

Ministry of Business, Innovation and Employment

Funding Agreements

Meeting: Kaipara District Council
Date of meeting: 28 October 2020
Reporting officer: Jim Sephton, General Manager Infrastructure Services

Purpose/Ngā whāinga

To seek Council approval to enter into three Funding Agreements with the Ministry of Business, Innovation and Employment (MBIE) to enable Council to uptake \$7.15m central government funding for the delivery of the Kaihu Valley Rail Trail project, Mangawhai Shared Path project and Kaiwaka Footbridges projects.

Executive summary/Whakarāpopototanga

Kaipara District Council (Council) was successful in its application for funding for three projects identified as Shovel Ready by the Infrastructure Reference Group (IRG).

\$7.15m of funding has been allocated across the following projects: Kaihu Valley Rail Trail (\$4m), Mangawhai Shared Path (\$2.4m) and Kaiwaka Footbridges and Linked Pathways (\$0.75m).

The Ministry of Business, Innovation and Employment (MBIE) have provided three funding agreement's representing the total of \$7.15m funding for the above-mentioned projects, these agreements are required to be approved by Council.

If Council is prepared to sign the contracts, then it is likely that funds will be made available and the projects will be able to progress.

Recommendation/Ngā tūtohunga

That the Kaipara District Council:

- a) Approves signing of the Kaihu Valley Rail Trail Funding Agreement, Mangawhai Shared Path Funding Agreement and Kaiwaka Footbridges and Linked Pathways Funding Agreement with the Ministry of Business, Innovation and Employment that would enable Council to uptake \$7.15m funding for the delivery of shovel ready projects.
- b) Delegates authority to the Chief Executive Officer to execute the Kaihu Valley Rail Trail, Mangawhai Shared Path and Kaiwaka Footbridges and Linked Pathways Funding Agreements.

Context/Horopaki

In Budget 2020, Cabinet agreed to provide a \$3 billion investment in infrastructure to support New Zealand's economic recovery as part of the 11 May COVID-19 Response and Recovery Fund. The Government established the Infrastructure Reference Group (IRG) to identify a pipeline of projects to support.

Kaipara District Council (Council) was successful in its application for funding through the Infrastructure Reference Group (IRG) for several projects which were identified as shovel-ready and able to support the economy during the COVID-19 rebuild. This included the Kaihu Valley Rail Trail project, Mangawhai Shared Path project and Kaiwaka Footbridges projects.

Discussion/Ngā kōrerorero

Three independent funding agreements have been drafted by the Ministry of Business, Innovation and Employment (MBIE). Council will use the funding to deliver the following:

Kaihu Valley Rail Trail (\$4m)

Construct a 36km walking and cycle trail from Dargaville to Donnelly's Crossing, on the west coast of Kaipara District. This trail will follow sections along a former railway corridor which forms part of a longer planned trail called the "Ancient Kauri Trail". The "Ancient Kauri Trail" will eventually run from Maungaturoto to the southern headland of the Hokianga Harbour in the Far North District.

In the contract it is noted that (Noted that the \$4m is less than the \$9m+ estimate from the Business Case ("Ancient Kauri Trail") dated November 2019 submitted to CIP and that it will not be possible to create a fully segregated facility at this stage.)

Mangawhai Shared Path (\$2.4m)

Construction of approximately 3.8 km of shared pathways and improvements to the intersections of Insley Street and Moir Street; and Molesworth Drive and Moir Street. This will include the construction of two roundabouts and supporting shared pathways.

MBIE are aware that the project is subject to NZTA approval of construction funding which is currently being finalised.

Kaiwaka Footbridges and Linked Pathways (\$0.75m)

Construction of two bridges in Kaiwaka, approximately 25 metres each in length. The project will also construct a pathway which will provide safe walking and cycling through Kaiwaka township, linking shops, schools, public transport stops and the park so that the community do not have to navigate SH1 to move around the township.

The funding agreements, as with any agreement of this type, includes MBIE imposing conditions on the release of funds. There are summarized as follows:

1. Satisfaction of the condition's precedent at agreement level;
2. Satisfaction of conditions related to release of funding for deliverables;
3. Final Approval of any instalments payable for deliverables;

Final Approval of any instalments payable for deliverables

Financial implications

Subject to Council approving the Kaihu Valley Rail Trail, and Kaiwaka Footbridges and Linked Pathways Funding Agreements, the projects would be 100% subsidised by central government to a total of \$4.75m.

