

Attachment 10.1

Tourist Park Update

17 pages

- 1.3 The Special Conditions stated in the Second Schedule to this Agreement shall be and form part of the terms of this Agreement **AND** in the event of any inconsistency between such Special Conditions and any other provision of this Agreement **THEN** and in such case the provisions of the Special Conditions shall prevail.
- 1.4 If any provision of this Agreement shall be found by a court of competent jurisdiction to be invalid or unenforceable in law **THEN** and in such case the parties hereby request and direct such court to sever such provision from this Agreement.
- 1.5 The law governing the interpretation and implementation of the provisions of this Agreement shall be the law of South Australia.

2. ENGAGEMENT OF THE CONTRACTOR

- 2.1 The Council **HEREBY ENGAGES** the Contractor who **HEREBY ACCEPTS** his engagement for the period specified in Item 1 of the First Schedule (hereinafter called "the term of this Agreement") to undertake and to perform the services specified in Item 2 of the First Schedule.
- 2.2 During the term of this Agreement the Contractor shall devote such of his time attention and ability as shall be appropriate and reasonably necessary in the proper performance of the services hereunder and shall use his best endeavours in and apply all due skill and care in the performance of those obligations.
- 2.3 The Contractor's engagement hereunder shall be non exclusive and this Agreement shall not restrict in any way the right of the Contractor to offer his services to any other person or to engage in any way in any other business occupation or activity **PROVIDED THAT** the exercise of such right shall not detrimentally affect the performance of the Contractor's services hereunder.
- 2.4 The Contractor's engagement hereunder shall be a sole engagement for the purposes of undertaking and performing the services specified in this Agreement **AND** during the term of this Agreement the Council shall not without the prior consent of the Contractor engage any other person or cause or permit any other person (whether as a Contractor to or as an employee of the Council) to undertake or assist or interfere in any way with the performance of the services required of the Contractor under this Agreement **UNLESS** the Contractor shall fail to rectify any breach of its obligations under this Agreement after notice in writing from the Council so to do pursuant to Clause 10.

3. PERFORMANCE OF THE SERVICES: STANDARDS

- 3.1 During the term of this Agreement the Contractor shall devote such of its time and ability as shall be appropriate and reasonably necessary for the proper performance of the Services and agrees to use its best endeavours and apply all due skill and care in the performance of those Services.

- 3.2 The Contractor warrants that it and its employees agents and any sub-contractors are competent and have the necessary skills to perform the obligations contained in this Agreement.

4. COMPLY WITH LEGISLATION

- 4.1 The Contractor shall comply at its own expense with all statutes, acts, ordinances, by-laws, proclamations, orders or regulations at present or at any time in the future affecting or relating in any way to the performance of the Services, and with all requirements which may be made or notices or orders which may be given in respect of anything affected by such Services.

- 4.2 The Contractor shall be registered as a business with the Australian Taxation Office for purposes of the Goods and Services Tax, and shall maintain such registration at all times during the term of this Agreement.

- 4.2.1 The Contractor shall produce evidence to the Council of its registration under Clause 4.2 forthwith upon request in writing to do so.

4.3 Occupational Health and Safety

- 4.3.1 The Council draws the Contractor's attention to the provisions of the Occupational Health Safety and Welfare Act 1986 (the "Act") and in particular Section 4(2) of the Act.
- 4.3.2 The Contractor shall be responsible for ensuring that the Contractor and any staff or sub-contractors it engages read and comply with the provisions of the Council's policies formulated under the Act.
- 4.3.3 The Contractor will be required to provide a safe system of work at any location at which the Contractor carries out the Services.
- 4.3.4 The Contractor will, in accordance with the provisions of Section 20 of the Act, be required to develop and review its own policies to ensure they comply with the requirements of the Act.
- 4.3.5 The Contractor must provide to the Council copies of such policies and all amendments made to the policies.
- 4.3.6 The Contractor must take all steps necessary to provide for and ensure the safety of all persons associated with the performance of the Services.
- 4.3.7 The Contractor must notify the Council and the Department of Industrial Relations of any incident, accident or dangerous occurrence happening in relation to the performance of the Services.

