.
- provide the MCATAC with an annual inventory and condition report of all Equipment purchased.
- keep accurate accounts of all income and expenditure in connection with the Equipment and will, on request, provide the MCATAC with details of all such income and expenditure.
- provide the MCATAC with a comprehensive annual report of all athletic engagement they are involved in.
- contribute to discussion on future specifications for design of future development of the Track.
- will endeavour to seek grant funding to support the total costs of renewal. The contribution to be up to 10% of the total cost.

(c) Massey shall:

- share equally with the Council the cost of the Operational expenses of the Track and Facility. Starting in 2021 each contributing \$33,500 plus GST (if any) per annum, adjusted for Inflation.
- contribute \$45,400 plus GST (if any) per annum towards a forecast renewal in 2029, adjusted for Inflation.
- contribute to discussions on future specifications for future development of the Track and Facility.

- keep accurate accounts of all income and expenditure in connection with the Track, Facilities and Equipment and will, on request, provide MCATAC with details of all such income and expenditure.
- pay the User Group all fees received from hiring out the Equipment which the User Group must use only for the purchase, maintenance and replacement of Equipment.
- maintain a separate account for the percentage of income to be set aside annually towards the replacement of the track surface, as specified in the annual budget.
- report annually to the MCATAC regarding maintenance and renewal requirements of the Track and Facility.

11. Asset Replacement-Renewals

- (a) Massey will be responsible for the renewal of the Facility, fencing and car parking of the Track.
- (b) When the Track needs renewal, funding of the renewal will be as follows:
 - a percentage of the annual funding contribution from Massey & the Council will be set aside for track replacement.
 - the User Group will endeavour to seek grant funding to support the total costs of renewal. (The contribution to be up to 10% of the total cost).
 - The forecast Track renewal timeframe is 10 years (2029). However, the MCATAC will review the forecast renewal date and budgets no later than 2028.

12. Conflicts of Interest

The members of the MCATAC must maintain a clear separation between their personal interests and their duties as a member of the MCATAC. In particular, members may not participate in the discussion or consideration of any matter placed before the MCATAC when they have a personal or pecuniary interest other than an interest in common with the public. Members are also required to make a declaration of interests at the time they are appointed and to update this declaration when there are changes to those interests.

13. Dispute Resolution

- (a) If a disagreement arises in relation to the interpretation, application or operation of this MoU (a Dispute) it will be initially discussed at the lowest management level of each of the Parties to see if the issue can be resolved.
- (b) If the Dispute cannot be resolved within a reasonable period of time then the matter shall be immediately escalated to the Chief Executive of the Council, President of the PNAHC on behalf of the User Group, and Massey's Executive Director Operations and Campus Experience for consideration.
- (c) Where the matter is unresolved to the satisfaction of the Parties, any Party involved in the Dispute may refer the matter to mediation on the terms of the standard mediation agreement of the Arbitrators' and Mediators' Institute of

New Zealand Inc. (AMINZ). The mediator shall be one mediator to be agreed by the parties or, in the event that a single mediator cannot be agreed within five (5) Business Days after the reference, then by a mediator appointed by the president or other office bearer of for the time being of AMINZ .

- (d) Any information or documents obtained through or as part of the reference under this clause shall not be used for any purpose other than the settlement of the dispute under this clause.
- (e) Nothing in this clause will prevent any party from seeking urgent interlocutory relief.

14. Liaison

The Chief Executive of the Council, User Group (PNAHC) and Massey will each appoint a person to act as agent of their respective bodies and that person will be the liaison person for that body about all matters pertaining to this MoU and the MCAT facility.

15. Review

- (a) The parties to this MoU acknowledge that every five years from the date of this MoU is signed, the parties: Massey University, the Council, User Group and MCATAC will meet to discuss and review their obligations under the MoU.
- (b) A review of the operating policy will form the basis of discussion at such meetings and the parties may agree to vary the terms and obligations of this Memorandum of Understanding.

