

LEASE

SHIRE OF DENMARK
[Lessor]

and

DENMARK ARTS COUNCIL INCORPORATED
[Lessee]

PART LOT 1 ON DEPOSITED PLAN 222379

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Parties

1. **Shire of Denmark** of 953 South Coast Highway, Denmark, WA 6333 (**Lessor**)
2. **Denmark Arts Council Incorporated** of PO Box 300, Denmark, WA 6333 (**Lessee**)

Agreed terms

SUBJECT TO THE COVENANTS AND POWERS IMPLIED UNDER THE LAND ADMINISTRATION ACT 1997 AND THE TRANSFER OF LAND ACT 1893 AS AMENDED (UNLESS HEREBY NEGATED OR MODIFIED) AND ALSO TO THE COVENANTS AND CONDITIONS CONTAINED HEREIN.

1. Definitions and interpretation

1.1 Terms in Reference Schedule

Terms in bold type in the Reference Schedule have the meaning shown opposite.

1.2 Definitions

Authority includes any government or governmental, semi-governmental, administration, fiscal or financial body, department, commission, council, authority, tribunal, agency or entity including but not limited to any court, tribunal, agency or entity including but not limited to any court, tribunal or person having jurisdiction over the parties, the Premises or this Lease;

CEO means the person employed as the Chief Executive Officer of the Lessor from time to time;

Claim includes any claim or legal action and all costs and expenses incurred in connection with it;

Commencing Date means the commencing date specified in the reference schedule;

Financial Year means 1 July to 30 June;

Lessor's Property means any property owned by the Lessor on the Premises including but not limited to the items specified in the reference schedule;

Lessee's Property means any property owned by the Lessee on the Premises including but not limited to the items specified in the reference schedule;

Land means the land described in the Reference Schedule;

Official Requirement means any requirement, notice, order or direction of any statutory authority and includes the provisions of any statute, ordinance or by-law;

Plan means the plan of the Land annexed to this Lease (if any);

Premises mean the whole of the Premises as described in the Reference Schedule and includes the Lessor's Property;

Purposes means the purposes described in the Reference Schedule;

Services means all utilities and services to the Premises;

Structural Building Repairs means substantial and major repairs or replacement of essential structures relating to all loads, internal actions, material properties and foundation conditions that significantly affect structural sufficiency or serviceability including but not limited to:

- floors;
- masonry;
- roof covering and roof structure;

- footings and foundations;
- painting of external surfaces;
- outer walls of any construction but does not include windows, doors, doorframes, and door furniture;
- ceilings; and
- Sewerage, drainage and water supply but does not include taps and other visible water fittings.

Lessee's Employees means each of the Lessee's employees, contractors, agents, customers, sublessees, licensees, invitees, volunteers or others (with or without invitation) who may be on Premises;

Lessee's Property includes all fixtures and other on the Premises which are not the Lessor's;

Term means the term of this Lease specified in the reference schedule and includes the further term as applicable; and

Termination Date means the date of termination of this Lease specified in the reference schedule.

1.3 Interpretation

(a) Reference to:

- (i) the singular includes the plural and the plural includes the singular;
- (ii) a person includes a body corporate;
- (iii) a party includes the party's executors, administrators, successors and permitted assigns;
- (iv) "month" or "monthly" means calendar month or calendar monthly; and
- (v) a right includes a remedy, authority or power.

(b) If a party consists of more than one person, this Lease binds them jointly and each of them severally.

(c) Headings are for convenience only and do not form part of this Lease or affect its interpretation.

2. Reserve, term and holding over

2.1 Reserve

The Land is vested in the Lessor for the Purposes with the power to lease for any term not exceeding 21 years subject to the consent of the Minister for Lands and this lease is subject to the covenants and powers implied under the *Land Administration Act 1997* (WA) and the *Transfer of Land Act 1893* (WA) (unless negated or modified by the provisions of this Lease) and to the covenants and conditions contained in this Lease.

2.2 Term

The Lessor leases the Premises to the Lessee for the Term commencing on the Commencing Date.

2.3 Monthly Tenancy

If the Lessee continues to occupy the Premises after the Term with the Lessor's consent then:

- (a) the Lessee does so as a monthly lessee on the same basis as at the last day of the Term; and

- (b) either party may terminate the monthly tenancy by giving to the other 1 month's notice expiring on any day.

3. Rent and rent reviews

3.1 Rent

- (a) The Lessee must pay the Rent in the amount and method described in the Reference Schedule.
- (b) Each payment of Rent must be made with an additional amount equal to any goods and services, consumption, value added tax applying to that payment.

4. Operating Expenses

4.1 Expenses Due to Lessee's Use

- (a) The Lessee must pay to the relevant authorities all charges for rates, taxes, charges, assessments, licence fees, duties, impositions, penalties, and other outgoings whatever which now or at any time during the Term are assessed and charged upon or in respect of the Premises or the use or occupation of the Premises or any part.
- (b) The Lessee must pay to the relevant authorities all charges for gas, electricity, water, telephone and internet and the costs incurred by the Lessor in providing Services to the Premises.
- (c) The Lessee must pay to the Lessor all expenses due solely to the Lessee's use of the Premises.

4.2 Goods and Services Tax

(a) Consideration is exclusive of GST

The consideration for a Supply under this Lease is exclusive of any GST imposed on the Supply.

(b) Recovery of GST

If a Supply under this Lease is subject to GST:

- (i) the Recipient of the Supply must pay, in addition to the other consideration payable or to be provided for the Supply, an additional amount equal to the GST; and
- (ii) the Recipient must pay the additional amount to the supplier at the same time as the other consideration.

However, the Recipient need not pay the additional amount until the supplier gives the Recipient a Tax Invoice.

(c) Adjustment of additional amount

If the additional amount differs from the amount of GST payable by the supplier on the Supply:

- (i) the supplier must promptly issue an Adjustment Note to the Recipient; and
- (ii) an amount equal to the difference must be paid by the supplier to the Recipient, or by the Recipient to the supplier, as appropriate.

(d) Reimbursement

If any part is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the payment must exclude any part of that cost or expense which is attributable to GST for which that party or the Representative Member of any GST Group of which that party is a member is entitled to an Input Tax Credit.

(e) **Definitions**

In this clause, Adjustment Note, GST, GST Group, Input Tax Credit, Member, Recipient, Representative Member, Supply and Tax Invoice have the meanings given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

5. Use of the Premises

5.1 Permitted Use

The Lessee must only use the Premises for the Permitted Use.

5.2 Restrictions on Use

The Lessee must not:

- (a) disturb lessees, owners or occupiers of any adjacent premises;
- (b) overload any Services;
- (c) damage the Lessor's Property;
- (d) alter the Premises, or do any building work without the Lessor's prior consent;
- (e) do anything that may invalidate the Lessor's insurance or increase the Lessor's premiums or risk;
- (f) damage, destroy or remove any native vegetation on the Premises without the CEO's consent other than pruning, trimming or cutting vegetation with the intention of keeping the premises neat and tidy and/or statutory compliance; or
- (g) Not allow anything to be done or to occur in or about the Premises which is noxious, offensive or audibly or visually a nuisance.

