

AGREEMENT FOR ECONOMIC DEVELOPMENT SERVICE GRANT

This Agreement for a Grant, dated 1 July 2015, is

between **Taupō District Council**, a body corporate under the Local Government Act 2002 ("Council")

and **Go Tongariro**, a duly incorporated society under the Incorporated Societies Act 1908 ("GT").

Background

Go Tongariro mission's is to be a strong, sustainable and proactive group that represent the interests of all stakeholders in the greater Turangi/Tongariro region and deliver on the base camp promise. They do this by providing business development & events support, retail & tourism promotion; and town centre vibrancy for the Turangi/Tongariro Region.

The parties enter into this agreement to record the terms of Council's grant to GT in order for GT to assist the Council to meet the current and future needs of its communities for good-quality local public services in a way that is most cost-effective for households and businesses.

Terms of Grant

1 Definitions

1.1 In this grant, unless the context indicates otherwise:

"business day" means any day of the week other than Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, Christmas Day, Boxing Day, New Year's Day, the second day of January, the Sovereign's Birthday and Waitangi Day;

"Council's representative" means the person nominated by Council's Chief Executive from time to time. At the date of this grant Council's representative is Business Development Manager;

"force majeure", for the purposes of this grant, means any strike or lockout (not due to the acts of the party prevented from complying or its employees, agents, associates or representatives), riot, crowd disorder, civil commotion, accidental fire, storm or tempest, act of God, act of war or terrorism, explosion, sabotage, flood, earthquake, volcanic eruption, subsidence, landslide, other natural physical disaster, epidemic, disease, nuclear, biological or chemical contamination, failure of power supplies, collapse of structure, central government order, requirement or intervention/ or any other cause beyond the control of a party that prevents it from performing its obligations under this grant;

"grant" means this document and its schedules;

"intellectual property" includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks and designs, circuit layouts, data and databases, confidential information, and all other rights resulting from intellectual activity in any field, together with any right, interest or licence in or to any of the foregoing;

"services" means the services to be provided, and other obligations to satisfied, by GT under this grant including as set out in attached schedules.

2 Interpretation

2.1 In this grant unless the context indicates otherwise:

- (a) Expressions defined in the main body of this grant have the defined meaning in the whole of this grant including the background recitals and the schedule;
 - (b) a reference to a **"clause"** or a **"schedule"** is to a clause or schedule of this grant;
 - (c) **"person"** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, and a local or central government department, governmental body, authority or agency, in each case whether or not having a separate legal personality;
 - (d) a reference to a **"party"** includes the person's executors, administrators, successors and permitted assignees;
 - (e) **headings** are for ease of reference only and are to be ignored in the interpretation of this grant;
 - (f) **"including"** and similar words do not imply any limitation;
 - (g) the **singular** includes the **plural** and vice versa;
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- (h) a **statute** or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether made before or after this grant);
- (i) a reference to any **document** or **agreement** (including this grant) includes a reference to that document or agreement as amended or replaced from time to time;
- (j) a requirement to the effect that consent, approval, agreement or the like shall not be **unreasonably withheld** shall be deemed to include a requirement that such consent, approval, agreement or the like not be unreasonably delayed; and
- (k) **derivatives of any defined word** or term have a corresponding meaning.

3 Term

- 3.1 This grant shall commence on 1 July 2015 and expire on 30 June 2018 ("the term").
- 3.2 For the avoidance of doubt, the effective date of this grant is 1 July 2015.

4 Services

- 4.1 During the Term, GT shall provide the Services identified in Schedule 1 and any subsequent Schedules, to be updated annually.

5 Payment for services

- 5.1 GT's funding level is outlined in the Councils 2015-2018 Long term Plan, under the Groups of Activities: Economic Development Funding Impact Statement. For the avoidance of doubt this is set at:
 - 2015/16 - \$20,000 (excluding GST)
 - 2016/17 - \$14,000 (excluding GST)
 - 2017/18 - \$7,000 (excluding GST)
- 5.2 GT will render Council a tax invoice for the full annual grant amount at the start of each financial year. Council will pay Go Tongariro for the Services on the 20th of following month.
- 5.3 The amount, distribution and collection of funding are subject to change at any time in accordance with the Local Government Act.