The Mangawhai Shared Path project scope as outlined in the Agreement requires a 61% subsidy from Waka Kotahi (NZTA) to deliver. An application to Waka Kotahi is to be submitted once cost estimates and MBIE agreements are finalised.

Risks and mitigations

The key potential risks and liabilities associated with the funding agreements are:

- MBIE is not required to make any payments under the Agreements until the following conditions have been satisfied (in the Ministry's sole discretion): which include the Project being on track to be completed by the Completion Date.
- MBIE retaining several discretions to withhold the funding (or part of it) or terminate the agreement. Clause 4.2 of the General Terms in particular, which gives MBIE the right to terminate the agreement on 10 business days' notice.

The programme team will be monitoring and managing progress to meeting these contractual obligations and conditions under the guidance and governance of the Externally Funded Projects governance team. Regular programme reporting will provide progress updates towards achieving these conditions.

There is a risk that any change in Government priorities may result in the Government reallocating any funding previously announced but not formally contracted by way of an executed Funding Agreement. The mitigation to this is to progress the execution of the contract.

The Mangawhai Shared Path project scope requires 61% subsidy from Waka Kotahi (NZTA), should this subsidy not be secured a revision of the project scope would be required and a revised Funding Agreement between MBIE and Council established.

The programme team will seek to reduce some of the risks and potentially liability associated with the new funding agreements by aligning, as far as possible, construction contract terms, and timing of construction programmes, with funding availability.

Options

Option 1 – Council approves entering into a contract with MBIE for the three projects and funds are made available

Option 2 – Council does not approve. MBIE have clarified that no further changes will be made to the contract and that any contracts not executed will put funds at risk.

The preferred option is **Option 1**.

Significance and engagement/Hirahira me ngā whakapapa

The decisions or matters of this report do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via agenda on the website.

Next steps/E whaiake nei

Should Council approve the resolution, the Kaihu Valley Rail Trail Agreement, Mangawhai Shared Path Agreement and Kaiwaka Footbridges and Linked Pathways Agreement will be signed by the Chief Executive Officer.

The programme team will then commence delivery of the Kaihu Valley Rail Trail project, Mangawhai Shared Path project and Kaiwaka Footbridges and Linked Pathways project within the scope outlined in the Funding Agreements.

Attachments/Ngā tapiritanga

	Title
A	Kaihu Valley Rail Trail Funding Agreement
B	Mangawhai Shared Path Agreement
C	Kaiwaka Footbridges and Linked Pathways Agreement

**INFRASTRUCTURE REFERENCE GROUP
FUNDING AGREEMENT
FOR
KAIHU VALLEY RAIL TRAIL**

BETWEEN The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment (**Ministry**)

AND Kaipara District Council, a territorial authority listed in Part 2 of Schedule 2 to the Local Government Act 2002, with offices at 42 Hokianga Road, Dargaville 0310, New Zealand (**Recipient**)

BACKGROUND

The Ministry wishes to contribute to the Project by providing Funding from the appropriation set out in Schedule 1 (**Details**) on the terms set out in this Agreement.

AGREEMENT

The Ministry will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in Schedule 1 (**Details**), Schedule 2 (**Funding Agreement Standard Terms and Conditions**), Schedule 3 (**Project**), Schedule 4 (**Social Procurement Outcomes**) and Schedule 5 (**Monthly Report Template**).

SIGNED by the **SOVEREIGN IN RIGHT**)
OF NEW ZEALAND acting by and)
through the Chief Executive of the)
Ministry of Business, Innovation and)
Employment or their authorised)
delegate:)

Ben Dalton, Chief Operating Officer of
the Provincial Development Unit

Date

SIGNED for and on behalf of **KAIPARA**)
DISTRICT COUNCIL by its authorised)
signatory:

Louise Miller, Chief Executive Officer,
Kaipara District Council

Date

SCHEDULE 1 – DETAILS

1 CONTEXT

- 1.1 In Budget 2020, Cabinet agreed to provide a \$3 billion investment in infrastructure to support New Zealand's economic recovery as part of the 11 May COVID-19 Response and Recovery Fund [CAB-20-MIN-0219.04 refers].
- 1.2 The Government established the Infrastructure Reference Group (**IRG**) to identify a pipeline of shovel-ready projects to support the economy during the COVID-19 rebuild. This process was supported by Crown Infrastructure Partners.
- 1.3 On 24 June 2020, the Cabinet Economic Development Committee, agreed that the Ministry (acting through the Provincial Development Unit) would be responsible for delivering projects approved by IRG Ministers where they are best placed to do so [CAB-20-MIN-0341 refers].

