

INDEPENDENT CONTRACT AGREEMENT

THIS AGREEMENT is made this day of 2008

PARTIES

1. **DIRECTOR-GENERAL OF CONSERVATION**, ("the D-G")
2. **THE TRUSTEES OF THE MILFORD COMMUNITY TRUST**, ("the Contractor" referred to in this Agreement and Schedules as "the Trust")

BACKGROUND

- A. The Department of Conservation *Te Papa Atawhai* has responsibility for protecting and promoting New Zealand's biodiversity and managing the use of New Zealand's historic and natural resources. Its goal is to be recognised as a world leader in the provision of responsive and cost effective conservation services.
- B. The Department's mission is "*To conserve New Zealand's natural and historic heritage for all to enjoy, now and in the future*". Its vision is: "*New Zealand's natural and historic heritage is protected; people enjoy it and are involved with the Department in its conservation*".
- C. The Director-General wishes to let out on contract certain Services.
- D. The Trust has the skills and expertise necessary to carry out the Services and wishes to contract for the performance of the Services.
- E. The parties wish to record the terms and conditions of their agreement in this document and its Schedules.
- F. Under section 53(2)(i) of the Conservation Act 1987 the Director-General has the power to enter into contracts and agreements necessary for exercising such powers as to enable the Department of Conservation to perform its functions.

OPERATIVE PARTS

1. The parties agree that the Trust will perform the Services specified in the Schedules in accordance with the Department of Conservation's Standard Terms and Conditions of Independent Contracts Version 1.5 attached as Schedule 4. Where the term "Contractor" is used in the Department of Conservation's Standard Terms and Conditions of Independent Contracts Version 1.5, that term means the Trust.
2. The Trust acknowledges receipt of a copy of the Department of Conservation's Standard Terms and Conditions of Independent Contracts Version 1.5.

<p>SIGNED on behalf of the Director-General of Conservation by _____, acting under delegated authority</p> <p>Signature: _____</p> <p>In the presence of (witness)</p> <p>Signature: _____</p> <p>Name: _____</p> <p>Occupation: _____</p> <p>Address: _____</p> <p>A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-32 Manners Street, Wellington.</p>	<p>SIGNED by the Milford Community Trust under common seal:</p> <p>Affixed in the presence of:</p> <p>Trustee signature: _____</p> <p>Trustee signature: _____</p>
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Schedule 1

1.	Commencement Date (clause 1.1)	
2.	Completion Date (clause 1.1)	10 years from commencement of this Agreement.
3.	Fee (clause 4.1.1)	(i) Fees for tasks carried out by the Trust associated with provision of community services benefits and facilities pursuant to Clauses 1 and 2 in Schedule 2, will be approved by the DG in conjunction with approval of Annual Plan submitted by the Contractor, as set out in Clause 2, Schedule 2. (ii) Fees for tasks to be carried out by the Trust on behalf of the D-G pursuant to Clause 3 of Schedule 2, must firstly be agreed with the Area Manager Te Anau, prior to any task being carried out.
4.	Fee Instalment(s) and Fee Payment Date(s) (clause 4.1.1)	Quarterly, on 1 August, 1 November, 1 February and 1 May, after completion of the Services provided for in each Annual Plan, subject to such services being carried out to the satisfaction of the Supervisor.
5.	Retention Money (clause 4.1.1)	Not applicable
6.	Liquidated Damages (clause 5.16.1)	Not applicable
7.	Disbursements (clause 4.3)	Nil Total \$ 0.00
8.	Site (clause 3.6.1)	That part of Fiordland National Park known as 'Milford' being the developed area of land at the head of Milford Sound/Piopiotaahi, as set out on the attached map.
9.	Equipment, Facilities and Personnel (to be provided by the Director-General) (clause 4.4.2)	None
10.	Access arrangements over private land to be organised by the Trust (clause 4.4.2)	Notwithstanding the provisions of Clause 4.4.2 of the Standard Terms and Conditions, where the Trust requires access to or over any land at the site which is leased by the Minister to another party the Trust shall be responsible for making arrangements for such access.
11.	Approvals, consents, authorities, licences and permits to be obtained by the Trust (clause 4.4.2)	Notwithstanding the provisions of Clause 4.4.2 of the Standard Terms and Conditions, where the Trust requires other approvals, consents, authorities, licences and permits the Contractor shall be responsible for obtaining such approvals, consents, authorities, licences and permits.
12.	Supervisor (clauses 1.1 and 4.6)	Area Manager, Te Anau, Southland.
13.	Additional Documents (clause 1.2(c))	Performance standards for tasks set out in Clause 1.1, Schedule 2.