5.3 No warranty as to Use

The Lessor does not warrant that the Premises:

- (a) is suitable for any purpose; or
- (b) may be used for the Permitted Use.

5.4 Official Requirements and rules

At its expense, the Lessee must comply with any Official Requirement concerning the Premises, the Lessee's Property or the Lessee's use or occupation of the Premises.

5.5 Caveats

The Lessee must not lodge or register any absolute caveat against the certificate of title to the land of which the Premises forms part to protect its interests under this Lease but the Lessee shall be entitled to lodge a "Subject to claim" caveat against the certificate of title to the land of which the Premises forms part.

6. Maintenance and repair

6.1 Repair

- (a) The Lessee must:
 - (i) keep and maintain the Premises in good repair, order and condition including painting of internal surfaces; and
 - (ii) fix any damage caused by the Lessee or the Lessee's Employees.
- (b) The Lessor is responsible for Structural Building Repairs and may do any repairs or maintenance to the Premises. The Lessor must give the Lessee reasonable notice before doing so and must cause as little disruption to the Lessee's business as is reasonably possible in the circumstances.

6.2 Cleaning and Maintenance

The Lessee must:

- (a) do such things as may reasonably be required to eradicate, exterminate and keep the Premises free from rodents, vermin, noxious weeds and other pests of any kind, and will procure that pest exterminators are employed from time to time for that purpose;
- (b) keep the Premises clean and tidy and free of infectious diseases; and
- (c) keep the Lessee's Property clean and maintained in good order and condition.

6.3 Not to pollute

- (a) The Lessee must not cause pollution in or contamination of the Premises or any adjoining land by garbage, waste matter, oil and other pollutants whether by stormwater or other run-off or arising from use of the Premises.
- (b) The Lessee must collect and dispose of all garbage, waste matter, oil and other pollutants from the Premises at a place and in a manner required or approved by the Lessor and all relevant authorities having control over the disposal of waste matter and the protection of the environment.

6.4 Lessor's right to inspect and repair

- (a) The Lessor may enter the Premises for inspection or to carry out maintenance, repairs or major structural repairs at any reasonable time after giving notice to the Lessee. In an emergency, the Lessor may enter at any time without giving the Lessee notice.
- (b) The Lessor may carry out any of the Lessee's obligations on the Lessee's behalf if the Lessee does not carry them out on time. If the Lessor does so, the Lessee must promptly pay the Lessor's costs.

6.5 Notice of damage or defect in services

The Lessee must promptly give the Lessor notice of:

- (a) any damage to, defect or disrepair in the Services or the Lessor's Property; and
- (b) any circumstances likely to cause any risk to the Premises or any person.

7. Assignment and subletting

- (a) The Lessee must obtain the Lessor's written consent, and if required by law, the written consent of the Minister for Lands pursuant to the *Land Administration Act 1997* (WA) before the Lessee assigns, sublets or deals with its interest in the Premises.
- (b) Subject to clause 18, the Lessor may grant or withhold its consent in its discretion.

8. Mortgage or charge

The Lessee must not mortgage nor charge the Premises without the prior written consent of the Lessor and the Minister for Lands.

9. Insurances and indemnities

9.1 Lessee's insurance

The Lessee must effect & keep effected in respect of the Premises and use of the Premises adequate public risk insurance in any amount not less than \$20,000,000 in respect of any one claim.

9.2 Lessee's policies

All policies under this clause 9 must be acceptable to the Lessor and endorsed to note the interest of the Lessor as Lessor of the Premises.

9.3 Proof of insurance policies

The Lessee must give the Lessor evidence of its insurance if the Lessor asks for it.

9.4 Lessee's release and indemnity

- (a) The Lessee occupies and uses the Premises at its own risk.
- (b) The Lessee releases the Lessor and the Minister for Lands from and indemnifies them against all Claims for damages, loss, injury or death:
 - (i) whether or not it is caused by the Lessee's negligence or default if it:
 - (A) occurs on the Premises;
 - (B) arises from the use of the Services on the Premises; or
 - (C) arises from the overflow or leakage of water from the Premises, except to the extent that it is caused by the Lessor's or Minister for Land's deliberate act or negligence; and
 - (ii) if it arises from the negligence or default of the Lessee or the Lessee's Employees, except to the extent that it is caused by the Lessor's or Minister for Land's deliberate act or wilful negligence.
- (c) The Lessee releases the Lessor and the Minister for Lands from and indemnifies them against any Claim or costs arising from anything the Lessor is permitted to do under this Lease.

9.5 Lessor's Insurance

- (a) The Lessor will insure, at the Lessor's cost, the Premises. The Lessee must pay to the Lessor the sum of \$1,000 for each claim made against the Lessor's insurance policy relating to the Premises during the term of this lease other than where the premises have been damaged and the cause of the damage was not in any way connected to the Lessee's, or the lessee's invitees, occupation of the premises. The Lessor must at its own cost meet all other costs of repair, replacement and reinstatement not met by the insurer in respect of each claim.

10. Occupational Safety and Health Act

- (a) The Lessee acknowledges and agrees that for the purpose of the *Occupational Safety and Health Act 1984* (WA) (**Act**) the Lessee has the control of the Premises and all plant and substances on the Premises.
- (b) The Lessee releases and indemnifies the Lessor from and against any claim against or obligation or liability of the Lessor under any occupational health and safety legislation as defined in the Act, except to the extent that any breach of the Act is contributed to by the Lessor's deliberate act or negligence.

11. Default and termination

11.1 Default

The Lessee defaults under this Lease if:

- (a) the Rent or any money payable by the Lessee is unpaid for 20 business days;
- (b) the Lessee breaches any other term of this Lease and such breach is unremedied within 20 business days of notice of breach having been served on the Lessee;
- (c) the Lessee assigns its property for the benefit of creditors; or
- (d) the Lessee becomes an externally-administered body corporate within the meaning of the *Corporations Act 2001* (Cth).

11.2 Forfeiture of Lease

If the Lessee defaults and does not remedy the default when the Lessor requires it to do so, the Lessor may do any one or more of the following:

- (a) re-enter and take possession of the Premises and by notice to the Lessee, terminate this Lease;
- (b) by notice to the Lessee, convert the unexpired portion of the Term into a tenancy from month to month;
- (c) exercise any of its other legal rights; or
- (d) recover from the Lessee any loss suffered by the Lessor due to the Lessee's default.

11.3 Consequences of Default

(a) Repudiation

- (i) If the Lessee repudiates this Lease or breaches an essential term of this Lease the Lessor may recover all money payable by the Lessee under this Lease up to the end of the Term. However, the Lessor must minimise its loss.
- (ii) The essential terms are:
 - (A) to pay Rent (clause 3.1);
 - (B) to pay Operating Expenses (clause 4.1);
 - (C) to use the Premises for only the Permitted Use (clause 5.1);
 - (D) to comply with Official Requirements (clause 5.4);
 - (E) to repair (clause 6.1); and
 - (F) not to assign, sublet or deal with the Lease without consent (clause 7).