2 APPROPRIATION AND APPROVAL PROCESS

- 2.1 Funding is from a Non-departmental Other Expenses Supporting Infrastructure Appropriation, Vote Business, Science and Innovation authorised by Cabinet on 20 July 2020.

3 FUNDING

- 3.1 **Funding Total:** This Agreement provides funding for a total amount of up to \$4,000,000 (plus GST, if any) (**Funding**). This is the Total Maximum Amount Payable by the Ministry.
- 3.2 **Application of Funding:** The Recipient:
- (a) must apply the Funding in accordance with the Project (**Schedule 3**), subject to any variation of the Project agreed with the Ministry in writing; and
 - (b) must not use the Funding for any part of the Project that is or was already funded by any party (including the Recipient, unless otherwise approved by the Ministry in writing), or in relation to any activity which the Ministry advises the Recipient that it may not apply the Funding to.
- 3.3 **Overruns:** The Parties acknowledge that the Funding in clause 3.1 is the Total Maximum Amount Payable by the Ministry for the Project, and that the Recipient will be liable for all cost overruns in relation to the delivery of the Project. The Ministry will not be liable for any cost overruns. The Recipient will carefully monitor the likelihood of cost overruns through its budgeting and reporting process, and will notify the Ministry as soon as it is aware that there is a likelihood that Project Costs will exceed the Total Maximum Amount Payable under this Agreement.

4 PROJECT

- 4.1 **Project:** The Recipient will use the Funding to support the costs of constructing the Kaihu Valley Rail Trail, a 36km walking and cycle trail from Dargaville to Donnelly's Crossing, on the west coast of Kaipara District. This trail will follow sections along a former railway corridor which forms part of a longer planned trail called the "Ancient Kauri Trail". This will eventually run from Maungaturoto (to the south) to the southern headland of the Hokianga Harbour in the Far North District, as set out further in **Schedule 3**.

- 4.2 **Project Outcomes:** The outcomes of the Project that align with the Funding criteria include:
- (a) new employment, the preservation of jobs and the redeployment of workers in communities and within the infrastructure sector hit by COVID-19; and
 - (b) investment toward a more productive, sustainable and inclusive economy, enabling our regions to grow and support a modern and connected New Zealand.
- 4.3 **Delivery:** The Recipient must ensure that:
- (a) the Construction Commencement Date is within 12 months from the Commencement Date (**Schedule 3**);
 - (b) it obtains all consents required (including without limitation, statutory consents, permissions and licences) to carry out the Project in accordance with the consenting timeframes set out in Schedule 3. The Recipient will notify the Ministry immediately if any consent is not achieved, expires, is withdrawn, is breached or otherwise lapses;
 - (c) its contractor(s):
 - (i) have accountability and deliver any construction contracts on time, within budget and to meet the relevant building codes and consents, as required for the Project to be undertaken; and
 - (ii) provide all necessary information to it that will allow the Recipient to promptly notify the Ministry if any material event or circumstance occurs which may be detrimental to the Project and its delivery (including any identified funding short fall or potential cost overruns); and
 - (d) the Project is carried out:
 - (i) promptly with due diligence, care and skill, and in a manner that meets or exceeds Best Industry Practice;
 - (ii) by appropriately trained, qualified, experienced and supervised persons;
 - (iii) in accordance with any directions of the Ministry, notified by the Ministry in writing from time to time;
 - (iv) to the high standard set out in any Project documentation submitted to the Ministry, including any Minister of the Crown or any Government Agency, and any further plans, designs, or other Project documents submitted to, and approved by, the Ministry; and
 - (v) in a manner that takes into account the Construction Sector Accord's principles and guidelines.

5 PROCUREMENT

- 5.1 In delivering the Project, the Recipient must ensure that all tendering and procurement arrangements:
- (a) occur at pace, time being critical; and
 - (b) comply with any agreed Social Procurement Objectives detailed in **Schedule 4**.

