PARTNERING AGREEMENT AND MEMORANDUM OF UNDERSTANDING

Between:
Far North District Council (1)
Te Hiku Community Board (2) and
Kaitaia Business Association (3)

Regarding a Business Improvement District ('BID') Partnership Programme Agreement.

Background and Purpose

1. Far North District Council ("FNDC") recognises the role of business associations in contributing to the economic development of local communities and the District as a whole.

2. FNDC has adopted the Business Improvement District (BID) Partnership Programme.

3. The purposes of the BID Partnership Programme include providing a mechanism to support business and the economy at local level and to collaborate with the business sector to improve the environment within which businesses operate.

4. Kaitaia Business Association ("the Business Association") is registered under the Incorporated Societies Act 1908 and undertakes business-led programmes initiated by the local business community which promotes and develops their local business economy.

5. FNDC wishes to work with the Business Association to implement the BID Partnership Programme, recognising that a supportive business environment is essential to maintain and grow the economic base of the region, provide employment opportunities and ensure a resilient economy.

6. This Memorandum of Understanding ("MOU") is entered into by the Business Association and the Community Board to guide and develop the relationship between them. It can be varied and reviewed at any time by written agreement of both parties.

7. The Parties to the MOU agree to the following principles:

- Trust-based relationship – a partnering relationship built on each party working on the basis of trust, respect and understanding.
- No surprises approach - a partnering relationship built on each party behaving with integrity and in good faith, with appropriate knowledge and information sharing.
- Open communication – a partnering relationship built on each party discussing issues openly, being open to constructive feedback and understanding and respecting each other's knowledge, expertise, operating environment and capabilities.
- Flexible – a partnering relationship built on each party taking an open approach on differences of views and opinion and being flexible regarding the resolutions of any issues which may arise.

7. FNDC values the relationship it has with the Business Associations it works with. They provide important feedback on Council's plans and policies; have links with the business community and work to grow the economic base of the District.

8. All businesses within the BID Partnership Programme boundary area pay the targeted rate and should therefore benefit from the activities of the programme. The intention of a BID Partnership

Programme is that all businesses are fully engaged and included. Therefore Business Associations are strongly encouraged not to charge members a membership fee, or any other fee, applicable to their operation, to belong to the association if the business is within the boundary of the BID Partnership Programme area.

9. The Business Association may allow organisations outside the boundary area or non-related members of the community to apply for Associate Membership.

Far North District Council's Role

1. FNDC levies the targeted rate for the BID Partnership Programme, and ensures it is included in its Annual Plans. It monitors the effectiveness of the programme at the District level.

2. It will receive an annual update report from the Business Association on how the BID Partnership Programme is operating.

3. FNDC has a partnership relationship with the Community Board and provides administrative support and advice.

Te Hiku Community Board's Role

1. Te Hiku Community Board ("the Community Board") is delegated the authority by FNDC for the day to day relationship with the Business Association as a joint partner in the BID Partnership Programme. The Community Board will work with the Business Association to assist in the alignment of the direction for the BID programme, taking into account where applicable, the wider local priorities that the Community Board may have. The Community Board will receive regular reporting on the BID Partnership Programme and review progress against objectives.

2. Apart from day-to-day relationships with the Business Association, the Community Board also has a governance role set out in this Memorandum of Understanding.

3. The Community Board will appoint a Community Board member to represent the Community Board regarding all matters relating to the Business Association.

4. The Business Association will invite the appointed member of the Community Board onto the BID Governance Board or Executive Committee. The discretion on whether this member has voting rights will lie with the Business Association under the rules of its Constitution. It is strongly recommended that this member is given voting rights to enable full engagement of the representative and his or her ability to contribute to the business of the BID Partnership Programme.

5. The Community Board will receive, along with the Business Association the Annual Business Plan for BID programme activities. Following acceptance of the business plan, the Community Board will recommend to FNDC to strike the BID targeted rate.

6. The Community Board may also take the following roles:

- Liaising between Council departments, CCOs and Business Associations;
- Advocating to FNDC departments and CCOs on behalf of the Business Association, where appropriate;
- Acting as a liaison point or conduit for the relationship with the BID Partnership Programme and the local community.

7. A proposal to establish a new BID Partnership Programme or to expand or reduce an existing BID Partnership Programme needs the approval of the Community Board.