(b) Lessor's Entitlement to Damages

The Lessor's entitlement to damages is not limited or affected if:

- (i) the Lessee abandons the Premises;
- (ii) the Lessor elects to re-enter the Premises or terminate this Lease;
- (iii) the Lessor accepts the Lessee's repudiation; or
- (iv) the parties' conduct constitutes or may constitute a surrender by operation of law.

(c) Liquidated Debt

The Lessor may remedy any default by the Lessee and recover its costs of doing so from the Lessee as a liquidated debt.

11.4 Waiver

- (a) No waiver by the Lessor is effective unless it is in writing;
- (b) Despite the Lessor's knowledge at the time, a demand for Rent or other money owing by the Lessee or the subsequent acceptance of Rent or other money does not constitute a waiver of any earlier default by the Lessee.

11.5 Interest on Overdue Money

The Lessor may charge daily interest to the Lessee on any late payment by the Lessee at a rate of 3% above the rate which would be charged to the Lessor by the Lessor's bank for borrowing the same amount on unsecured overdraft as certified by the Lessor's bank manager.

12. Termination of Term

12.1 Termination by Notice

- (a) The Lessor may terminate this Lease by giving 6 months' written notice to the Lessee, notwithstanding that:
 - (i) the Lessee is not in default; or
 - (ii) that the term of the Lease has not expired.
- (b) The Lessee may terminate this Lease by giving 3 months' written notice to the Lessor notwithstanding that the term of the Lease has not expired.
- (c) In the event of this Lease being terminated pursuant to subclause 12.1(a) or 12.1(b) each Party will retain its rights against the other in respect of any past breach of this Lease.

12.2 Lessee's obligations

On termination the Lessee must:

- (a) vacate the Premises and give it back to the Lessor in good repair and condition in accordance with the Lessee's obligations in this Lease;
- (b) remove all the Lessee's Property from the Premises;
- (c) repair any damage caused by removal of the Lessee's Property and leave the Premises in good repair and condition; and
- (d) return all keys, security passes and cards held by it or the Lessee's Employees.

12.3 Failure to Remove Lessee's Property

If the Lessee does not remove the Lessee's Property at the end of the Term, the Lessor may:

- (a) remove and store the Lessee's Property at the Lessee's risk and expense; or
- (b) treat the Lessee's Property as abandoned, in which case title in the Lessee's Property passes to the Lessor who may deal with it as it thinks fit without being liable to account to the Lessee.

13. General

13.1 Notices

(a) In Writing

Any notice given under this Lease must be in writing. A notice by the Lessor is valid if signed by an officer or solicitor of the Lessor or any other person nominated by the Lessor.

(b) Notice of Address

The Lessee must promptly notify the Lessor of its address and telephone number or email address and update the notice if any changes occur.

(c) Service of Notice on Lessee

The Lessor may serve a notice on the Lessee by:

- (i) giving it to the Lessee personally;
- (ii) sending it to the Lessee's email address; or
- (iii) posting it to the Lessee's last known address.

(d) Service of Notice on Lessor

The Lessee may serve a notice on the Lessor by leaving it at, or posting or emailing it to the Lessor's office set out in the Reference Schedule.

13.2 Costs

The Lessee must pay the Lessor:

- (a) duty (if any) on this Lease; and
- (b) the Lessor's reasonable legal fees and outlays:
 - (i) for the preparation and negotiation of this Lease;
 - (ii) relating to any assignment or subletting;
 - (iii) arising from any breach of this Lease by the Lessee;
 - (iv) for any Lessor's consent under this Lease.
- (c) half of any costs associated with registration of this Lease or variations to the Lease; and
- (d) half of any of the lessor's reasonable legal expenses associated with any substantial amendments to the Lease that are not requested by either party (for example, if they are required by law or due to a change in circumstances beyond either party's control).

14. Option of Renewal

- (a) The Lessor hereby grants to the Lessee the option to renew this Lease for the further term or terms (if any), specified in Item 5 of the reference schedule, so long as the term of the lease plus any option does not exceed 21 years, upon the terms, covenants, conditions and restrictions of this Lease (excepting any exercised right of renewal). The Lessee may exercise such option if and only if:
 - (i) the Lessee has first given to the Lessor written notice of such exercise of option not less than 3 months and not more than 6 months prior to the expiration of the Term; and
 - (ii) the Lessee is not, at the time of giving the notice under this clause in breach of any of the terms, covenants or conditions of this Lease.

15. Damage and destruction

15.1 Definitions

In this clause 15:

- (a) **abatement notice** means a notice given under clause 15.2(a);
- (b) **reinstatement notice** means a notice given by the Lessor to the Lessee of the Lessor's intention to carry out the reinstatement works; and
- (c) **reinstatement works** means the work necessary to:
 - (i) reinstate the Premises; and
 - (ii) make the Premises fit for occupation and use and accessible by the Lessee.

15.2 Abatement

- (a) If at any time the Premises are wholly or partly:
 - (i) unfit for occupation and use by the Lessee; or
 - (ii) inaccessible having regard to the nature and location of the Premises and the normal means of access to them,
 as a result of destruction or damage then from the date that the Lessee notifies the Lessor of the relevant event, the Rent and any other money payable by the Lessee are to abate according to the circumstances.

- (b) If clause 15.2(a) applies, the remedies for:
- (i) recovery of the Rent and any other money or a proportionate part falling due after the damage or destruction; or
 - (ii) enforcement of the obligation to repair and maintain,
- are suspended from the date of the abatement notice until the Premises are reinstated or otherwise made fit for the Lessee's occupation and use and fully accessible.

15.3 Either party may terminate

If clause 15.2(a) applies, then at any time after 2 months from the date the abatement notice is given either party may terminate this Lease by notice to the other unless the Lessor has within that period of 2 months:

- (a) given the Lessee a reinstatement notice; and
- (b) started to carry out the reinstatement works.

15.4 Lessee may terminate

If the Lessor gives a reinstatement notice to the Lessee and does not commence the reinstatement works within a reasonable time, the Lessee may terminate this Lease by giving not less than 2 months' notice to the Lessor and, at the expiration of the notice period, this Lease terminates.

15.5 Dispute resolution

- (a) No party to this agreement will start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this agreement (**dispute**) unless it has complied with this clause.
- (b) A party claiming that a dispute has arisen must notify the other parties, giving details of the dispute.
- (c) During the 21 day period after a notice is given under clause 14.5(b) (or longer period agreed in writing by the parties to the dispute) (**initial period**) each party to the dispute (**disputant**) must use its best efforts to resolve the dispute.
- (d) If the disputants are unable to resolve the dispute within the initial period, each disputant agrees that the dispute must be referred for mediation in accordance with the Mediation Rules of the Law Society of Western Australia, at the request of any disputant, to:
 - i. a mediator agreed on by the disputants; or
 - ii. if the disputants are unable to agree on a mediator within seven (7) days after the end of the initial period, a mediator nominated by the President of the Law Society of Western Australia or the President's nominee.
- (e) The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a disputant unless that disputant has so agreed in writing.
- (f) Any information or documents disclosed by a disputant under this clause:
 - i. must be kept confidential; and
 - ii. may not be used except to attempt to resolve the dispute.