16. General

- (a) Nothing in this MoU is intended or will be deemed to constitute a partnership, agency, employee/employer or joint venture relationship among the Parties. The Parties will not represent themselves, and will ensure that their officers, employees or agents do not represent themselves as being officers, employees, agents or partners of the other. No Party will have any authority to bind the other legally or equitably by contract, admission, acknowledgement, undertaking or estoppel.
- (b) No variation, waiver or modification of any of the terms of this MoU shall be valid unless in writing and signed by or on behalf of the Parties.
- (c) This MoU may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document.

Signed by the **PALMERSTON NORTH CITY COUNCIL**

.....
Authorised Signatory

SIGNED by the **Palmerston North Athletic and Harrier Club Incorporated**

.....
Authorised Signatory

SIGNED by **MASSEY UNIVERSITY**

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Authorised Signatory

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PRINCIPLES FOR AGREEMENT FOR USE OF THE MCAT TRACK & FACILITY

1. Normal Hours of Use Track & Facility-Meeting room

Standard use to be Monday-Sunday from 6.00am to 10.00pm. NB the Track & Meeting Room must be specifically booked if required. A booking of the track will not include the meeting room unless specified. Power and cleaning fees will apply.

2. Arrangements for Use

Users of the Track and Meeting Room are expected to include:

- a. Athletic Clubs affiliated to Athletics Manawatu-Wanganui
 - i. Athletic Clubs will have rights of use of the Track and Meeting Room at no cost other than the cost of *equipment hire*, power, and cleaning. This group season is expected to occur between September and April. Some use will occur between May and August in the late afternoon and evening dependent on availability. All use is to be determined by advance bookings.
- b. Schools
 - i. Primary, Intermediate and Secondary schools will be allowed one free day a year and any additional use by these schools are to be booked and charged as deemed appropriate. Equipment, cleaning, facility and power will be charged as appropriate.
- c. Massey University
 - i. Massey University will have rights of use of the Track and Meeting Room at no cost other than the cost of equipment hire, power and cleaning. Users will be required to book in advance.
- d. Other Sporting Bodies
 - i. National and Regional sport bodies seeking to train on the track through Massey University Sport Institute will have to book in advance. Priority access remains with the needs of the regional community.
- e. Other User Groups
 - i. Sport Manawatu and Sport Clubs
 - ii. People with Disabilities
 - iii. Casual users (organised groups who wish to use the Facility)
- f. All groups will be charged a fee for equipment use, cleaning, facility hire and power as appropriate by the Manawatu Community Athletic Track Advisory Committee.

3. Shared use

Where possible the Facility should be used by a variety of groups and individuals at the same time. This will be coordinated as part of the booking process. Primary users will be identified and their use will take precedence over any conflicting secondary use. When shared use is

occurring, the booking agent (Massey Recreation Centre) will charge a percentage of costs to each user.

4. **Booking Arrangements**

Massey University Recreation Centre will be the booking authority and manage the booking processes. Use of the Facility determined by the policies and procedures established by the MCAT Advisory Committee.

Bookings by Primary Users will not unreasonably exclude the use of the Facility to secondary/other users.

5. **Fee Structure**

The MCAT Advisory Committee will set a fee structure annually for use of the Facility. Palmerston North City Council policies with regard to sport ground user charges are to be taken into consideration by the MCAT Advisory Committee when determining fees.

Charges will be levied to groups other than those described above and for one off events. These charges will be established and approved by the MCAT Advisory Committee.

As a general principle, local and regional community access will be free other than the specific equipment, power, facility and cleaning charges, which shall be charged at a fair and reasonable rate. A financial report will be supplied to the MCAT advisory committee on request.

6. **Monitoring & Reporting**

The MCAT advisory committee will provide an overview of management practices including monitoring usage levels and will report these annually to Massey University Deputy Registrar, the Council, and the User Group.

7. **Infield**

The Parties agree that the in-field within the Track is a winter sport ground under the exclusive control of Massey University. Rights of use of the in-field by athletic groups and other groups will be negotiated annually with Massey University.

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