



THAMES VISITOR INFORMATION CENTRE FUNDING AGREEMENT

THAMES-COROMANDEL DISTRICT COUNCIL
(Council)

DESTINATION COROMANDEL
(DC)

DATED this

day of

2014

BETWEEN **THAMES-COROMANDEL DISTRICT COUNCIL** (Council)

AND **DESTINATION COROMANDEL** (DC)

THE PARTIES AGREE:

1. INTERPRETATION

In this agreement unless the context indicates otherwise:

1.1 Definitions:

"**Commencement Date**" means 1 July 2015;

"**Council**" means the Thames-Coromandel District Council and includes the Council's officers, employees, agents and representatives;

"**Lease**" means a Deed of Lease between Council and DC that may exist between the parties

"**Party**" means DC or the Council (as the case may be), and "**Parties**" means both of them

"**Termination Date**" means 30 June 2018;

"**DC**" means Destination-Coromandel and includes its permitted assigns.

1.2 Defined Expressions: expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement, including the background;

1.3 Headings: section, clause and other headings are for ease of reference only and do not form any part of the context or affect this agreement's interpretation;

1.4 Negative Obligations: any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

1.5 No Limitation: references to anything of a particular nature either before or after a general statement do not limit the general statement, unless the context requires;

1.6 Parties: references to parties are references to parties to this agreement and include each party's executors, administrators and successors;

1.7 Persons: references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities, in each case whether or not having separate legal personality;

1.8 Plural and Singular: singular words include the plural and vice versa; and

1.9 Sections and Clauses: references to sections and clauses are references to this Agreement's sections and clauses.

2. TERM

2.1 The term of this Agreement shall be from 1 July 2015 (Commencement Date) and expire on 30 June 2018 (Termination Date).

3. FUNDING SUM

3.1 The Council will provide DC total funding sums of:

- 2015/16: \$80,000
- 2016/17: \$80,000
- 2017/18: \$80,000

3.2 The Funding Sum will be paid to DC in three equal payments on 1 July, 1 November and 1 March of each financial year.

3.3 The Council will pay each of the Funding Allocations as set out in Clause 3.2 on receipt of a GST tax invoice from DC.

3.4 In accordance with the Ten Year Plan and Annual Plan requirements of the Local Government Act 2002, Council retains the right to vary the Funding Sum in any Council financial year subsequent to the year in which the Commencement Date occurred.

4. MANAGEMENT OF FUNDING SUM

4.1 DC shall use the Funding Sum to deliver the obligations and to meet the reasonable costs associated with the provision of the services as set out in this Agreement.

4.2 All interest earned on the Funding Sum provided to DC shall be used for the same purpose as set out in Clause 4.1.

5. OBLIGATIONS

5.1 DC

5.1.1 DC shall use the Funding Sum to provide services during the term of this Agreement which include, but shall not be limited to:

- a) DC shall operate the centre 7 days a week (open a minimum of 48hrs) between 1 October - 28 February each year. DC can set autumn and winter hours to best accommodate the visitor demand of the local area.
- b) DC shall staff the centre at all times by at least one appropriately trained employee.
- c) Utilisation of Council information (including provided via Council e-newsletters) to keep up-to-date on current matters and disseminate such information to visitors;
- d) Provide visitors with local information via multiple mediums (including verbal, electronic or print) to facilitate tourism and generate revenue;
- e) Provide an area to display posters of upcoming events;
- f) Provide booking services for local and district accommodation, attractions, activities, tours and local transport;

- g) Provide use of the Premises for the conduction of any information gathering surveys carried out by Council.

5.1.2 In addition to the services set out in Clause 5.1.1, DC are also required to:

- a) Work with the Thames Community Board and local groups to help facilitate events where practicable

5.1.3 In providing the services set out in Clause 5.1.1 and 5.1.2, DC shall:

- a) Comply with all applicable laws (including all applicable statutes, statutory regulations, and local authority by-laws) in meeting their obligations in this Agreement.
- b) Indemnify the Council against all loss, fines, penalties, liability and expense incurred by them as a result of:
 - i. a breach by DC of its obligations in this Agreement; or
 - ii. a breach by DC of any warranty given by DC in this Agreement; or
 - iii. any act or omission (whether negligent or not) of DC, its agents, employees or contractors.
- c) Provide the services professionally, conscientiously, diligently and according to best practice.
- d) Notify the Council immediately if it becomes aware of a suspected or actual breach of this Agreement
- e) Not use the Council's name in any manner except as is specifically allowed in this Agreement or as otherwise agreed with the Council.
- f) Not enter into any commitment, contract or agreement, or incur any liability in the name of, or which binds, the Council, without the Council's prior written approval.
- g) Meet and comply with the Health and Safety requirements set out in clause 6.
- h) Work with the Council professionally and competently, complying with all lawful directions of Council.
- i) Use its best endeavours to promote and protect the Council's interests, and acknowledge the support of the Council in any correspondence, advertising or other publicity material.
- j) Obtain and maintain during the term of this Agreement adequate public liability insurance, and provide evidence of that if required by the Council at any time. Use the Funds for the purposes outlined in this agreement.
- l) Identify and provide a minimum of one representative that is available to meet with Council representatives on a regular basis (as required by Council) to optimise opportunities for the provision of the services outlined in this agreement.