- (g) Each disputant must bear its own costs of complying with this clause and the disputants must bear equally the costs of any mediator engaged.
- (h) After the initial period, a disputant that has complied with clauses 14.5(a), (b) and (c) may terminate the dispute resolution process by giving notice to each other disputant.
- (i) If in relation to a dispute a disputant breaches any provision of clauses 14.5(a) to (f), each other disputant need not comply with clauses 14.5(a) to (f), in relation to that dispute.

16. Severability

- (a) As far as possible all provisions of this Lease must be construed so as not to be invalid, illegal or unenforceable.
- (b) If anything in this Lease is unenforceable, illegal or void then it is severed and the rest of this Lease remains in force.
- (c) If any provision cannot be read down, that provision will be void and severable and the remaining provisions of this Lease will not be affected.

17. Entire Understanding

This Lease:

- (a) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Lease; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

18. Organisations

- (a) If any organisation ceases to exist, a reference to that organisation will be taken to be a reference to an organisation with similar objects to the original organisation nominated by the Lessor.
- (b) Reference to the president of an organisation will, in the absence of a president be read as a reference to any person fulfilling the duties of a president.

19. Lessor's Consent

Unless otherwise stated, if the Lessor's consent or approval is required:

- (a) the Lessor must consider the request promptly and be reasonable in giving or refusing its consent or approval;
- (b) the Lessor may require the Lessee to comply with any reasonable conditions before giving its consent; and
- (c) it is not effective unless in writing.

20. Property Law Act

The following sections of the *Property Law Act 1969* (WA) do not apply to this Lease:

- (a) Section 80; and
- (b) Section 82.

Schedule 1 - Reference Schedule

1. Lessor/Lessor

Shire of Denmark of 953 South Coast Highway, Denmark, Western Australia 6333

2. Lessee/Lessee

Denmark Arts Council Incorporated of PO Box 300, Denmark, Western Australia 6333

3. Land

3.1 Reserve

Reserve 25985

3.2 Purpose

Civic Centre

3.3 Premises

Part of Lot 1 on Deposited Plan 222379, Certificate of Title Volume LR3002 Folio 682 as shown on Appendix 1.

4. Term

4.1 Period

10 years 0 months

4.2 Commencing Date

1 July 2026

4.3 Termination Date

30 June 2036

5. Further term

5.1 Period

Nil

5.2 Commencing Date

Not applicable

6. Rent

\$1.00 per annum (plus GST)

7. Permitted Use

To carry out the objectives of, and in accordance with, the Denmark Arts Council Incorporated's Rules of Association.

8. Lessor's Property

Security and communications equipment.

9. Lessee's Property

Nil

10. Special conditions

The following special conditions (if any) form part of this Lease and in the event of any inconsistency between the foregoing provisions of this Lease and the special conditions, the special conditions prevail:

10.1 Rate Concession

Council will annually consider the provision of a concession to the value of the local government rates levied with respect to the property, noting that the Lessee is required to meet any costs applicable to the property relating to any other rates and taxing including, but not limited to, the Emergency Services Levy and refuse charges.

10.2 Redevelopment

The Lessee acknowledges that the Council have plans to redevelop the Reserve and agrees to accommodate the Lessor throughout the development phase. The Lessee acknowledges that while the Lessor will endeavour to limit interruption to the Lessee's operations, the Lessee will not be eligible for any compensation, including but not limited to, the Lessor providing an alternative premises.

10.3 Lessor's Access to Security and Communications Equipment

The Lessee agrees to permit the Lessor unconditional access to the security and communications equipment. The Lessor agrees that such access shall not be unreasonable.

Appendix 1 – Surveyed Plan

SEE NEXT PAGE

DRAFT

SCHEDULE OF AREAS

TOTAL AREA 331m²

LETTABLE AREA



METHOD OF MEASUREMENT

AREAS HAVE BEEN CALCULATED IN ACCORDANCE WITH THE PROPERTY COUNCIL OF AUSTRALIA (PCA) METHOD OF MEASUREMENT FOR LETTABLE AREA (2008)

GUIDELINES USED

NET LETTABLE AREA

Sketch is correct

▲ 25985
938

▲ 25985
1
DP222379
CT LR3002/682

▲ 25985
2

▲ 12134
500

STRICKLAND

STREET

LEASE 1
331m²

Lease 2

▲ 12134
5

NOTES:

- Tenancy area is calculated to inside face of walls unless shown otherwise.
- Hachured area is limit of Lettable Area.

LEASE OVER PORTION OF
Lot 1 on DP222379, CT LR3002/682
34 Strickland Street, DENMARK

Lease 1

Scale 1:250@A4



Harley Dykstra

SURVEYING | TOWN PLANNING | PROJECT MANAGEMENT

01/05/2026

HD Ref: 25150-01A

Appendix 2 – Ministerial Consent

SEE NEXT PAGE

DRAFT



Property Management Policy

Policy Statement

The purpose of the policy is to outline the principles and guidelines governing the management of properties owned or controlled by the Shire of Denmark. Effectively managing the very significant building portfolio is vital for ensuring efficient long-term service delivery and maximising value for the community. The Shire seeks:

- Consistent and equitable tenure arrangements within each property agreement classification;
- Terms that are responsive to changing conditions;
- Co-investment in maintaining the asset; and
- Sharing arrangements that maximise the use of community facilities.

Policy Scope

This policy specifically applies to property arrangements with the Shire, encompassing commercial (including business, telecommunications and community), licensing agreements, and memorandums of understanding (MOU). Property used for the Shire's operational requirements (eg. administration building, depot, fire sheds) and residential properties managed by the Shire are outside the scope of this policy.

Definitions

Commercial Lease

Commercial leases are agreements with an entity where the tenancy is held to generate income from ongoing activities or where a non-exempt body or organisation conducts activities under the Local Government Act 1995. The term 'generate income' is expressly not intended to include clubs undertaking normal fundraising activities for club members.

Community Lease

A peppercorn (usually \$1) lease is established between the Shire and a not-for-profit community group where the core service provided specifically to the Denmark community is not, in the CEO's opinion, commercial competition with any other local provider. While this lease arrangement grants the lessee exclusive use, community groups are encouraged to make maximum use of the facility, so share arrangements, including leases by management groups or sub-tenancies with other community groups, are encouraged.

A community lease holder has the same obligations as a commercial lease holder but with a peppercorn rent.

Telecommunication Lease

These agreements between the Shire and a telecommunications carrier or provider permit the property to house and operate telecommunications infrastructure and equipment.

Facility Hire

Are arrangements where the Shire undertakes day-to-day facility management and provides access to individuals or groups based

on casual, regular, or seasonal space hire within the facility. This property arrangement offers the most significant access for the public to use a facility but is resource-intensive for the Shire to manage.

