

GREAT SOUTHERN TREASURES

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made the day of..... 2020

BETWEEN:

the SHIRE OF BROOMEILL-TAMBELLUP of 46-48 Norrish Street, TAMBELLUP, WA;

the SHIRE OF CRANBROOK of Gathorne Street, CRANBROOK, WA

the SHIRE OF GNOWANGERUP of 28 Yougenup Street, GNOWANGERUP, WA;

the SHIRE OF KATANNING of 52 Austral Terrace, KATANNING, WA;

the SHIRE OF KENT of 24-26 Richmond Street, NYABING, WA;

the SHIRE OF KOJONUP of Albany Highway, KOJONUP, WA;

the SHIRE OF PLANTAGENET of 22-24 Lowood Road, MOUNT BARKER, WA;

the SHIRE OF WOODANILLING of 3316 Robinson Road, WOODANILLING, WA.

collectively known as the ('**Member Councils**')

BACKGROUND

- A. Each of the Member Councils are local government authorities established under the Local Government Act 1995.
- B. The Member Councils desire to formalise their agreement and understanding in relation to Great Southern Treasures and have agreed to enter into this Memorandum of Understanding in this regard. However, the Member Councils agree that this Memorandum shall not create any legal obligations and whilst recognising that there are no enforceable obligations between them, the Member Councils agree to perform their obligations pursuant to this Memorandum in good faith and to the best of their abilities.
- C. The purpose of this memorandum of understanding is to affirm the partnership and collaboration of the local governments and to further the shared aims as below. The purpose for which the Scheme is established is to provide a means for the Participants, through voluntary participation and the integration and sharing of resources:
 - 1. To maximise the economic return from tourists and visitors to the participant local governments
 - 2. To promote and develop the tourism assets of the participant local governments
 - 3. To cooperate and take an active interest in tourism matters affecting the participant communities
 - 4. Nurture industry partners and key stakeholders within the local, regional, state and national tourism industry

D. The values of the member councils guiding participation in this memorandum of understanding are that they are:

1. Working together to be a preferred regional destination
2. Shared benefits
3. Championing each other's tourism assets

AND THE MEMBER COUNCILS AGREE:

1. Definitions & Interpretation

1.1 Definitions

- 1.1.1 **'Act'** means the Local Government Act 1995;
- 1.1.2 **'Costs'** means all costs incurred by the Host Council including, but not limited to, the engagement of the Executive Officer (salary, training costs, sick leave, annual leave, long service leave and reimbursement of expenses), costs for time incurred by any other staff member or consultant, hardware, software licences, vehicle costs, communication costs, stationery, and any other resources associated with operating the Scheme;
- 1.1.3 **'Billing Period'** means the quarterly periods of each financial year when Tax invoices are issued by the Host Council;
- 1.1.4 **'Costs Schedule'** means the Cost Schedule attached to this Memorandum;
- 1.1.5 **'Host Council'** means one Member Council that agrees to undertake the duties in 4.1 on behalf of the member Councils to administer the Scheme
- 1.1.6 **'Committee'** means the group of representatives appointed by each of the Member Councils in accordance with Clause 4.1 of this Memorandum;
- 1.1.7 **'Scheme'** means the Great Southern Treasures scheme;
- 1.1.8 **'Memorandum'** means this Memorandum of Understanding;
- 1.1.9 **'Operating Guidelines'** means the guidelines (as amended from time to time) referred to in Clause 6 of this Memorandum;
- 1.1.10 **'Other Member Councils'** means the Member Councils that are not the Host Council.