5. PLANT EQUIPMENT AND MATERIALS

- 5.1 The Council shall supply at its own expense in all things all plant equipment and materials (as identified in Item 4 of the Schedule) required by the Contractor in the performances of the services required under this Agreement.
- 5.2 The Contractor must ensure that its plant, equipment and materials are maintained at all times in a safe and good working condition.

6. CONTRACTOR'S FEES AND EXPENSES

- 6.1 In consideration of the performance by the Contractor of the services required under this Agreement the Council shall pay to the Contractor the Contract Fee specified in Item 3 of the First Schedule.
- 6.2 Unless specified otherwise, the Contract Fee set out in Item 3 of the First Schedule is inclusive of any Goods and Services Tax which applies to the Contractor's supply of Services under this Agreement.
- 6.3 Payment of the Contractor's fees and expenses shall be made in the following manner:
 - 6.3.1 The Council will pay the Contractor a fortnightly Contract Fee two weeks after the Council has received all of the Contractor's record sheets for the fortnight.

7. INDEMNITY

The Contractor shall indemnify and keep the Council indemnified against all loss or damage to the Council's property and from any claim, demand, action, suit or proceeding that may be brought by any person against the Council in respect of, loss or damage to any property, or the death of, or personal injury to any person, arising out of, or as a consequence of, the Contractor performing the Services, or the non-performance of the Contractor's obligations. The Contractor shall also indemnify the Council from any costs and expenses that may be incurred in connection with any such claim, demand, action, suit or proceeding.

8. INSURANCES

- 8.1 The Council and the Contractor shall maintain at all times during the term of this Agreement all insurances required by law to be effected by them or either of them in respect of any act matter or thing arising under or in consequence of this Agreement **AND** in particular but without limiting the generality of the foregoing the Contractor must take out:
 - 8.1.1 public risk insurance in the joint names of the Council and the Contractor in the sum of ten million dollars (\$10,000,000.00) in respect of any one incident arising during or in consequence of the performance of the Services hereunder. The insurance policy must carry an endorsement from

the insurer acknowledging the indemnity to be given by the Contractor under this Agreement;

- 8.1.2 insurance for the full replacement value of the Contractor's plant, equipment and materials.
- 8.2 Both parties shall produce evidence to the other of them as to the maintenance of all such insurances as are required to be effected under this Agreement forthwith upon request in writing to do so.
- 8.3 Neither party shall cause or permit any act or omission to occur so as to make void or unenforceable any policy of insurance effected by the other party under this Agreement.
- 8.4 If required by the Worker's Rehabilitation and Compensation Act 1986, the Contractor shall register himself as an employer with WorkCover pursuant to the Act effective from the commencement of the term of this Agreement. The contractor (and any sub-contractors) shall maintain such registration at all times during the term of this Agreement and shall produce evidence of such registration to the Council forthwith upon request in writing to do so.
- 8.5 The Council shall be responsible for effecting comprehensive motor vehicle insurance for the vehicles made available to the Contractor for the purpose of this Agreement.

9. CONFIDENTIALITY

Neither party shall at any time disclose any confidential information acquired during the term of or otherwise in consequence of the making of this Agreement in respect of the business finances organisation operations or affairs of the other party or its or his customers.

10. NON PERFORMANCE BY CONTRACTOR

In the event that the Contractor shall fail to observe and perform any of his obligations under this Agreement and such failure shall continue for three (3) days after service upon him by the Council of a notice in writing specifying the obligation which the Contractor has failed to observe and perform and requiring such failure to be rectified forthwith THEN AND IN SUCH CASE the Council shall be entitled to:

- 10.1 suspend payment of all further sums due to the Contractor under this Agreement until such failure is rectified; and/or
- 10.2 rectify such failure itself whether by the use of the Council's employees or other contractors and to deduct the cost of such rectification from all sums due to the Contractor under this Agreement; and/or
- 10.3 terminate the Agreement under Clause 12; and/or

- 10.4 pursue all or any other legal remedies available to the Council in consequence of such failure on the part of the Contractor.