Licence	Are property arrangements where permission is granted to a party to enter and use a property space for a particular purpose without exclusive possession. Licenses generally last for a shorter duration than leases (months or years) and do not allow the licensee the right to transfer their permission to use the property to another party. Licenses are primarily used for parking, storage, or similar temporary arrangements.
Memorandums of Understanding (MOU)	Are non-binding agreements between two or more parties outlining the understanding of proposed transactions or collaborations. They are less formal than a lease or license and are typically not intended to govern the use or occupancy of the property.
Property Maintenance Checklist	A checklist developed by the Shire to clearly outline the lessor and lessee responsibilities.
Shared Use	Where two or more parties agree to share the use of a property. This arrangement allows the parties to use the same premises for their respective purposes, often resulting in cost savings, increased efficiency, and optimal space utilisation. These arrangements are formalised through a Management Agreement.
Strategic Holding	The Shire of Denmark can apply this subclassification to any lease when it considers the property needs to be held in a short-term arrangement pending short—to medium-term potential future development. This includes but is not limited to, redevelopment, improvement, repurposing, demolition, rebuilding for purposes of increased income generation or providing community infrastructure. This subclassification does not alter any other conditions of the property arrangement other than the lease term.
Sublease	A sublease is a formal contractual arrangement in which the original lessee sublets all, or part, of a property to another party (the sublessee) while still retaining rights and obligations under the head lease with the landlord (the Shire). A sublease arrangement requires Shire approval.

Policy Principles

1.1 Sustainability

The Shire of Denmark is dedicated to implementing a clear and consistent property management structure to facilitate access to Shire facilities via various property arrangements. Given the Shire's substantial property holdings, innovative methods must be investigated to ensure the continued sustainability of these vital assets. This policy empowers the Shire to define or adjust property arrangements to ensure the overall long-term financial sustainability of its building assets. This may involve pursuing commercial leases while recognising the importance of subsidising community-focused property arrangements that contribute to nurturing community life across the Shire.

Several Shire of Denmark owned community halls are located around the Shire that provide a valuable meeting place for the local community. These meeting places are often deeply rooted in the local culture, history and the specific needs of the residents. These facilities play a role in civil engagement, emergency response, community building and social interaction. The Shire considers these to be valuable community assets and, as such, will assist community groups to manage these facilities through service partnerships to ensure these facilities are maintained. The Shire will establish a budget for service agreements within the annual budgeting process. The financial contribution allocated to the community group under the service agreement will be commensurate with the frequency of the building's utilisation. Greater usage of the facility will result in increased monetary support.

1.2 Consistency

Each property arrangement is assigned a classification that will determine the standard terms and conditions of the property agreement. At the end of a property agreement term, the Shire may review and amend the property classification based on strategic or emerging issues or changing community expectations and economic needs. See Section 1.10 for lease conclusion arrangements.

The choice of property agreement employed by the Shire hinges on several factors, namely:

- The current and intended zoning regulations applicable to the property.
- The activities proposed to be undertaken by the applicant.
- The historical use of the property.
- An applicant's financial investments in the existing or planned development of the site.
- Alternative property uses.
- The resources available to the Shire for overseeing the proposed property arrangement.

1.3 Efficiency

When community groups apply for a community lease, efficiencies are considered when evaluating their request to use a Shire facility. These considerations encompass:

- The anticipated occupancy rate of the property. If the projected occupancy rate isn't expected to be fully utilised, collaborative shared-use agreements must be extensively explored and presented as part of any application.
- The significance and extent of the group's contributions to the broader community, beyond its primary membership.
- The group's capacity to generate revenue to meet its property agreement obligations.
- The group's commitment and capability to contribute to addressing community needs.
- On a case-by-case basis, the Shire may consider entering into specific user arrangements that do not require a shared use arrangement in recognition that some groups have specific infrastructure that makes shared-use challenging, they have invested significant levels of their capital in facilities on Shire managed land or for other justifiable reasons.

1.4 Shared Use – Community Groups

The Shire maintains the authority to refuse property arrangements, whether at renewal or when considering a new application if evidence suggests that the prospective applicant may not optimally use the facility and has expressed reluctance to share the space with other community groups.

The Shire prioritises shared use between community groups because it fosters community cohesion, optimises facility use, and promotes cost savings for as many groups as possible. Since the Shire cannot provide a building for every community group. Fairness and equity can sometimes only be achieved through sharing arrangements.

This policy encourages community groups to actively pursue shared-use arrangements through a management structure or by applying for a sublease arrangement with another community group. Sharing a facility with others can substantially lessen the maintenance cost burden. Dividing these expenses among more than one party allows each group to experience reduced financial pressure while enjoying access to the facility.

Single applicants seeking a property arrangement will need to demonstrate that they have:

- Assessed their own needs and requirements for space within the facility and determined whether there is space available for sharing.
- If shared space is an option, conducted research and consultation to gauge interest from other community organisations in sharing the facility.

Requests from shared users must have:

- Negotiated terms of the sharing arrangement in a written Management Plan that includes:
 - Names and addresses of all parties;
 - Areas of responsibility to comply with a Shire property use agreement;
 - A communication protocol for liaising with the Shire;
 - A dispute resolution process;
 - A means for modifying the Management Agreement, including default, repudiation or termination by one party; and
 - Any other requirement determined necessary by the Shire's Chief Executive Officer.

Parties to a shared use arrangement are encouraged to establish an incorporated management body with membership consisting of representatives from each party.

1.5 Rate Waivers and Peppercorn Rent

The Shire continues its commitment to providing affordable spaces for community groups by offering leases at a peppercorn rate. The Shire appreciates the essential role that community groups play in delivering services and enhancing the quality of life for our residents, so it also considers rate waivers each year to support the efforts of these groups. (Refer to the Community Contributions Policy).

In this regard, the Shire seeks to foster a reciprocal relationship where community groups undertake to maintain the asset over the life of the use agreement in line with standard commercial property arrangements.

1.6 Repairs, Maintenance and Property Maintenance Checklist

Lessees are responsible for the building repairs and maintenance. The extended security of tenure associated with commercial leases, even when the lease rates are minimal (referred to as "peppercorn" rates), imposes an obligation on lessees to continuously conduct repairs and maintenance as part of a shared property agreement. The maintenance responsibility encompasses tasks related to internal furniture and fittings, pest control, security, electrical, fire services and emergency procedures, sewerage, water supply and drainage, gardening and landscaping, plant and machinery, and external features, including sporting and recreation facilities.

To facilitate this, lessees will receive a detailed property maintenance checklist, and a Shire representative will conduct an annual property inspection in collaboration with a representative from the lessee. This process aims to establish and document the ongoing condition of the premises and identify any issues that require attention from the responsible party.

Contributions towards repairs and maintenance that are embedded in use agreements prior to the commencement of this policy, will be phased out as the use agreements come to the end of their term.

Any future contributions to maintenance or the ongoing operations of a community group will be provided for in any new agreement and/or the Council's *Community Contributions Policy*.