6 Reporting

- 6.1 Council will monitor GT's progress in delivering the Services as follows:
 - (a) GT's Chairperson will meet six weekly with Council's Representative to provide an update on progress and to discuss any matters or issues arising;
 - (c) GT will submit and formally present a report annually to Council; and
 - (d) From time to time GT may request to present a confidential update to the Turangi-Tongariro Community Board and/or the full Council covering commercially sensitive issues.
- 6.2 Formal performance reports will be submitted by GT within three months of the end June. The reports will include details of the progress and implementation of the Services, as specified in Schedule 1 (and any subsequent Schedules, to be updated annually).and may include any other information requested by Council. The reports will specifically cover:
 - (a) Performance compared against the performance measures set out in Schedule 1 (and any subsequent Schedules, to be updated annually).
 - (b) A budget and expenditure report.

7 General obligations

- 7.1 In relation to this grant, GT will:
 - (a) comply with all reasonable timeframes, directions and other requirements of Council;
 - (b) deal with Council and community stakeholders in good faith at all times;
 - (c) advise Council promptly of any significant risks to the delivery of the Services under this grant, that GT is aware of (including changes), and how these risks are being or will be mitigated;
 - (d) not intentionally or recklessly damage the reputation of Council, community stakeholders or the Taupo District;
 - (e) not intentionally or recklessly damage or adversely affect the business operations or assets of Council and community stakeholders; and
 - (f) comply with all relevant laws.
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8 Records and audit

- 8.1 GT agrees to keep detailed records relating to its delivery of the Services for a period no less than 7 years from the expiry or termination of this grant.
- 8.2 GT will allow Council, or other persons authorised by Council, at any time during normal business hours, to inspect and/or audit the records of GT relating to the provision of the Services and require the provision of copies of the records. GT will do everything in its power to assist that inspection and provide those copies.
- 8.3 Any inspection and/or audit authorised by clause 8.2 may take place after the termination of this grant.

9 Intellectual property

- 9.1 Any intellectual property that is developed, commissioned or created under or in connection with this grant and used for the purposes of this grant is owned by Council.
- 9.2 Council shall not restrict, limit, regulate, manage or control GT's use of any such intellectual property during the term.

10 No fettering of powers

- 10.1 GT acknowledges that nothing in this grant does or will restrain, limit or otherwise fetter the exercise by Council of the powers, duties and discretions which Council has at law (including, for the avoidance of doubt, under the Resource Management Act 1991 and the Local Government Act 2002).

11 Confidentiality

- 11.1 This grant and its arrangements must be kept confidential between the parties. Neither party may disclose the details of this agreement without the prior written consent of the other party, other than:
- (a) as may be required to comply with any lawful requirement (including under the Local Government Official Information and Meetings Act 1987), or
 - (b) to implement the provisions of this grant, or
 - (c) if the information is already in the public domain.

12 Force majeure

- 12.1 If and to the extent that either party is prevented or delayed by an event of force majeure from performing any or all of its obligations under this grant it shall promptly notify the other party in writing, specifying the nature, cause and consequences or likely consequences of the event of force majeure together with such evidence verifying the event of force majeure as it can reasonably give and the period for which it estimates that the event of force majeure will continue.

13 General

- 13.1 GT acknowledges that Council does not guarantee or otherwise accept any liability for the obligations of GT under this grant.
- 13.2 GT may not assign, transfer or otherwise deal with any of its rights or obligations under this grant without the prior written consent of Council.
- 13.3 The parties will act reasonably and promptly in relation to all matters arising under or affecting this document. This will include by way of example, supplying information, discussions and consultations, requests for consent or assistance and signing documents.
- 13.4 Nothing expressed or implied in this grant will constitute either party as the partner, agent, employee or officer of, or as a joint venture with, the other party, and GT has no authority or power to bind Council or to pledge its credit. Neither party will make any contrary representation to any other person.
- 13.5 Unless otherwise expressly provided, time is of the essence in the performance by the parties of their obligations under this grant.
- 13.6 No variation, amendment or addition to this grant will be effective unless in writing signed by duly authorised representatives of all parties.
- 13.7 This grant, including the schedules, records the entire arrangement between the parties relating to the services and supersedes all previous arrangements, understandings or representations whether written, oral or both, relating to the services.
- 13.8 No waiver of a party's rights is effective unless given by that party in writing, and any waiver is only effective in the specific instance and for the purpose of the waiver and no failure on the part of a party to exercise any right under this grant will operate as a waiver. No single or partial exercise of any right under this grant will preclude any other or further exercise of that right or the exercise of any other right.
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- 13.9 Each party must promptly do everything reasonably required to give full effect to the terms and intentions of this grant.
- 13.10 If any term or provision of this grant is or becomes invalid or unenforceable or in breach of any Act of Parliament, the validity of the remainder of this grant will not be affected and will remain in force and effect as if this grant had been executed with such term or provision eliminated.
- 13.11 This grant is governed by the laws of New Zealand. The parties submit to the nonexclusive jurisdiction of the New Zealand courts in respect of all matters relating to this grant.
- 13.12 All rights, remedies and powers conferred upon the parties are cumulative and shall not be deemed to be exclusive of any other rights, remedies or powers now or subsequently conferred upon them by law, this grant or otherwise.