1.2 Interpretation

- 1.2.1 The Background set out above forms part of this Memorandum and the Member Councils agree that the Background is true and accurate.
- 1.2.2 Unless the contrary intention appears:

- 1.2.2.1 Words noting the singular shall include the plural and vice versa.
- 1.2.2.2 Reference to any gender shall include every other gender and words denoting individuals shall include corporations and vice versa.
- 1.2.2.3 Reference to any Act of Parliament, statute or regulation shall include any amendment currently in force at the relevant time and any Act of Parliament, statute or regulation enacted or passed in substitution therefore.
- 1.2.2.4 Headings are for convenience of reference only and do not affect the interpretation or construction of this Memorandum.
- 1.2.2.5 A requirement in this Memorandum for liaison and consultation is a requirement for full and frank discussion and includes a requirement where necessary and appropriate, for full disclosure of relevant information and material.

2. Term

- 2.1 The term of this Memorandum shall be three (3) years,
 - 2.1.1 The first MoU will commence on 1 Jan 2021 and expire on the 30 June 2023, unless otherwise agreed or extended by the Member Councils in writing.
- 2.2 The term shall be reviewed by the Member Councils not more than twelve (12) months and not less than six (6) months prior to the expiration of the term subject to the term being reviewed prior to this period.

3. Negotiate in Good Faith

The Member Councils agree that they will cooperate with each other and at all times act in good faith and with the joint objective of successfully and expeditiously concluding and carrying out all of the arrangements and agreements contemplated in this Memorandum.

4. The Member Councils' Obligations

The Member Councils agree that each of them shall have the following obligations in respect of the **Great Southern Treasures Scheme**;

4.1 Host Council

On behalf of the Other Member Councils, the Host Council agrees;

4.1.1 Administration

- 4.1.1.1 to administer the Scheme in accordance with this Memorandum and the Operating Guidelines; and
- 4.1.1.2 to be accountable to the Other Member Councils in a

manner determined for the administration of the Scheme and the facilitation of the Scheme;

4.1.2 Membership of the Committee

- 4.1.2.1 to appoint the Chief Executive Officer or delegated officer to the Committee;
- 4.1.2.2 to appoint a proxy for each of the representatives in Clause 4.1.2.1.
- 4.1.2.3 to delegate such powers to the representatives as are required and necessary to give effect to this Memorandum, the Operating Guidelines and the Scheme;
- 4.1.2.4 to delegate such powers to the Chief Executive Officer of the Host Council as are required and necessary to give effect to the preparation, amendment and implementation of the Operating Guidelines;

4.1.3 Finances

- 4.1.3.1 to administer and account to the Other Member Councils in accordance with the method set out in the Cost Schedule for the Scheme Costs and the Administration Costs and to issue to the Other Member Councils on a yearly basis a tax invoice specifying the amount of the Scheme Costs and Administration Costs that each of the Other Member Councils are responsible for during that Billing Period. An adjustment will be made in the following July invoice to reflect the actual expenditure for the previous year.
- 4.1.3.2 to prepare with the assistance from the Other Member Councils, and EO in accordance with this Memorandum, the budgets for the Scheme; and
- 4.1.3.3 to meet all auditing requirements for all moneys received and paid for in relation to the Scheme;

4.1.4 Executive Officer (EO)

- 4.1.4.1 to enter into, on behalf of the Other Member Councils, an employment or contractual arrangement with the Executive Officer on terms and conditions that the Member Councils determine as appropriate;
- 4.1.4.2 to instruct the Executive Officer in accordance with directions given to it by the Committee (if any);
- 4.1.4.3 to provide the Executive Officer with office facilities, office equipment and resources, (including but not limited to stationery, postage resources, and telephone facsimile and photocopying facilities) and any other administrative assistance or resources required to be provided to enable the Executive Officer to effectively carry out their duties;

- 4.1.4.4 to nominate a representative (which at the commencement of the Memorandum shall be the Chief Executive Officer) to;
- (a) liaise with the Executive Officer in relation to the terms, conditions and operation of the Scheme; and
 - (b) supervise the conduct of and compliance of the Executive Officer;
- 4.1.4.5 not to terminate the Executive Officer without the approval of the Other Member Councils. For the purposes of this clause, 'approval' means the written approval of a majority of the Other Member Councils received after a request has been made by the Host Council to the Other Member Councils requesting their vote;

4.2 The Other Member Councils

The Other Member Councils agree;

4.2.1 Finance

to pay to the Host Council within fourteen (14) days of having received a tax invoice the amount specified in the tax invoice (GST inclusive) given during each Billing Period in accordance with Clause 4.1.3.1 for its share of the Scheme Costs and the Administration Costs.