1.7 Additional and Unique Assets

Certain community organisations that lease property from the Shire offer a range of facilities for the benefit of their members, such as additional auxiliary buildings, recreational areas, and sports playing surfaces.

These facilities are considered assets and are, therefore, included in the Shire's asset register and integrated into the Shire's balance sheet. The Shire provides ongoing property insurance for these assets.

Community groups offering these unique assets to their members will manage and maintain them throughout their operational lifespan and will be responsible for funding their replacement. This obligation will form a condition of any lease agreement.

1.8 Standard Terms of Leases

General: The following standard terms are provided as a guide. The Shire reserves the right to exercise discretion in all circumstances and remains bound by all applicable laws and regulations.

- Commercial and Telecommunications leases: The standard term will be up to 21 years.
- Community leases: The standard term will be 10 years.
- Licenses / MOUs: The standard term is up to 3 years.

Strategic Holding: For any lease, licence of MOU where the land is deemed a strategic holding the maximum term will be 3 years.

New lease midterm: Under certain circumstances, a new lease may be initiated with the Shire before the current lease expires. The decision to commence a new lease prior to the expiry date lies within the discretion of the Shire and should be prompted by significant reasons presented by the lessee, including:

- Property Upgrades: where the lessee intends to make improvements or upgrades to the property.
- Funding considerations: where a funding body connected to the lessee is seeking assurance that the lessee has a commitment to a specific length of property tenure to continue funding them to deliver a service.
- Shared lease consideration: The lessee requests a lease change to enter into a shared use lease.

1.9 User responsibilities and agreement type

Standard arrangements for each agreement type outline the **property user's responsibility** to meet the costs associated with the arrangement.

General Property User's Responsibilities (Subject to specific conditions in the lease)	Telecommunication Lease	Commercial Lease	Community Lease	Community Lease land only*	License	MOU	Hire
Outgoings – utilities (water, gas, electricity)	✓	✓	✓	✓	NA	NA	NA
Cleaning and grounds maintenance	✓	✓	✓	✓	✓	NA	NA
Rubbish and recycling	✓	✓	✓	✓	NA	NA	NA
Emergency Services Levy	NA	✓	✓	✓	NA	NA	NA
Building insurance excess (if claim made)	✓	✓	✓	✓	NA	NA	NA
Public Liability	✓	✓	✓	✓	✓	✓	NA
Ongoing repairs and maintenance	✓	✓	✓	✓	NA	NA	NA
Significant structural repairs (not including inherent structural defects)	✓	✓	NA	✓	NA	NA	NA
Rates	✓	✓	** Waived	** Waived	NA	NA	NA
Rent	✓	✓	\$1	\$1	✓	NA	Refer to Fees & Charges Schedule

* Community groups who fund 100% of the cost of the facility based on a Shire land lease only are responsible for structural repairs to the buildings.

** Rate waivers are considered by Council in accordance with s 6.47 of the Local Government Act 1995.

1.10 Lease Conclusion

If the lease term ends and the Shire determines that the property might be required for an alternative purpose in the short to medium term, the Shire will offer the lessee the right of first refusal to enter a *Strategic Holding* lease for a maximum period of up to three years and no less than one year.

This provision is designed to give the Shire the necessary time to assess the future use of the property while allowing the lessee to consider other arrangements.

At the conclusion of the Strategic Holding lease, Council will decide whether to either transition back to a commercial, community or telecommunications lease, renew the Strategic Holding lease, or otherwise alter the lease arrangements.

1.11 Acknowledging the Shire

Recognising the Shire's support is crucial as it helps build positive relationships between community groups and the local government. By acknowledging the Shire's contribution, community groups foster a sense of partnership and collaboration. Additionally, publicly recognising the Shire's support enhances transparency and accountability, ensuring the community is aware of the resources provided to benefit all.

Therefore, community groups with property agreements are required to acknowledge the Shire's contribution at all available public opportunities, including their organisation's website homepage, social media and any advertising materials. Prior approval from the Shire is necessary for any materials using the Shire logo before publication.

1.12 Public Register

The Shire will publish a register of all current leases, licences and MOU's on the Shires website.

Responsibilities

In line with Delegations 1.2.18 Disposing of Property, the following assignments have been determined.

The Council will determine:

- Commercial and Telecommunication leases with a total lease value above \$50,000.
- Community leases, when entering into an arrangement for the first time.
- Community leases, where the lease term is over 10 years.
- Subleases, when entering into an arrangement for the first time.
- Strategic Holding classifications.
- Any other use agreements that, in the opinion of the Chief Executive Officer, should be considered and determined by Council.

The Chief Executive Officer will determine:

- Commercial and Telecommunication leases with a total lease value below \$50,000.
- Renewal of Community leases for 10 years or less.
- Renewal of subleases.
- Licence agreements.
- Memorandums of Understanding.

Document Control Box			
Document Responsibilities:			
Owner:	Governance Coordinator	Owner Business Unit:	Governance
Reviewer:	Chief Executive Officer	Decision Maker:	Council
Compliance Requirements:			
Legislation:	Local Government Act 1995		
Document Management:			
Synergy Ref:	NPP24999		Review Frequency: As required
Version #	Date:	Action:	Resolution No.
1.	27 August 2024	Adopted by Council	140824
2.			



SHIRE OF DENMARK

953 South Coast Highway (PO Box 183), Denmark WA 6333

Ph: (08) 9848 0300 | Email: info@denmark.wa.gov.au | ABN 24 355 062 623

COMMUNITY FUNDING AGREEMENT

1 INTRODUCTION

- 1.1 This Agreement records the terms on which the Shire of Denmark provides community funding to Denmark Arts Council Incorporated to support arts, cultural and community activities that contribute to community wellbeing, participation and cultural life in the Shire.
- 1.2 The funding is provided as a community contribution under the Shire's Community Contributions Policy and does not constitute the engagement of Denmark Arts as a contractor, agent, partner, delegate or service provider of the Shire.
- 1.3 Denmark Arts remains an independent incorporated association responsible for determining, planning, managing and delivering its own activities, subject to compliance with this Agreement, applicable laws, funding acquittal requirements, and any separate approvals required for particular activities.
- 1.4 This Agreement is intended to support community benefit outcomes while preserving appropriate independence for Denmark Arts in relation to artistic direction, programming, operational management and organisational decision-making.

2 PARTIES

Shire of Denmark of 953 South Coast Highway, Denmark, Western Australia 6333

and

Denmark Arts Council Incorporated [A08203884] of PO Box 300, Denmark, Western Australia 6333

3 TERM

- 3.1 The Agreement commences on **insert execution date** and continues as a rolling annual agreement, renewing automatically for a period of 12 months on 1 July each year unless terminated in accordance with clause 7.3.

4 FUNDING PURPOSES

- 4.1 During the term of this Agreement, and subject to annual budget adoption, the Shire will provide community funding to Denmark Arts to support the broad community arts and cultural purposes described in clause 4.2.
- 4.2 The funding may be used by Denmark Arts to support the following community arts and cultural purposes.