6 HEALTH AND SAFETY

- 6.1 DC shall comply with and shall ensure all Centre staff comply with all the relevant requirements of the Health and Safety in Employment Act 1992 (HSE Act), including any regulations made pursuant to section 21 of the HSE Act and all related approved codes of practice.
- 6.2 DC warrants to Council that it shall take all practicable steps to ensure that no act or omission:
- a) causes a hazard, significant hazard, harm or serious harm to any employee, member, volunteer or any person at the place of work or in the vicinity of the place of work; or
 - b) is a breach of duty or obligation of DC under the HSE Act; or
 - c) does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSE Act against either parties of this agreement.

7 LIMITATION OF LIABILITY

- 7.1 DC acknowledges and agrees that the Council has no liability (whether in contract or in tort) to DC.
- 7.2 The Council is not liable to DC for:
- a) Any indirect or inconsequential loss suffered by DC; or
 - b) Any delay or default in complying with the Council's obligations in this Agreement if the delay or default is caused by anything beyond Council's reasonable control.

8 TERMINATION

- 8.1 The Agreement is deemed to be terminated in any of the following events:
- a) Upon the Termination Date; or
 - b) Upon the expiration of not less than one months' notice from one party to the other of that party's intentions in that behalf; or
 - c) The Council may terminate this Agreement by giving not less than one months' notice in writing; if
 - i. DC breaches or fails to observe or perform any of the terms and conditions of this Agreement; or
 - ii. DC becomes insolvent, goes into receivership or liquidation or is subject to creditor's arrangement; or
 - d) A Lease between Council and DC expires or is terminated in accordance with the provisions of the Lease.
- 8.2 Termination of this Agreement does not reflect a Party's right to damages for any pre-existing breach of this Agreement.

9 CONSEQUENCE OF TERMINATION

- 9.1 If this Agreement is terminated upon the expiration of one months' notice under clause 8.1 (b) or in accordance with Clause 8.1 (d) the Council will not be obliged to pay any further portion of the Funding Sum and will be entitled to a refund of the payments of the Funding Sum it has already made less a fair and equitable sum that takes into account the benefits already actually received by the Council.
- 9.2 If this Agreement is terminated by the Council under clause 8.1(c)(i) or 8.1(c)(ii) the Council will be entitled to a refund of all the payments of the Funding Sum paid to DC by the Council.

10. REPORTING

Reports

- 10.1 DC shall provide quarterly reports to the Economic Development Committee on the performance of the centre when it is reporting on its own performance to the Committee
- 10.2 Each report required under Clause 10.1 shall include but not be limited to the following matters:
- (a) Delivery of the services as set out in Clause 5.1.1;
 - (b) Progress with the matters set out in Clause 5.1.2;
 - (b) Monthly financial statements;
 - (c) Business plan;
 - (d) Significant risks or issues relating to the Centre
- 10.3 DC shall provide the report as required by Clause 10.1 no later than 15 working days following the end of each of Reporting Periods.

Year-End Report

- 10.4 DC shall submit audited financial statements to Council within 30 days of receipt of its audited accounts as part of its own financial statement submission to Council

11. ASSIGNMENT

- 11.1 DC shall not assign or transfer its obligations under this Agreement to any other party without first obtaining the prior written approval of Council.

12. INDEMNITY

- 12.1 DC shall indemnify Council against all actions, proceedings, claims, demands, losses, damages, costs, expenses or liabilities of any kind suffered or incurred by the Council, whether directly or indirectly as a result of DC's breach of this agreement.

13. DISPUTE RESOLUTION

- 13.1 The parties acknowledge that they wish to avoid or minimise any differences or disputes arising out of and from the terms of this agreement. The parties therefore agree that if any difference or dispute arises between them they will actively, openly and in good faith negotiate that difference or dispute with a view to achieving a quick resolution.

13.2 If the parties cannot resolve a dispute or difference within 10 Working Days of any dispute or difference arising then, unless otherwise expressly provided in this agreement, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation.

13.3 If the parties cannot agree on any dispute resolution technique within a further 15 Working Days of any dispute or difference being referred by both parties to any informal dispute resolution technique under clause 13.2 then the difference or dispute will be determined by arbitration by a sole arbitrator in accordance with the Arbitration Act 1996 and any substitute or amendment Act.

14. WAIVER

14.1 No waiver or failure to act by the Council in respect of any breach of this agreement by DC shall operate as a waiver of another breach.

15. IMPLIED RELATIONSHIPS

15.1 Nothing contained in this agreement shall be deemed or construed or constitute any party or parties' agent or representative or be deemed to create any trust, commercial partnership or joint venture.

16. SEVERABILITY

16.1 If any part of this agreement is held to be illegal or unenforceable, the continued operation of the rest of this agreement will not be affected. The illegal or unenforceable part will be treated as severed from this agreement.

17. GOVERNING LAW

17.1 This agreement will be interpreted in accordance with the laws of New Zealand.

18. NOTICES

18.1 Each Party's address for notices is as notified from time to time by that party in writing to the other.

18.2 Delivery may be affected by hand, by poste with postage prepaid, or by facsimile.

18.3 All notices mailed to the Party's address will be considered to have been received 3 days after being mailed.

19. ENTIRE AGREEMENT

19.1 This agreement:

(a) **Entire Agreement:** sets out the parties' entire agreement on its subject matter and replaces all earlier agreements and negotiations in connection with it; and

(b) **Alteration:** may not be altered except in writing signed by both parties.

EXECUTION:

**SIGNED by
THAMES-COROMANDEL
DISTRICT COUNCIL**

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Mayor

Chief Executive

**SIGNED by
DESTINATION COROMANDEL**

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Authorised signatory

Authorised signatory

Authorised signatory name

Authorised signatory name