



## SHIRE OF DENMARK

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# 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 Tourism Incorporated** [IARN: A10368642] of PO Box 932, 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 Denmark Tourism Inc. ("DTI") for a term commencing on 1 November 2020 and expiring on 30 June 2021.
- d) This Service Agreement is intended to replace any agreements made prior to 1 November 2020.
- 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, DTI agrees to:

- a) Open and operate the DVC to promote tourism and tourist facilities and services throughout Denmark.
- b) Use its best endeavours to maintain Level 1 tourism accreditation.
- c) 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.
- d) Each financial quarter present to the Shire's Chief Executive Officer ("CEO") to circulate to Councillors and Senior Officers for information;
  - (i) a profit and loss statement;
  - (ii) operating budget; and
  - (iii) visitation numbers.
- e) The information provided to the Shire in part d) will be circulated internally to Councillors and Senior Officers for information. The Shire of Denmark's Chief Executive Officer will inform DTI should there be any concerns raised.
- f) Open and maintain the DVC toilets on Saturdays and Sundays, including provision of all consumables.

- g) Notify the Shire of any changes to its address, telephone number or email address.
- h) Seek approval from the Shire before applying for or requesting State or Federal grant funding.
- i) Collaborate with the Amazing South Coast Incorporated and the Australia's South West to ensure no cross over or competition of services regarding destination marketing.
- j) Participate in the development of a Tourism Strategy through feedback and industry specific knowledge and statistics.
- k) Sale of merchandise or souvenirs within the DVC must not create any competition concerns for local businesses.

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

- a) Provide financial assistance of \$50,000 (ex GST) to DTI, 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 DTI, will pay these funds within 10 working days.
- b) Clean and maintain the DVC toilets during the week (Monday to Friday, inclusive), this includes providing all consumables and cleaning materials.
- c) Meet with DTI in March 2021 to discuss DTI's future operation of the DVC.

3.3 That this agreement records the basis of the financial arrangements between the parties for a specified period being 1 November 2020 to 30 June 2021.

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.

## ATTESTATION

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 Tourism 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