28 July 2026 - Attachment 10.4c

Funding Purpose	Details
Community arts and cultural festivals or events	Supporting one or more arts, cultural or creative events or festivals in Denmark, with the form, scale, timing and artistic direction determined by Denmark Arts having regard to available funding, organisational capacity, community need and other funding sources.
Arts and Cultural Programming	Supporting year-round arts and cultural activity, which may include exhibitions, workshops, performances, artist development opportunities, community arts initiatives, youth engagement activities and creative partnerships.
Community Recognition and Awards	Supporting initiatives that celebrate contribution, creativity and participation in the cultural life of the district and encourage community engagement, local identity and creative expression.

4.3 Denmark Arts will determine the final form, scale, timing, content and delivery arrangements for funded activities having regard to available funding, organisational capacity, community need, other funding sources and its own strategic priorities.

4.4 The funding must be used for community arts, cultural or related community benefit purposes and must not be used for purposes inconsistent with this Agreement or the Shire's Community Contributions Policy.

5 FUNDING AMMOUNT AND PAYMENT

5.1 Subject to annual budget adoption and receipt of a valid invoice from Denmark Arts, the Shire will pay Denmark Arts \$70,000 ex GST each financial year for term of this Agreement, pro rata where applicable.

5.2 Payment will be made within 10 working days after receipt of a valid invoice, unless otherwise agreed in writing.

5.3 The provision of funding in one financial year does not create an entitlement to funding in any future financial year unless funding is adopted in the Shire's annual budget and this Agreement remains in force.

6 INDEPENDENCE AND RELATIONSHIP OF THE PARTIES

6.1 Denmark Arts delivers funded activities as an independent incorporated association and not as an employee, agent, partner, delegate, contractor or representative of the Shire.

6.2 Neither party shall, by virtue of this Agreement, become a partner of the other party, a joint venturer, or a member of a joint enterprise with the other party.

6.3 Nothing in this Agreement authorises Denmark Arts to bind the Shire, incur liabilities on behalf of the Shire, represent that it acts for the Shire, or make commitments on behalf of the Shire.

7 APPROVALS, USE OF SHIRE LAND AND EVENT REQUIREMENTS

- 7.1 This Agreement does not, of itself, grant approval to use any Shire land, building, facility, road reserve, public open space, infrastructure or equipment.
- 7.2 Denmark Arts must obtain all separate approvals, permits, licences, bookings and consents required for each activity, including any event approval, venue hire approval, trading approval, traffic management approval, liquor approval, food approval or other statutory approval required by law or by Shire policy.
- 7.3 Where an activity is held on Shire-owned or managed land or facilities, Denmark Arts must comply with any conditions of approval imposed by the Shire, including conditions relating to public safety, traffic management, emergency access, waste, noise, insurance, infrastructure protection and site reinstatement.
- 7.4 Denmark Arts is responsible for ensuring that any artists, contractors, stallholders, volunteers, participants or other persons engaged by Denmark Arts comply with relevant approval conditions and reasonable site requirements.

8 REPORTING REQUIREMENTS

- 8.1 Denmark Arts will provide an annual acquittal report each year during the agreement term by:
 - a) providing audited annual financial statements to the Shire's CEO no later than 3 months after the end of the financial year, for each year of the term; and
 - b) making a presentation to Council between 1 May and 30 June for each year of the term.
- 8.2 The presentation referred to in clause 8.1b) shall include the following information:
 - a) outcomes of agreed deliverables;
 - b) an operation plan for the following year reflecting agreed priorities.

9 DISPUTE RESOLUTION

- 9.1 A party claiming that a dispute has arisen must notify the other party in writing by giving details of the dispute.
- 9.2 During the 21-day period after a notice is given (initial period) each party to the dispute must use its best efforts to resolve the dispute.
- 9.3 If the dispute is unable to be mutually resolved within the initial period, the dispute will be referred for mediation in accordance with the Mediation Rules of the Law Society of Western Australia.
- 9.4 A mediator will be nominated by the President of the Law Society of Western Australia or the President's nominee and each party will share equally any costs associated with the services of a mediator.

9.5 The decision of the mediator shall be final and binding on all parties.

10 TERMINATION AND DAMAGES

10.1 Termination of this Agreement can be made by either party by written notice to the other party if the other party commits any breach of any provision of this Agreement and has failed to remedy such breach within thirty (30) days of receipt of written notice requiring it to do so.

10.2 Any termination of this Agreement pursuant to sub paragraph 10.1 is without prejudice to the rights of the party terminating to seek and obtain damages for any breach of this Agreement by the other party.

10.3 Before issuing a notice of termination without cause, the party proposing termination will consult with the other party in good faith regarding options to continue, vary or modify the services under this Agreement. Following that consultation, either party may terminate this Agreement without cause by giving not less than 12 months' written notice to the other party. The Agreement will continue in force during the notice period unless the parties agree otherwise in writing.

11 GENERAL

11.1 This Agreement is governed by the laws in force in Western Australia.

11.2 In the event of any part of this Agreement being or becoming void or unenforceable, that part shall be severed from this Agreement. Nothing prevents either party proposing a replacement part that is able to be enforced, if required.

11.3 Any amendment to this Agreement must be agreed by both parties in writing. The variation then becomes an appendix to this Agreement.

11.4 This Agreement shall be binding upon each party notwithstanding the avoidance, invalidity or unenforceability of any part.

11.5 The tolerance or sufferance of any breach or default under this Agreement shall not be construed to be a consent to or waiver of that breach or default.

11.6 Neither party shall at any time, without the prior written consent of the other party, disclose to any person any confidential information relating to the other party's business or operations, except as required by law.

11.7 Any demand or notice to any party shall be validly made or given if purporting to be signed by the party or by that party's representative having that party's express or implied authority in writing. Such demand or notice is to be delivered or sent by post or email to the other party at that party's last notified address.

11.8 Each party shall pay its own legal costs for the preparation, examination, amendment and/or execution of this Agreement and shall share equally any duties payable hereon, unless otherwise agreed in writing.

11.9 No party shall assign, transfer or convey any of its rights or obligations under this Agreement without the prior written consent of the other party.

Executed as a Deed on the _____ day of _____ year _____

The Common Seal of
Shire of Denmark
was hereunto affixed in the
presence of:

Shire President

Chief Executive Officer

Print Name

Print Name

Executed by Denmark Arts Council Incorporated
in accordance with section 127 of the Corporations Act 2001:

President

Treasurer

Print Name

Print Name

Signed by the presence of: }

Witness Signature

Witness Address

Witness Name

Witness Occupation

Document Control Box

Document Management:

Synergy Ref: AGR.90

Version #	Date:	Action:	Resolution No.
1.	24 September 2024	APPROVED by Council	160924
2.	XXX	REVIEWED by Council	XXX



SHIRE OF DENMARK

953 South Coast Highway (PO Box 183), Denmark WA 6333

Ph: (08) 9848 0300 | Email: enquiries@denmark.wa.gov.au | ABN 24 355 062 623

SERVICE AGREEMENT

1. INTRODUCTION

- a) In accordance with the Community Contributions Policy, the Shire of Denmark can decide to provide services to the community beyond the essential functions of the local government.
- b) Service agreements for service delivery can be forward commitments for up to three years, subject to the requirements of the Purchasing Policy.