8. The Community Board may approve additional funding at its discretion. This would be by way of specific grants for specific projects or initiatives.

9. The Community Board is obliged by virtue of being a local government organisation to:

(a) observe due process, and comply with its policies; and
(b) comply with various statutes such as the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987 and the Public Records act 2005.

Accordingly, the Community Board's obligations under this MOU are subject to FNDC's processes, policies and legislative obligations. This MOU is an agreement between the parties that only seeks to establish a co-operative relationship.

The Business Association's Role

1. The Business Association implements the BID Partnership Programme within the parameters of this agreement and according to the rules of their Constitution, as agreed by the Business Association at an Annual or Special General Meeting.

2. The Business Association will be required to provide the Community Board with the following:

- Audited accounts;
- Annual Report for the previous year;
- Strategic Plan covering the current three to five year period;
- Annual Business Plan; and
- Budget for the following year.

3. The Business Association will also measure its performance through a number of key performance indicators (KPIs) related to its Strategic and Annual Plan objectives. These may be identified in the Annual Report of the year just passed and also in the current year's Annual Business Plan.

4. The Business Association is strongly encouraged to work collaboratively with any partner or agency that would assist it in its organisational goals.

5. In accordance with this Memorandum of Understanding, the Business Association agrees to inform and update the Community Board regularly on their BID Partnership Programme related activities. This includes:

(a) An annual presentation to the Community Board of the Business Association documents including:
    - The annual report of the previous financial year
    - Audited annual financial accounts
    - Strategic plans (3 – 5 years with next years financial business activities identified
    - Budget for the next financial year

Note: Annual reporting should occur by the end of September each year to allow, where appropriate the relevant FNDC body to consider the inclusion of the BID target rate in FNDC's Annual Plan.

(b) Any other presentation as mutually agreed by the Parties.

Reporting Requirements

Each of the Parties in the BID Partnership Programme on this matter has different reporting responsibilities.

The parties and their reporting obligations are as follows:

- FNDC must provide an Annual Report to all ratepayers which may include information on the BID Partnership Programme's effectiveness and other economic development outcomes.

- The Community Board reports to its constituents and may include any information on any BID Programmes within their area.

- The Business Association reports to its members (via an AGM) and the Community Board. These parties must be able to access the following:
  - Annual audited accounts;
  - A review of the previous years activity (Annual Report);
  - A strategic plan for the next 3 to 5 years;
  - A detailed Annual Plan for the next 12 months;
  - A detailed budget for the next 12 months showing expected income and expenditure; and

  Other Reporting requirements for Business Associations

  - An annual update report to FNDC
  - Reporting requirements under the Incorporated Societies Act 1908 must be complied with.
  - The Business Association must choose a minimum of three performance measures on which to report on a regular basis. Measures are at their discretion but should be relevant to their stated objectives and/ or goals.

General Provisions

It is in the interests of both the Business Association and the Community Board to understand how effectively the MOU approach is working and whether it is beneficial to the Parties' desired outcomes. The working relationship will be reviewed at regular intervals.

Payment of BID Targeted Rate and Recovery of 50% of BID Establishment Grant.

FNDC will deduct 50% of the total cost of the initial BID establishment grant from the BID targeted rate in the first successful BID targeted rates strike.

In the first year of a successful BID targeted rate being struck FNDC will pay 50% of the remaining targeted rate (after the 50% of the total cost of the BID establishment grant has been deducted first). This will be payable after the 1st July 2012 and the remaining 50% of the BID target rate will be payable from the beginning of the 3rd quarter of the financial year.

In subsequent years the BID targeted rate will be payable on a quarterly basis, with the first payment being due on 1st of July 2013.

Change to BID Target Rate Income

The Business Association's constitution is to be used as the starting point for the annual budget to be increased and for gaining approval for a change to the BID Target Rate Income

Council anticipates that this will be achieved by special resolution of members at an Annual General Meeting or Special General Meeting.

The maximum amount a Business Association can increase or decrease their annual BID targeted rate by vote of members at an AGM is by 5% of their existing targeted rate or a maximum of $5,000 if the 5% increase is greater than $5,000.

The Business Association needs to identify this amount in its planning documents and budgets, which are then distributed to eligible voters as part of the AGM / SGM process.

In the interests of transparency and accountability for the Business Association, the BID target rate increase or decrease amount requested should be identified clearly against its proposed purpose.