4.2.2 Membership of the Committee

- 4.2.2.1 to appoint the Chief Executive Officer or delegated officer to the Committee;
- 4.2.2.2 to appoint a proxy for each of the representatives in Clause 4.2.2.1;
- 4.2.2.3 to delegate such powers to the representatives as are required and necessary to give effect to this Memorandum, the Operating Guidelines and the Scheme;
- 4.2.2.4 to delegate such powers to the Chief Executive Officer of the relevant Member Council as are required and necessary to give effect to the preparation, amendment and implementation of the Operating Guidelines.

4.3 All Member Councils

The Member Councils agree:

4.3.1 Reporting

To consider reports and recommendations from its respective representatives on the Committee in relation to the administration of the Scheme.

4.3.2 Collaboration

- a) Achievement of the GST purpose
- b) Strategic direction of the GST and its management;
- c) Oversee the delivery of the annual implementation plan;
- d) Work cooperatively with other members
- e) Promote the GST
- f) Participate in GST decision-making processes at meetings;
- g) Represent and undertake actions on behalf of GST as authorised by the Committee;
- h) Form sub committees of the GST and
- i) Perform such other functions as are given to the member by the Act or any other written law.

5. Scheme Committee

- 5.1 The Member Councils agree to establish a Committee for the purposes specified below.
- 5.2 The Committee representatives shall meet at the times and places determined by the Committee (but in any case, at least quarterly) for the purposes of:
 - 5.2.1 considering the strategic direction of the Scheme;
 - 5.2.2 considering any major policy issues in relation to the Scheme; and
 - 5.2.3 reviewing, discussing and preparing budgets for the Scheme.
- 5.3 Each Member Council representative on the Committee shall be responsible for exercising their delegated authority and for the reporting back to their respective Council upon the exercise of those powers.
- 5.4 In the event of a conflict arising between the representatives of the Committee or if the Committee is divided in its votes on a decision required to be made by it, then the Committee will be required to report to their respective Councils for their determination.
- 5.5 The Member Councils agree that their respective Chief Executive Officer shall have delegated to them the necessary powers to make such decisions on behalf of the respective Member Council with respect to the Scheme.
- 5.6 The Committee shall at its first meeting (and annually thereafter) appoint amongst the representatives a Chairperson who shall hold office for a term of one (1) year but is eligible for reappointment for a further term, unless he/she resigns in which case the Committee shall appoint a new Chairperson to chair the meetings.
- 5.7 In the event that the appointed Chairperson is absent from a Committee meeting the representatives present shall appoint an acting Chairperson, who shall preside over that meeting or until the Chairperson is present.

- 5.8 One delegate of the Member Council (Chief Executive Officer or other such delegate) has one vote on the Committee

6. Operational Guidelines

- 6.1 Upon execution of this Memorandum, the Chief Executive Officer or delegate of each of the Member Councils shall prepare and implement Operational Guidelines which the Chief Executive Officers or delegates shall be capable of amending from time to time as the Chief Executive Officers or delegates see fit.
- 6.2 Notwithstanding the provisions of this Memorandum, the Member Councils agree that the Operational Guidelines shall be the principal document that facilitates the operational management of the Scheme.
- 6.3 The Member Councils shall delegate to their respective Chief Executive Officers such powers as are required and necessary to prepare and amend the Operational Guidelines and to manage the Scheme in accordance with the Operational Guidelines.
- 6.4 The Councils agree to negotiate and cooperate with each other at all times and to act in good faith in the operation of the Operational Guidelines and to comply with its terms.