14.	Insurance (to be obtained by the Trust) (clause 5.4)	<p>A. <u>Types and amounts:</u></p> <p>(i) Public Liability insurance for: (a) general indemnity is required; and (b) Forest and Rural Fires Act extension is required; and</p> <p>(ii) Professional Indemnity insurance is not required</p> <p>(iii) Statutory Liability insurance is required</p> <p>B. <u>Other policies and amounts:</u> Nil</p> <p>C. <u>Details of all policies:</u> Note, these policies are held by Southland District Council but such policies cover the activities of the Trust (written confirmation to be provided).</p> <p>Certificate of Insurance received: No</p>
15.	Health and Safety (clause 4.5)	<p>(i) Safety Plan: Required.</p> <p>(ii) Known hazards on the Site: Falling debris, extreme climatic conditions.</p> <p>(iii) Details of any staff of the Director-General or other people in the vicinity of the Site where there is potential for some contact between the Trust and such people: Members of the public, Concessionaires and Department of Conservation Staff.</p> <p>(iv) Details of any other services being carried out by such people which might affect the Trust or the Services: Department of Conservation staff duties and Concessionaires undertaking their concession activities.</p>
16.	Fires on the Site (clause 5.5.4)	Not permitted without an appropriate permit being granted
17.	Addresses for service (clause 5.20)	<p>The Director-General's address for service is: P O Box 743 Invercargill Phone: 03 2144589 Fax: 03 2144486</p> <p>The Trust's address for service is: C/- Southland District Council P O Box 903 Invercargill Phone: Fax:</p>

Note: The clause references are to the Department of Conservation's Standard Terms and Conditions of Independent Contracts Version 1.5 attached as Schedule 4

Schedule 2 - Special Conditions

Contract to provide community services, benefits or facilities on behalf of the Director-General and Minister of Conservation

BACKGROUND

- A. The Minister of Conservation ("the Minister") and the Director General ("the D-G") are empowered to provide community services, benefits and facilities for the benefit of Concessionaires, which may also benefit the general public visiting the area.
- B. The Minister sets the contribution for any such community services, benefits and facilities and it is due and payable to the Minister, pursuant to s17ZH of the Conservation Act 1987.
- C. The Minister can also impose a reasonable charge (on Concessionaries and members of the public) for use of facilities s/he provides in or in respect of a national park pursuant to s49(3) of the National Parks Act 1980.
- D. The Minister or Director General can require payment of a royalty etc. pursuant to s60D of the Conservation Act, where s/he reaches any approval...or decision and a person is able or more easily able to carry on an activity or would be able more easily to make a larger profit.
- E. The D-G can collect the above on the Minister's behalf.
- F. The D-G recognises there is a need to provide certain community services, benefits and facilities at Milford for the benefit of Concessionaires
- G. The D-G approves the provision of the community services benefits and facilities set out in this Agreement. The Minister however must give separate approval for an appropriate contribution.
- H. The D-G wishes to employ the following services of the Trust in the provision of such community services, benefits and facilities and to carry out associated tasks on behalf of the D-G.