11. ASSIGNMENT

- 11.1 The Contractor shall not assign the whole or any part of his rights and obligations under this Agreement to any person without the prior consent in writing of the Council. The Contractor may employ any persons for the purpose of performing any of the services required under this Agreement provided they are honest and of good character and are competent and have the necessary skills to perform the obligations contained in this Agreement.
- 11.2 The Contractor shall not let any subcontract for the performance of any of the services required under this Agreement without the prior consent of the Council.
- 11.3 The Council shall not unreasonably withhold any consent requested by the Contractor in the case of any proposed assignee or subcontractor who is honest and of good character and whose officers and employees are honest and of good character and are competent and have the necessary skills to perform the obligations contained in this Agreement..

12. TERMINATION

- 12.1 This Agreement may be determined prior to the expiration of the term of this Agreement as follows:
- 12.1.1 Forthwith by notice in writing from either party in the event of any serious breach of the terms of this Agreement by the other party;
- 12.1.2 Forthwith by the Council by notice in writing in the event that the Contractor shall be prevented by illness or other physical or legal incapacity from performing the services required under this Agreement for any continuous period of one (1) month and is unable to employ any persons for the purpose of performing any of the services required under this Agreement provided they are honest and of good character and are competent and have the necessary skills to perform the obligations contained in this Agreement during such period; and
- 12.1.3 On three (3) months written notice if the council decides to close the Tourist Park.
- 12.2 The termination of this Agreement whether by effluxion of time or otherwise shall not prevent the enforcement by either party of any right of action which shall have arisen prior to or in consequence of such termination.

13. NOTICES

Any notice to be given by the parties under this Agreement shall be sufficiently served if it is delivered personally or posted by ordinary prepaid postage to the address of the party to be served as stated in this Agreement or to the last known place of business of such party and in the case of postage such notice shall be deemed to have been served on the next day following the date of postage when Australia Post would ordinarily deliver mail at the address of the party to be served.

14. NATURE OF PARTIES' RELATIONSHIP

- 14.1 The Contractor is an independent contractor and is not nor shall be deemed to be an employee, servant, partner or agent of the Council.
- 14.2 The Contractor acknowledges that neither it nor any officer or employee of the Contractor has any claim upon the Council in respect of annual leave, sick leave, long service leave, public holiday leave, superannuation or any other entitlement (whether of a similar or different nature) which is capable of arising out of an employer/employee relationship including (without limitation) claims under Workers Compensation legislation in force in any State or Territory of Australia.
- 14.3 The Contractor further acknowledges and confirms that it shall be solely responsible for payment of the Contractor's own income tax and payroll tax.
- 14.4 Nothing herein contained shall be construed as granting or shall be deemed to grant to the Contractor any estate or interest in the Tourist park and save as to the rights hereby expressly conferred upon the Contractor (which are personal to the Contractor) the Tourist Park shall remain in the possession and under the control of the Council.

15. COUNCIL'S AUTHORISED OFFICER

The Council may nominate a person as its Authorised Officer to manage the day to day running of this Agreement.

16. ACCOUNTING AND ACCOUNTS

16.1 Open Books and Records

- 16.1.1 The Contractor will keep and maintain full and complete records including receipts issued for all visitors to the Tourist Park, appropriately filed and indexed for convenient access and review.
- 16.1.2 The files and records will be kept for a minimum period of seven (7) years or such longer period as may be required by law or mutually agreed between the parties.

16.1.3 The Contractor will make all files and records freely open and available to the Council for inspection and audit and the Council shall be entitled to make copies at its cost.

16.2 Audit

The Council may at any time by giving written notice to the Contractor require the Contractor to produce records and files for the purpose of the Council conducting a financial audit. The Contractor will cooperate fully with the Council's auditor and provide such information and other material as the auditor may request. The fees and expenses of the auditor will be a cost borne by the Council.

16.3 Discrepancies

Any discrepancies between the audited figures and those previously provided to the Council to substantiate commission payments may be treated by Council as a breach of this Contract and entitle the Council to terminate the Contract.