It is advisable that AGMs are timed to align with FNDC's annual planning process to ensure that the Business Association's request for the increased or decreased BID target rate amount is captured in (next year's) Council Annual Plan.

Activities

Special Circumstances

1. It is in the interest of all parties to operate successfully. Circumstances can occur which may need action to be taken if serious concerns regarding the operation of the BID Partnership Programme are raised. Action by FNDC would be initiated as a last resort and in agreement with the Community Board and if possible, the Business Association executive.

Concerns may arise through governance, management or operational procedures that expose the Business Association unnecessarily to risk.

Examples that may be considered a serious concern include, but not limited to:

- Failure of the Business Association's executive to consistently meet the constitutional rules, which impact on the Association's ability to meet the requirements of the Incorporated Societies Act 1908;
- When FNDC is aware of inappropriate business practices (e.g. misappropriation of BID Programme funds);
- Continuing financial issues such as overspending or the accumulation of unsustainable debt.

2. In some extreme circumstances, FNDC may need to intervene in a Business Association's management of its BID partnership Programme. If practical, the purpose of this intervention is the sustainability and the continuation of the Business Association as an independent entity able to fulfil its obligations.

FNDC intervention would be through one of the following approaches:

- Management of the BID Partnership Programme by FNDC officers or nominated representative. In these circumstances, the original Business Association Executive Committee will have failed to meet its legal obligations. The purpose of this approach would be to rebuild the BID governance in order to return it to independent management and henceforth the continuation of the Business Association and BID Partnership Programme. Specific actions would be agreed on a case by case basis;
- Support of the Business Association by FNDC officers or nominated representatives. Council officers or nominated representatives would work alongside the Business

Association's Executive Committee to resolve issues and find solutions on a case by case basis.

3. In very exceptional circumstances and as a last resort after all approaches have been exhausted, FNDC may initiate a Ballot to review the BID Partnership Programme's continuation.

FNDC in considering whether to initiate such a ballot must:

- Seek feedback from the Community Board;
- Seek legal advice on the situation; and
- Cover all cost relating to the Ballot

Such ballot must be carried out in a similar manner to the BID establishment ballot.

4. If a mandate has been achieved to continue with the Kaitaia BID partnership Programme and to receive BID target funds, FNDC officers must consider the best way forward for the Programme and consult with the Community Board on how to raise the Business Association to a functioning level.

If the Ballot produces a Kaitaia mandate to discontinue the BID Partnership Programme in Kaitaia and cease collecting of the BID targeted rate, FNDC officers will take appropriate steps to remove the Business Association from the BID Partnership Programme.

Winding-up Provisions

There are three parties who may request a review of a BID partnership Programme:

1. The Business Association Executive Committee;
2. The BID Association members – member initiated; and
3. FNDC

If after due consideration the Business Association no longer wishes to continue as a BID Partnership programme and to receive the annual target rate amount they are required to:

- Pass a resolution at an Executive meeting;
- Formally notify FNDC as soon as practically possible, and forward on a copy of the minutes of this meeting to FNDC; and
- Formally notify the Community Board as soon as practically possible, and forward a copy of the minutes of this meeting to the Community Board.

A ballot to review the continuation of the BID Partnership Programme and BID targeted rate shall be carried out in a similar manner to the BID establishment ballot.

Dispute Resolution

Any disputes between the Business Association and FNDC will be settled in accordance with the following procedure.

Having exhausted normal means of resolving a dispute or difference (by engaging in a process of good faith negotiation and information exchange), either party may give written notice specifying the nature of the dispute and its intention to refer such dispute or dispute to mediation.

If a request to mediate is made then the party making the request will invite the chairperson of the New Zealand Chapter of Lawyers Engaged in Dispute Resolution ("LEADR") to appoint a mediator to enable the parties to settle the dispute. All discussions in the mediation will be without prejudice and will not be referred to in any later proceedings.

The parties will bear their own costs in the mediation and will equally share the mediator's costs.

If the dispute is not resolved within a further 30 days after appointment of a mediator by LEADR, any party may refer the matter to arbitration by a sole arbitrator in accordance with the Arbitration Act 1996.

The award in the arbitration will be final and binding on the parties.

SIGNED BY

The Mayor

Chairman of the Te Hiku Community Board

Chairman of Kaitaia Business Association