1. Provision of community services benefits and facilities

- 1.1 Where the following community services, benefits and facilities are not provided at Milford, the Trust, may subject to Clause 2 of this Schedule 2, provide such for the benefit of Concessionaires at Milford (*relevant performance standards to be provided by the D-G and form part of this contract*) including:
 - 1.1.1 Rubbish removal service;
 - 1.1.2 Maintenance of roads excluding State Highway 94 and any roads contained in an area leased by the Minister to a third party;
 - 1.1.3 Maintenance of Storm water and Drainage;
 - 1.1.4 Maintenance, monitoring and management of Cleddau riverbank protection works;
 - 1.1.5 Maintain an over-view of and recommend priorities for local works;
 - 1.1.6 Manage and co-ordinate with Milford Concessionaires to ensure that the Milford area has a tidy and well maintained appearance; and
 - 1.1.7 Other such:
 - 1.1.7.1 community services, benefits or facilities for the benefit of Concessionaires at Milford, and/or
 - 1.1.7.2 tasks the D-G may wish the Trust to carry out on his behalf, as may be agreed in writing between the D-G and the Trust from time to time.

- 1.2 Where the community services, benefits and facilities listed in Clause 1.1 above are already provided at Milford, the Trust may, where appropriate (and with the written agreement of any owner of such service, benefit or facility), manage the provision of such services, benefits and facilities.
- 1.3 The Trust shall also:
- 1.3.1 Consider and report to the D-G on matters in Clause 1.1 and 1.2 affecting Concessionaires at Milford, which may also affect the general public visiting the area;
 - 1.3.2 Consider, report and make recommendations (as appropriate) on all matters referred to it by the D-G;
 - 1.3.3 Recommend a total contribution (the community contribution fee "CCF") to the Director General (which must then be approved by the Minister) in accordance with the amount required to fund the proposed Annual Programme of Works for community services, benefits and facilities for Concessionaires at Milford, as prepared in accordance with Clause 2 of this Schedule 2. The Director-General will apportion the fees amongst Concessionaires and advise the Trust;
 - 1.3.4 Collect from Concessionaires, on behalf of the D-G, the CCF approved by the Minister pursuant to Clause 1.3.3 above;
 - 1.3.5 Advise the D-G and be responsible for the collection of any outstanding CCF unpaid by Concessionaires on the expiration of 3 months after the service of demand made on the Concessionaire by the Trust. The D-G must be kept fully informed of action taken to recover such funds;
 - 1.3.6 Monitor annually, the balance between capacity, demand and supply for community services, benefits and facilities e.g. infrastructure assets and infrastructure services, provided by all parties at Milford (including Concessionaires), and, when appropriate:
 - 1.3.6.1 Identify options for improvement and undertake financial analysis of options;
 - 1.3.6.2 Propose options and make recommendations, via the Annual Planning Process set out in Clause 2 of this Schedule 2, to the D-G regarding:
 - 1.3.6.2.1 intervention to ensure continuity of capacity and supply and
 - 1.3.6.2.2 any action needed to be taken to facilitate this; and
 - 1.3.6.3 Liaise with Infrastructure providers in Milford including but not limited to power, phone, water, electricity, sewerage etc. as necessary and use its best endeavours to ensure continuity of capacity of those services.
- 1.4 In entering into any contracts to carry out the above tasks in clause 1.1 and 1.2. the Trust shall:
- 1.4.1 Use the Southland District Council's standard contract documentation and procedures for any contracts entered into;
 - 1.4.2 Insert the name of the Director-General as the beneficiary of any contracts entered into with the Contractor and a third party for the purpose of Clauses 1.1 and 1.2 and state the Director-General may enforce any of the conditions of the contract as if he were a party to it; and
 - 1.4.3 Comply with Southland District Council tendering guidelines (attached as Schedule 3).
- 1.5 Where any work or services in this Agreement is work or services that would normally be carried out by the Southland District Council, all work shall be of a design and construction so as to comply with the requirements and standards of the Southland District Council or with the specifications set out in the contract documentation or as approved from time to time by the Group Manager Services and Assets Southland District Council.

