

SHIRE OF WYNDHAM EAST KIMBERLEY

AND

EAST KIMBERLEY CHAMBER OF COMMERCE
& INDUSTRY INC

PREPARED BY
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REF : KZBP:8141164

PARTIES

SHIRE OF WYNDHAM EAST KIMBERLEY (ABN 35 647 145 756) of 20 Coolibah Drive, Kununurra, Western Australia (**SWEK**)

EAST KIMBERLEY CHAMBER OF COMMERCE AND INDUSTRY INC (ABN 73 754 070 279) of D2, 120 Konkerberry Drive, Kununurra, Western Australia (**EKCCI**)

Recitals

EKCCI has approached SWEK for a financial contribution towards operational support so it is in a position to contribute to SWEK's priority employment and community safety outcomes.

SWEK and EKCCI are desirous of providing clear supporting economic development opportunities within the region by working in greater alignment to achieve positive community outcomes.

A challenge for EKCCI is sustaining its operations in order to offer value to its membership and grow that membership for the benefit of the community by focusing on advocating for business and services in the region.

Both SWEK and EKCCI are of the view that a formal outline of the collaboration between the organisations will be to the benefit of the organisations and to the region as a whole.

This Memorandum of Understanding (MOU) will enable SWEK to commit to the financial contribution sought from it to support EKCCI in expanding its membership and influence in the region and provide both organisations with a clear path to achieving positive collaboration between the parties.

1. MOU Objective

This MOU is entered into between SWEK and EKCCI with the objective of:

- 1.1 SWEK supporting the activities of EKCCI by documenting a formal understanding of the way both organisations will collaborate in providing support to each other for the benefit of existing, new business and the wider community in the Kununurra region;
- 1.2 SWEK committing to a financial contribution towards EKCCI's operations to support it in carrying out its vision and objectives as identified in its mission statement (EKCCI objectives);
- 1.3 documenting the outcomes desired by both SWEK and EKCCI by including Key Performance Indicators and details of the extent of funding and payment of it to be provided by SWEK;
- 1.4 setting out the key roles for SWEK and EKCCI collaboration in building a prosperous community by ensuring the inherent strengths are leveraged with challenges addressed so as to capitalise on the key opportunities within the Kununurra region.

2. SWEK Financial Contribution

- 2.1 SWEK will contribute \$6,250 per quarter to EKCCI by the making of one payment of \$25,000 each year for three (3) years (payment).
- 2.2 The payment will be made within thirty (30) days of receipt of an invoice from EKCCI for the payment.
- 2.3 The payment is made on the understanding by EKCCI that it does not constitute a debt owing by SWEK to EKCCI.
- 2.4 The payment is made on the further understanding that EKCCI will strictly comply with the EKCCI commitment and Key Performance Indicators set out in this MOU.

3. EKCCI Commitment

EKCCI agrees that it will:

- 3.1 act in good faith, at all times, in its dealings with SWEK;
- 3.2 ensure that activities funded by the payment are conducted in accordance with best practice and in alignment with EKCCI objectives;
- 3.3 provide SWEK an opportunity to network with the EKCCI members by inviting it to Chamber events promoting the Kununurra region;
- 3.4 liaise with the SWEK in order to better scope how to jointly promote Kununurra business;
- 3.5 meet with SWEK on a bi-monthly basis, at least, to liaise in respect to matters relevant to the business, commercial and community issues;
- 3.6 provide SWEK with reasonable notice of the EKCCI activities to which SWEK will be invited so as to allow adequate time to arrange availability;
- 3.7 notify SWEK, prior to making any public statement or any communications of significance to be published by it in respect to business, commercial and community issues;
- 3.8 liaise with SWEK prior to making any negative public statement about SWEK in any way of whatsoever nature and in respect to any activity of whatsoever nature undertaken by SWEK;
- 3.9 invite SWEK's CEO or the CEO's delegate to attend the Chamber and present to the EKCCI members on any business, commercial and community issues raised in the Chamber relevant to the Shire.

4. SWEK Commitment

SWEK agrees that it will:

- 4.1 act in good faith, at all times, in its dealings with EKCCI;
- 4.2 make the payment in accordance with the clause 2 of this MOU in that respect;
- 4.3 meet with EKCCI on a bi-monthly basis, at least, to liaise in respect to matters relevant to business, commercial and community issues;
- 4.4 attend Chamber events promoting the Shire;
- 4.5 ensure the SWEK is available to liaise with EKCCI in order to better promote business, commercial and community issues on a collaborative basis;
- 4.6 Promote memberships to assist in the growth of community driven business.

