



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

This Agreement is made on the _____ day of _____ year

1. PARTIES

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

and

Denmark Chamber of Commerce Incorporated [A0824062S] t/as Denmark Chamber of Commerce [ABN 62 127 248 004] of, PO Box 148, Denmark, Western Australia

2. INTRODUCTION

- a) The Shire of Denmark ("the Shire") is the manager of the land comprising the whole of Reserve 48198, whole of Lot 501 on Deposited Plan 61023, Certificate of Title Volume LR3157 Folio 222, corner of South Coast Highway and Ocean Beach Road, Denmark.
- b) The Shire owns the buildings and improvements located on the Reserve including the building known as the Denmark Visitor Centre ("DVC").
- c) The Shire has agreed to lease the DVC to the Denmark Chamber of Commerce ("DCC") for a term commencing on 1 December 2021 and expiring on 30 November 2024.
- d) This Service Agreement is intended to replace any agreements made prior to 1 December 2021.
- e) The Parties enter into this agreement to record the terms of their financial relationship.

3. AGREEMENT

It is agreed as follows:

- 3.1 During the term of this agreement, and in consideration of the financial assistance provided by the Shire, DCC agrees to:
 - a) Open and operate a face-to-face visitor service at the DVC to promote tourism and tourist facilities and services throughout Denmark for at least 30 hours per week, to be reviewed annually.
 - b) Operate the DVC in such a manner as shall be consistent with its obligations hereunder and in compliance with the terms of the lease and shall make its operations, as near as possible, financially self-sustaining.
 - c) Work together with the Shire to develop a common vision for the DVC and for promoting tourism in the Denmark region, including by meeting with the Shire's Chief Executive Officer ("CEO") on at least a quarterly basis to address, amongst other things:
 - (i) the operation of the DVC;
 - (ii) the allocation of funds provided by the Shire;
 - (iii) developing agreed priorities for Tourism in the Denmark Region;

- (iv) review the performance of the agreement against the KPIs and amend or vary the KPIs as necessary; and
 - (v) obstacles faced by the DCC in achieving common objectives.
- d) Each year, in the month of May, present to the CEO a report including;
- (i) a profit and loss statement
 - (ii) an operating budget
 - (iii) reporting against the following KPIs:
 - A. Development of an annual multiple delivery channel tourism plan linked to type and location and reporting against activity undertaken.
 - B. Visitation numbers to the DVC for tourism related activity.
 - C. Tourism face to face service delivery hours at the DVC.
 - D. Volunteer workforce participation statistics.
 - E. Number of partnerships undertaken with community and business groups to provide tourism related activity including activity to lead community tourism events.
 - F. Shire approved sub-tenancy arrangements undertaken since last report;
 - (iv) Setting out an operation plan for the following year reflecting agreed priorities.
- e) The information provided to the Shire in parts d) will be circulated internally to Councillors and Senior Officers for information. The Shire of Denmark's CEO will inform DCC should there be any concerns raised.
- f) The DCC will be required to address Councillors at a Briefing Forum outlining the activities undertaken for the previous 12 months.
- g) If operating face to face visitor servicing on a Sunday, check and maintain the DVC toilets on Sundays, including provision of all consumables.
- h) Notify the Shire of any changes to its address, telephone number or email address.
- i) Obtain approval from the Shire CEO before applying for or requesting grant funding relating to tourism, with such approval not to be unreasonably withheld.
- j) Obtain approval from the Shire before entering into 'ongoing sub-tenancy' arrangements for lockable office space in order to not create any unreasonable competition concerns for local retail and office space owners.
- Ongoing sub-tenancy refers to arrangements that are for fixed-terms greater than six months. No formal approval process is required for open plan shared working space arrangements or licensing arrangements up to 6 months in duration.*
- k) Sale of merchandise or souvenirs within the DVC must not create any unreasonable competition concerns for local businesses.

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

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

Year 1 - \$95,000 (ex GST)

** Years 2 and 3 will be subject to annual budget considerations and any amount being allocated by the Council when adopting the budget.*

* Year 2 - \$95,000 (ex GST)

* Year 3 - \$95,000 (ex GST)

- b) Clean and maintain the DVC toilets during the week (Monday, Wednesday and Friday), this includes providing all consumables and cleaning materials.
 - c) Provide a lease agreement for the term of this agreement for the yearly rental of \$1.00 which shall be deemed to have been paid by the Lessee to the Lessor.
 - d) Grant a 100% concession of the rates payable, pursuant to section 6.47 of the Local Government Act 1995.
- 3.3 That this agreement records the basis of the financial arrangements between the parties for a specified period being 1 December 2021 to 30 November 2024.
- 3.4 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.
- 3.5 This Agreement shall be governed by the laws in force in the State of Western Australia.
- 3.6 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.
- 3.7 Any amendments to this Agreement are to be agreed to by both parties in writing. The variation then becomes an appendix to this Agreement.
- 3.8 This Agreement shall be binding upon each party notwithstanding the avoidance, invalidity or unenforceability of any part.
- 3.9 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.
- 3.10 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.
- 3.11 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.
- 3.12 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.
- 3.13 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.

4. DISPUTE RESOLUTION

- 4.1 A party claiming that a dispute has arisen must notify the other party in writing by giving details of the dispute.
- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 The decision of the mediator shall be final and binding on all parties.

5. TERMINATION AND DAMAGES

- 5.1 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.
- 5.2 Any termination of this Agreement pursuant to sub paragraph 5.1 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.
- 5.3 The Shire acknowledges that if it fails to provide funding pursuant to paragraph 3.2, or fails to provide the lease pursuant to paragraph 3.2(c) or terminates the lease in accordance with clause 11.1 of the Lease, then the DCC will have incurred significant detriment in reliance on the funding pursuant to paragraph 3.2, such detriment includes, but is not limited to:
 - (a) relocation expenses in moving the DCC office to the DVC;
 - (b) personal time and effort from DCC staff and committee members and other volunteers;
 - (c) liability to employees engaged, and in relation to other commercial relationships entered into, on the assumption of ongoing funding;

and if this Agreement is terminated by the DCC due to a breach of clause 3.2 by the Shire, the Shire will negotiate with the DCC in good faith to ascertain fair compensation for the Shire's failure to comply with clause 3.2 and the consequent detriment suffered by the DCC.

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

Affix Seal Here

Shire President

Chief Executive Officer

Print Name

Print Name

Executed by Denmark Chamber of Commerce Incorporated t/as Denmark Chamber of Commerce
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

DRAFT