2. PARTIES

Shire of Denmark of 953 South Coast Highway, Denmark, Western Australia 6333

and

Denmark Arts Council Incorporated [A08203884] of 2a Strickland Street, Denmark, Western Australia 6333

3. TERM

Three (3) years from 1 July 2024 to 30 June 2027.

4. OBLIGATIONS AND RESPONSIBILITIES

It is agreed as follows:

- 4.1 During the term of this agreement, and in consideration of the financial assistance provided by the Shire, Denmark Arts agrees to the following deliverables:

Deliverable	Outputs/Details
Brave New Works Festival (biennial)	Held in the first half of the year, embracing all forms of creative expression, BNW, a fringe style festival, invites submissions of "works in progress to polished pieces, big or small, across all artistic mediums, as long as they are brave and new." BNW focusses on community cohesion, connectedness, mentorship, audience engagement, employing regional artists and arts workers. Most of the works are free entry or by donation, increasing accessibility to quality arts and cultural experiences for the whole community.
Brave New Works Professional Development (biennial)	Held in the first half of the year BNW Professional Development will deliver 1 night of

28 July 2026 - Attachment 10.4d

	performances, Opening and smoking ceremony, and 2 days of professional development workshops. Focussed on technical presentation, audience engagement and career progression, BNW will build resilience, behind the scenes performance knowledge and administration basics to ensure artists can present high quality communication and delivery of their works in Denmark, state wide and nationally.
Festival of Voice (biennial)	Held June long weekend, delivery of a 3 day festival celebrating the voice; live music performances, poetry, exhibition, cultural engagement, professional development. Activating multiple Shire venues and supporting regional Artworkers and Artists.
Festival of Voice Professional Development (biennial)	Held June long weekend, delivery of the Friday night schools/youth concert followed by ticketed performances. Followed by a 2 day professional development weekend for singers, choir masters, singer/songwriters.
REVIVE Sculpture Aware	Annual 10 Day November event, sustainable sculpture award, open to WA artists. \$2,000 of Shire funds dedicated to award - to be permanently displayed in the Shire. \$500 People's Choice & \$250 People's Choice award. Indoor small works to be displayed in a Shire Hall.
Minor Programming	Create and deliver minor programs annually, directly informed by the Denmark Community. These projects will be flexible and used to activate diverse Shire locations, inclusivity of all ages, abilities, focussed on community engagement spanning all culture and art genres.

4.2 During the term of this agreement the Shire agrees to:

- a) Provide financial assistance to Denmark Arts, for the term of this agreement, to enable it to perform its obligations under this agreement. Following the annual budget adoption and upon receiving an invoice from Denmark Arts, the Shire will pay these funds within 10 working days.

1 July 2024 to 30 June 2025 - \$65,000 ex GST

1 July 2025 to 30 June 2026 - \$65,000 ex GST

1 July 2026 to 30 June 2027 - \$65,000 ex GST

- 4.3 Neither party shall hereby in any way, or for any purpose, become a partner of the other party in the conduct of that party's business or otherwise or a joint venturer or a member of a joint enterprise with the other party.
- 4.4 This Agreement shall be governed by the laws in force in the State of Western Australia.
- 4.5 In the event of any part of this Agreement being or becoming void or unenforceable then that part shall be severed from this Agreement. Nothing prevents either party proposing a replacement part that is able to be enforced, if required.
- 4.6 Any amendments to this Agreement are to be agreed to by both parties in writing. The variation then becomes an appendix to this Agreement.
- 4.7 This Agreement shall be binding upon each party notwithstanding the avoidance, invalidity or unenforceability of any part.
- 4.8 The tolerance or sufferance of any breach or default under this Agreement shall not be construed to be a consent to or a waiver of that breach or default.
- 4.9 Neither party shall at any time without the prior written consent of the other party disclose to any person any trade secrets, customer lists, patents, design copyright materials or confidential information relating to the other party's business or to any of its related or associated companies. Both parties shall at all times take all necessary and available steps to prevent such disclosure to any person not entitled thereto.
- 4.10 Any demand or notice to any party shall be validly made or given if purporting to be signed by the party or by that party's representative having that party's express or implied authority in writing. Such demand or notice is to be delivered or sent by post to the other party at that party's address. Such demand or notice shall be deemed to have been served on the date which such letter would in the ordinary course of post have arrived at the address to which it is sent.
- 4.11 Each party shall pay their own legal costs for the preparation, examination and execution of this Agreement and shall share equally any duties payable hereon.
- 4.12 No party shall assign, transfer or convey any of its rights or obligations under this agreement without the prior written consent of each of the parties.

5. REPORTING REQUIREMENTS

- 5.1 Denmark Arts will report each year during the agreement term between 1 May and 30 June by:
- a) providing a written report to the Shire's CEO; and
 - b) making a presentation to Council.
- 5.2 The written report and presentation referred to in clause 5.1 shall include the following information:
- a) outcomes of agreed deliverables;

- b) the total number of participants for each event, workshop, or program;
- c) the total number of unique individuals participating over the year, counting each person only once regardless of how many times they participate where reasonably possible, including major ticketed events;
- d) a profit and loss statement;
- e) an operating budget; and
- f) an operation plan for the following year reflecting agreed priorities.

6. DISPUTE RESOLUTION

- 6.1 A party claiming that a dispute has arisen must notify the other party in writing by giving details of the dispute.
- 6.2 During the 21-day period after a notice is given (initial period) each party to the dispute must use its best efforts to resolve the dispute.
- 6.3 If the dispute is unable to be mutually resolved within the initial period, the dispute will be referred for mediation in accordance with the Mediation Rules of the Law Society of Western Australia.
- 6.4 A mediator will be nominated by the President of the Law Society of Western Australia or the President's nominee and each party will share equally any costs associated with the services of a mediator.
- 6.5 The decision of the mediator shall be final and binding on all parties.

7. TERMINATION AND DAMAGES

- 7.1 Termination of this Agreement can be made by either party by written notice to the other party if the other party commits any breach of any provision of this Agreement and has failed to remedy such breach within thirty (30) days of receipt of written notice requiring it to do so.
- 7.2 Any termination of this Agreement pursuant to sub paragraph 7.1 is without prejudice to the rights of the party terminating to seek and obtain damages for any breach of this Agreement by the other party.

Executed as a Deed on the _____ day of _____ year _____

The Common Seal of
Shire of Denmark
was hereunto affixed in the
presence of:

Shire President

Chief Executive Officer

Print Name

Print Name

Executed by Denmark Arts Council Incorporated
in accordance with section 127 of the Corporations Act 2001:

President

Treasurer

Print Name

Print Name

Signed by the presence of: }

Witness Signature

Witness Address

Witness Name

Witness Occupation

Document Control Box			
Document Management:			
Synergy Ref:		XXX	
Version #	Date:	Action:	Resolution No.
1.	24 September 2024	APPROVED by Council	160924
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