5. Key Performance Indicators

EKCCI will:

- 5.1 increase its membership by 5% per annum and report the results to SWEK annually at the time of delivery of its invoice for payment as set out in clause 2.2 of this MOU;
- 5.2 review and, where necessary, update the EKCCI website so as to ensure that the business directory is kept up to date;
- 5.3 survey members annually regarding satisfaction and value and provide results to SWEK at the time of delivery of its invoice for payment as set out in clause 2.2 of this MOU;
- 5.4 promote and acknowledge its funders, partners and stakeholders including SWEK at each business event in the Chamber;
- 5.5 recognise the financial support from SWEK including publishing the SWEK logo on the EKCCI website and in all promotional materials relating to events during the term of this MOU.

6. Dispute and Termination

- 6.1 Any disagreement arising in respect to the terms and conditions of this MOU or for any other reason related to the operation of this MOU will be deemed a dispute event (Dispute Event).
- 6.2 On the happening of a Dispute Event:
 - 6.2.1 the disaffected party will set out in writing the particulars of the Dispute (Dispute Notice) so as to allow the receiving party to understand the scope of the Dispute Event and deliver the Dispute Notice to the receiving party within seven (7) days of the Default Event occurring;
 - 6.2.2 on receiving the Dispute Notice the receiving party will have fourteen (14) days within which to reply in writing to the particulars set out in the Dispute Notice (Reply);
 - 6.2.3 within a further fourteen (14) days from receipt by the disaffected party of the Reply, the parties will meet (Dispute Meeting) to discuss the particulars in the Dispute Notice and the Reply;
 - 6.2.4 in the event that the Dispute Meeting results in a settlement of the issues between the parties the subject of the Dispute Notice and Reply the parties will reduce the agreement reached to writing. Where appropriate or required, in law, the agreement reached or the written agreement itself will be published either internally within each organisation or, where required, on each party's website depending on whether the issues the subject of the Dispute Notice and/or Reply were matters internal to either or both parties, or made public and further, by a SWEK report to Council if required in order to comply with its obligations under the *Local Government Act 1995* or Regulations;
 - 6.2.5 in the event that the parties are unable to mediate a mutually agreeable settlement to the Dispute Event at the Dispute Meeting this MOU will terminate without further notice required of either party (Date of Termination).
- 6.3 In the event that this MOU is terminated as a consequence of a failure of the parties to resolve a dispute as set out in clause 6.2 as at the Date of Termination:

- 6.3.1 EKCCI will no longer be obliged to fulfil the EKCCI commitment or meet the Key Performance Indicators;
 - 6.3.2 SWEK will no longer be obliged to make the payment;
 - 6.3.3 EKCCI will be required to refund any payment made to the date of termination calculated on a pro-rata basis in accordance with the contribution amount set out in clause 2.1 of this MOU.
- 6.4 The parties agree that either party may terminate this MOU without cause on the giving of 30 days written notice PROVIDED THAT the provisions of clause 6.3 of this MOU will apply.

7. Miscellaneous

- 7.1 The parties agree that this MOU is of no legal force or effect except to the extent that either may initiate legal proceedings, on the giving of thirty (30) day's notice in the event of a breach by a party of the obligations set out in clauses 7.4 to 7.6 inclusive of this MOU.
- 7.2 This MOU can be varied at any time by the parties as agreed and provided in writing.
- 7.3 The term of this MOU commences on 1 October 2023 and expires on 30 September 2026 except to the extent this MOU is varied as provided for in clause 7.1 of this MOU.
- 7.4 Each party maintains its rights to its intellectual property including but not limited to trademarks, logos, plans, drawings, confidential information, systems etc. Permission from the owner of the intellectual property will be required to be granted to the other party prior to use by the other party of the intellectual property.
- 7.5 Each party agrees not to disclose any information, except to the extent required in law, regarding any disclosures made confidentially and arising from meetings between the parties, minutes, email information or documents generated by the parties in collaborating in order to fulfill the relevant commitments made under this MOU without the prior written consent of the other party.
- 7.6 Each party will comply with all applicable privacy laws including the *Privacy Act 1988 (Cth)* as amended from time to time.

SIGNED by
Shire of Wyndham East
Kimberley

CHIEF EXECUTIVE OFFICER

SIGNED by
East Kimberley Chamber
of Commerce & Industry Inc

PRESIDENT