7. Variation

The Member Councils agree that the terms and conditions of this Memorandum may be varied upon written agreement of the proposed variation by **all** the Member Councils.

8. Withdrawal

- 8.1 If a Member Council of the **Great Southern Treasures** wishes to no longer participate, that Council may upon giving twelve (12) months written notice (the 'Notice Period') to the other Member Councils, prior to the conclusion of this MOU, withdraw from this Memorandum in which event that Council, as at and from the expiration of the Notice Period, shall no longer be a part of this Memorandum.
- 8.2 Notwithstanding withdrawing from the Scheme that Council shall still be liable for its contribution to all costs as per the Cost Schedule for the duration of the Notice Period.

9. Additional Members

- 9.1 If another council wishes to join the Scheme, subject to the unanimous agreement of the Member Councils, that council may join in this Memorandum and the Scheme, provided that the council agrees;
- 9.1.1 to be bound by the terms and conditions of this Memorandum;
- 9.1.2 to contribute a share of the initial Scheme Costs and Administration Costs, with the contribution and use thereof to be determined by the

Member Councils.

10. No Partnership

This Memorandum does not create or evidence a partnership between the Member Councils.

11. Winding Up

11.1 Subject to the Member Councils extending or otherwise entering into a new agreement, at the expiration of this Memorandum, each of the participating Member Councils at that time shall be provided with the following:

11.1.1 a readable copy of all records (hard copy or otherwise), in an appropriate format, associated with the Scheme; and

11.1.2 a share of the proceeds in accordance with the percentages specified in the Cost Schedule upon the realisation of any of the assets forming part of the Scheme (as opposed to those owned by the individual Councils) after the payment of all liabilities (outstanding or contingent) if any.

11.2 If upon winding up the liabilities (outstanding or contingent) exceed the assets forming part of the Scheme (as opposed to those owned by the individual Councils) each Member Council shall contribute a share towards the payment of the liabilities in accordance with the formula specified in the Cost Schedule.

12. Disputes Between Member Councils

12.1 The Member Councils agree to work together in good faith to resolve any matter requiring their direction or resolution.

12.2 In the event of any dispute or difference ('dispute') arising between the Member Councils or any of them at any time as to any matter or thing of whatsoever nature arising under or in connection with this Memorandum of Understanding, then a Member Council may give to the other Member Council/s (as the case may be) notice in writing ('dispute notice') adequately identifying the matters, the subject of the dispute and the giving of the dispute notice shall be a condition precedent to the commencement by any Member Council of proceedings (whether by way of litigation or arbitration) with regard to the dispute as identified in the dispute notice.

12.3 At the expiration of 35 days from the date of receipt of the dispute notice by the persons to whom it was sent, the person giving the dispute notice may notify the others in writing ('arbitration notice') that it requires the dispute to be referred to arbitration and the dispute (unless meanwhile settled) shall upon receipt of the arbitration notice by the recipients then be and is hereby referred to arbitration under and in accordance with the provisions of the Commercial Arbitration Act 1985.

12.4 The costs (if any) of arbitration shall be borne equally by the Member Councils involved in the arbitration.

THE COMMON SEAL of SHIRE OF BROOMEHILL-TAMBELLUP)
was hereunto affixed in the presence of:)

President

Chief Executive Officer

THE COMMON SEAL of SHIRE OF CRANBROOK)
was hereunto affixed in the presence of:)

President

Chief Executive Officer

THE COMMON SEAL of SHIRE OF GNOWANGERUP)
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President

Chief Executive Officer

THE COMMON SEAL of SHIRE OF PLANTAGENET)
was hereunto affixed in the presence of:)

President

Chief Executive Officer

THE COMMON SEAL of SHIRE OF WOODANILLING)
was hereunto affixed in the presence of:)

President

Chief Executive Officer
Great Southern Treasures Scheme

SERVICES SCHEDULE

The following Services will be provided by the Scheme:

HOST COUNCIL FOR THE TERM OF THIS MOU

Shire of Broomehill-Tambellup