FIRST SCHEDULE**ITEM 1**

The Period of
Engagement
(Clause 2.1)

One year commencing on the XXXX and expiring at 5.00 pm on the XXXX.

ITEM 2

The Services To be
Performed
(Clause 2.1)

See Second Schedule

ITEM 3

The Contract Fee
(Clause 6.1)

Thirty five thousand dollars (\$35,000) per annum plus GST.

In addition to the fee referred to above the Contractor shall be entitled to a commission of 10% of all income received from site rentals and 20% of all income received from cabin rentals (both amounts excluding GST). Commissions will be paid by Council fortnightly in arrears on the 1st business day of the month and the 1st business day after the 15th day of each month..

ITEM 4

Council's plant,
equipment and
materials
(Clause 5)

Whipper Snipper
Lawnmower
Cleaning equipment
Gardening Tools
Trailer

ITEM 5

Special Conditions

- 1.1 The Council hereby grants to the Contractor a right to renew this Agreement for a term of XXXX commencing the XXXX and expiring at 5.00pm on the XXXX ("the Right of Renewal").
- 1.2 If the Contractor wishes to exercise the Right of Renewal, then the Contractor must serve a written notice on the Council not less than three (3) months and not more than six (6) months prior to the expiry of the initial term stating its desire to renew this Agreement for the period of one (1) year. If such notice is given then the Council will be obliged to renew this Agreement for one (1) year on the same terms and conditions as are contained in this Lease except for the exclusion of this Special Condition 1 commencing immediately after the initial term expires.
- 1.3 The Contractor will not be entitled to a Right of Renewal pursuant to this Special Condition if:

- 1.3.1 The Contractor has been in breach of this Agreement at any time before giving notice of the Contractors desire to exercise the Right of Renewal (“Notice”);
- 1.3.2 The Contractor is in breach of this Agreement at the time of giving that Notice; and
- 1.3.3 The Contractor is in breach or commits any breach under this Agreement after giving that Notice but before commencement of the Renewal Term.

SECOND SCHEDULE
SERVICES TO BE PERFORMED
SPECIAL CONDITIONS

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CONTRACT SPECIFICATION

- Title:** Tourist Park Management Contract - Moana Tourist Park
- Department/Section:** Organisation Services Department (Property Management Section)
- Classification:** Contract amount \$35,000 pa (exclusive of GST)
Plus commission based on 10% site income and 20% of cabin income (commission based on income generated less GST).
- Purpose:** The Tourist Park Contractor will be responsible for the effective management of the Tourist Park. The Contractor will be responsible for facilities management and minor maintenance to buildings and the surrounding area, ensuring the Tourist Park achieves budgeted financial objectives.
- Context:** The Tourist Park Contractor is a contract position managed within the Organisation Services Department, and will have a strong working relationship with visitors and residents of the Tourist Park.
- Organisational Relationships:** The Tourist Park Contractor will report directly to the Manager of Property who is responsible for the management of the City of Onkaparinga Tourist Parks through a contractual arrangement.

Responsibilities:

- Manage the day to day operations of the Tourist Park.
- Ensure that all of the facilities in the Tourist Park are cleaned and maintained to the highest standard possible including daily cleaning of amenities areas, regular grounds maintenance incorporating regular lawn mowing, planting, sweeping, edging, watering, fertilizing, recycling, bbq cleaning and as regards the Tourist Park ensuring that the cabins are cleaned and linen is changed upon vacation by residents or in the case of long term stays, then at least weekly.
- Carry out minor routine maintenance within the Tourist Park, eg changing washers, changing light-globes, minor painting and touch-ups and works generally carried out by a handyperson.
- Manage the daily collection of site and cabin fees and income from the washing machines and tumble dryers, including the maintenance of the RMS booking system, with banking of proceeds to the Council's designated bank accounts.
- Ensure that all hazards are either reported or removed immediately to prevent injuries to either visitors or residents of the Tourist Park.