2. Tasks associated with provision of community services benefits and facilities

Annual Plan of Works and Costs

- 2.1 The Trust shall submit the following to the D-G for review not less than 3 months prior to the commencement of each financial year:
- (a) an Annual Plan that sets out:
 - (i) what services, benefits and facilities the Trust recommends are provided for Concessionaires at Milford in that financial year; and
 - (ii) the total amount that needs to be collected from Concessionaires at Milford in the relevant financial year to cover the matters set out in Clause 2.1(a)(i) above; and
 - (iii) proposed expenditure of such monies;
 - (iv) the estimated costs to the Trust in providing the services set out in this contract for that particular financial year.
- 2.2 The Trust, as a CCO, is required by the Local Government Act 2002 to go through public planning and reporting processes. Some documentation prepared under that Act can be reviewed by the D-G pursuant to clause 2.1 above. Although the D-G can make a submission via those processes on the matters covered in Clause 2.1, he has powers under the Conservation and National Parks Act that cannot be delegated.
- 2.3 The D-G will use his best endeavours to ensure that:
- (i) any issues, concerns and/or changes required for the matters specified in clause 2.1 are communicated to the Trust as soon as is practicable but no later than the time frame referred to in Clause 2.6 below; and
 - (ii) any unnecessary overlap or duplication between Local Government Act processes and the review required pursuant to clause 2.1 is avoided.
- 2.4 The Trust will use its best endeavours to ensure that any issues or concerns raised by the D-G are taken into account or required changes are made.
- 2.5 Subject to Clause 2.2, the Plans specified in Clause 2.1 must be provided to the D-G before any plans, policies and/or statements of intent procedures are commenced pursuant to the Local Government Act 2002 (or under some agreement/requirement of the Southland District Council).
- 2.6 The outcome of any review by the D-G (or adjustment as the case may be) of the plans referred to in Clause 2.1 above shall be communicated to the Trust within 40 working days of the date of submission of such plans.
- 2.7 The Trust shall provide the D-G with a half yearly financial statement within two months of the end of the first half of each financial year.
- 2.8 Within three months of the end of each financial year the Trust shall provide the D-G with an audited annual report on the financial performance of the Trust's operations under this contract.
- 2.9 All financial management by the Trust under this contract shall be carried out in accordance with the financial management requirements of the Local Government Act 2002 and generally accepted accounting principles.
- ### **3. Tasks to be carried out on behalf of the D-G**
- 3.1 Before the Trust carries out any of the tasks listed below or any other task requested by the D-G, the details of such tasks must firstly be agreed in writing with the Area Manager, Te Anau.

- 3.2 The Trust shall monitor compliance with camping bylaws at Milford Sound. This will be carried out by the community trustee representative, unless otherwise agreed with the D-G.
- 3.3 The Trust may provide advisory input into appropriate signage for Milford Sound.
- 3.4 The Trust will, if requested, incorporate Department of Conservation news in quarterly updates the Trust contributes to.
- 3.5 The Trust will provide an overall concept plan for upgrading Deepwater Basin Facilities, subject to final requirements being communicated in writing to the Trust by the D-G.
- 3.6 The Trust may be invited to participate on any Department of Conservation committees or groups meeting to discuss:
 - 3.5.1 Provision and management of fire fighting services;
 - 3.5.2 Civil Defence initiatives;
 - 3.5.3 Emergency response activities.

4. **Special conditions**

- 4.1. Further to clause 5.13 of the General Conditions of Contract (termination provisions), either party may terminate this Agreement by giving 3 months written notice of such termination to the other party.
- 4.2 The Parties can, by written agreement, vary, amend or add to this Agreement.

Schedule 3

Southland District Council Tendering guidelines

Schedule 4

Department of Conservation's Standard Terms and Conditions of Independent Contracts Version 1.5

(attach WGNHO 297506)