14 Dispute resolution

- 14.1 If the parties are unable to resolve a dispute by negotiation within a reasonable time either party may require the dispute to be escalated for resolution by their respective Chief Executives or equivalent officers.
- 14.2 If such officers are unable to resolve the dispute within 10 business days of the dispute being referred to them, either party may refer the dispute to mediation in which case:
- (a) if the parties cannot agree on a suitably qualified mediator within 5 business days of the dispute being referred to mediation, either party may request the chairperson or equivalent officer of LEADR New Zealand Inc to appoint a suitably qualified mediator;
 - (b) unless otherwise agreed, the then current model mediation agreement issued by LEADR New Zealand Inc will be used; and
 - (c) the parties shall share the mediator's costs equally.
- 14.3 If the parties are unable to resolve a dispute by mediation within 10 business days of the dispute being referred to mediation, either party may refer the dispute to arbitration in which case:
- (a) if the parties cannot agree on an arbitrator within 5 business days of the dispute being referred to arbitration, either party may request the President of the New Zealand Law Society to appoint a suitably qualified independent arbitrator; and
 - (b) the arbitration shall be conducted in accordance with the Arbitration Act 1996.
- 14.4 Notwithstanding clauses 14.1 to 14.3, if this grant requires any matter to be determined by an expert, the following shall apply:
- (a) the parties shall appoint an agreed third party expert with requisite expertise to resolve the matter to be determined;
 - (b) if the parties are unable to agree on the third party expert within 5 business days of the matter arising for decision, either party may request the President of the New Zealand Law Society to appoint an expert;
 - (c) if the parties have not agreed on the process for the determination by the time the expert is appointed, the expert shall decide on a fair process;
 - (d) the expert shall use reasonable endeavours to determine the matter within 20 business days of his or her appointment;
 - (e) the expert shall act as an expert and not an arbitrator and, accordingly, the Arbitration Act 1996 shall not apply;
 - (f) the expert's decision is (in the absence of manifest error) final and binding on the parties; and
 - (g) unless agreed otherwise by the parties or unless the expert considers it unreasonable, the parties shall share the expert's costs equally.
- 14.5 Notwithstanding the existence of a dispute and the operation of this clause 14, each party must continue to perform its obligations under this grant pending resolution of the dispute.
- 14.6 Nothing in this grant affects the right of a party to institute court proceedings seeking urgent injunctive relief.
- #### **15 Termination**
- 15.1 This grant may be terminated by Council by notice in writing to GT in the event that:
- (a) GT fails to perform or observe any of the terms of this grant on its part to be performed or observed or fails to remedy such breach within 15 business days of the date of receipt of written demand to remedy such breach (such notice giving adequate particulars concerning the alleged default and of Council's intention to terminate this grant); or
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- (b) GT is unable to pay its debts when they fall due or suffers proceedings under any law relating to insolvency or reorganisation for the benefit of creditors or has any writ of attachment, execution or any similar process issued or levied against any of its property.
- 15.2 Notwithstanding clause 15.1, this grant may be terminated by Council by eight weeks notice in writing to GT.
- 15.3 Termination of this grant shall be without prejudice to the accrued rights and liabilities of the parties.

Executed as an Agreement

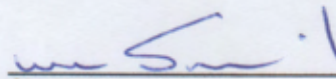
Signed for TAUPU DISTRICT COUNCIL

by the Chief Executive, Rob Williams

Signature

Signed for GO TONGARIRO

by the Chair of the Board, Wayne Smith



Signature

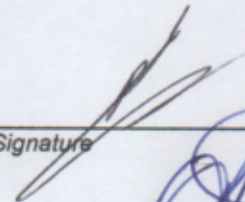
and in the presence of two trustees:



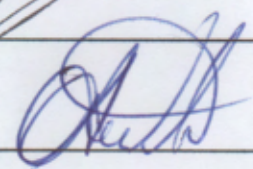
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