Accountabilities:

- Contribution to the overall management of the Tourist Park including budgetary controls relating to income and expenditure.
- Contribution to the continuous improvement philosophy of the Tourist Park and the services provided.
- Compliance with the Customer Service principles as applied by the Council.
- Compliance with legislation and Council policies and procedures relating to Occupational Health Safety and Welfare, Injury Management and Equity and Diversity.

Required attributes:

Key attributes:

- Comprehensive knowledge of the Tourism industry in particular the management of Tourist Park accommodation facilities.
- Previous experience in managing Tourist Park and associated accommodation facilities is essential.
- Detailed/ High knowledge of the RMS booking system and the preparation of various reports available from the system.
- Detailed knowledge of Customer Service principles.
- Knowledge of grounds maintenance including the operation of minor plant and equipment (eg lawnmower, whipper snipper).
- Knowledge of minor maintenance procedures, including the

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ability to maintain a variety of minor buildings defects. Major or significant building defects or issues requiring “structural maintenance” must be referred to the Council for consideration and if necessary attention.

- Demonstrated high level of personal integrity and management ethics.
- Demonstrated ability to exercise initiative and problem solving skills relating to daily activities.
- Demonstrated high level negotiation and conflict resolution skills and the ability to achieve acceptable outcomes for both visitors and residents of the Tourist Park.
- Knowledge of and the ability to implement the legislation and regulations that apply to the management of Tourist Park.
- Pleasant nature.

Desirable attributes:

- Sound knowledge of broad industry issues and trends as they may apply to service delivery.
- Previous Local Government experience.
- Ability to work well with a variety of people from different socio-economic backgrounds.

Essential Requirements

- Current Drivers Licence. Access to reliable motor vehicle with third party property damage insurance is necessary.
- Accommodation provided at Moana Beach Tourist Park – Managers Residence at a cost of XXXX per calendar month. In the event that the Contractor does not live on site, then the Contractor must be available 24 hours per day.
- To comply with all requirements of the GST legislation including a current ABN.
- Contractor is responsible for its own taxation including income tax and GST from the contract fees.
- The Contractor must register with WorkCover as an employer or provide satisfactory evidence of income maintenance and disability insurance.
- The Contractor will be required to take out and maintain its own policy of public liability insurance to a minimum of ten million dollars and with an insurer reasonably approved by the Council.

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EXECUTED as an agreement by both parties.

THE COMMON SEAL of the)
CITY OF ONKAPARINGA was)
affixed in the presence of:)

..... Mayor

..... Chief Executive Officer

SIGNED by **INSERT NAME**)
in the presence of:)
)

.....

.....
Witness

SIGNED by **INSERT NAME**)
in the presence of:)
)

.....

.....
Witness

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CITY OF ONKAPARINGA
("the Council")

and

INSERT NAME OF CONTRACTOR
("the Contractor")

AGREEMENT

for the provision of management services in respect of the Moana Beach Tourist Park

Selection Criteria for Short Term Management of Moana Beach Tourist Park

- Comprehensive knowledge of the Tourism industry in particular the management of Tourist Park accommodation facilities.
- Previous experience in managing Tourist Parks and associated accommodation facilities.
- Detailed/High knowledge of the RMS booking system and the preparation of various reports available from the system.
- Detailed knowledge of Customer Service principles.
- Knowledge of grounds maintenance including the operation of minor plant and equipment eg lawnmower, whipper snipper, lawn edger etc.
- Knowledge of minor maintenance procedures, including the ability to maintain a variety of minor building defects.
- Demonstrated high level of personal integrity and management ethics.
- Demonstrated ability to exercise initiative and problem solving skills relating to daily activities.
- Demonstrated high level negotiation and conflict resolution skills and the ability to achieve acceptable outcomes for both visitors and residents of the Tourist Parks.
- Knowledge of and the ability to implement the legislation and regulations that apply to the management of Tourist Parks.
- Sound knowledge of broad industry issues and trends as they may apply to service delivery.
- Ability to live on site.
- Ability to work well with a variety of people from different socio-economic backgrounds.
- The capacity to take out and maintain own policy of public liability insurance to a minimum of ten million dollars and with an insurer reasonably approved by the Council.