6 PAYMENT TERMS

6.1 Subject to the terms of this Agreement, the Ministry will pay the Funding to the Recipient in the following instalments:

Completion Date	Project Deliverable	Instalment payable (plus GST, if any)
Commencement Date	This Agreement executed by both parties. Recipient to provide evidence to the Ministry that the procurement plan has been completed and the head contractor has been appointed.	Up to \$400,000
February 2021	All required consents (excluding water crossings) have been obtained and Project is "shovel ready". Construction commences. Recipient to provide evidence of consents to the Ministry and evidence that the previous instalment has been spent/committed in full.	Up to \$2,000,000
October 2021	Evidence that 50% of the Project is complete. All required water crossing consents have been obtained. Recipient to provide evidence that the previous instalment has been spent/committed in full.	Up to \$1,200,000
October 2022	Construction complete.	Up to \$400,000 (or the remainder of the Funding Total, as set out in clause 3.1)

6.2 **Payment preconditions:** The Ministry is not required to make any payments under this Agreement until the following conditions have been satisfied (in the Ministry's sole discretion):

- (a) in relation to each Instalment (except the First Instalment), the Recipient has provided the Ministry with copies of the GST invoices for all payments over \$1,000 paid by the Recipient to third parties using the previous Instalment;
- (b) in relation to each Instalment (except the First Instalment), the Recipient has provided a valid GST invoice for the Instalment;

- (c) in relation to each Instalment (except the First Instalment), the Recipient provides a certificate (or similar) signed by the relevant construction contractor which:
 - (i) certifies the progress of the Project;
 - (ii) certifies the costs incurred by the Recipient;
 - (iii) certifies the Project is on track to be completed by the Completion Date;
 - (iv) notifies the Ministry of any variations to the relevant construction contract; and
 - (v) provides the cost to complete the Project;
- (d) the Recipient has delivered all Monthly Reports required under clause 5, Schedule 2 to the Ministry's satisfaction;
- (e) the Recipient is not in breach of any provision of this Agreement; and
- (f) the Ministry is satisfied in its sole discretion that:
 - (i) the Project is progressing as approved; and
 - (ii) the Funding has been applied in accordance with clause 4 of this Schedule including pursuant to any discussions with the Recipient.

7 TERM

- 7.1 **Commencement Date:** The Commencement Date is the date that this Agreement has been signed by both Parties.
- 7.2 **Completion Date:** The Completion Date is the date that is two years from the Commencement Date.

8 REPORTING REQUIREMENTS

- 8.1 **Monthly Reports:** The Recipient will provide the Ministry with a monthly report, completed on a template attached as Schedule 5, by the 3rd Business Day following the end of each month.
- 8.2 **Ministry satisfaction:** For the avoidance of doubt, if any one or more of the Monthly Reports do not satisfy the Ministry that the Project is progressing in accordance with Clause 4 of this Schedule, the Ministry will be entitled to terminate the Agreement and recoup all unspent funds in accordance with clause 4 of Schedule 2.
- 8.3 **Final Report:** A Final Report within 1 month following the Completion Date in the Ministry's approved form.
- 8.4 **Further information:** The Recipient will promptly provide all information requested by the Ministry necessary to verify the Recipient's performance under this Agreement, including (without limitation) its procurement documentation, subcontracts, financial and technical information, and records of the number and make-up of the workers hired to undertake the Project.

9 ADDRESS FOR NOTICES

Ministry	Recipient
<p>Ministry of Business, Innovation and Employment 15 Stout Street PO Box 1473 WELLINGTON 6011</p> <p>Attention: Vibeke Wright, Senior Regional Advisor, Provincial Development Unit</p> <p>Email address: Vibeke.wright@mbie.govt.nz</p> <p>Contact person: Vibeke Wright</p>	<p>Kaipara District Council 42 Hokianga Road DARGAVILLE 0310 New Zealand</p> <p>Attention: Jim Sephton, General Manager Infrastructure</p> <p>Email address: jsephton@kaipara.govt.nz</p> <p>Contact person: Jim Sephton</p>

SCHEDULE 2 – FUNDING AGREEMENT STANDARD TERMS AND CONDITIONS

1 INTERPRETATION

1.1 In this Agreement, the following terms have the following meanings:

“Agreement” means this agreement, including Schedules 1 to Schedule 5;

“Best Industry Practice” means that degree of skill, care and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Recipient or any contractors (as applicable) under the same or similar circumstances as those contemplated by this Agreement;

“Business Day” means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

“Commencement Date” means the date that this Agreement has been signed by both Parties;

“Completion Date” means the date set out in Schedule 1;

“Confidential Information” includes all information and data (in any form) concerning the organisation, administration, operation, business, clients, finance, and methods of the Ministry, including any information provided by the Ministry under or in connection with this Agreement;

“Construction Commencement Date” means the date that construction works must commence, as described in Schedule 3.

“Final Report” means the report, as described in Schedule 1;

“Funding” means the funding amount set out in Schedule 1;

“GST” means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

“Instalment” means the payment instalments in Schedule 1;

“Intellectual Property Rights” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

“Deliverable” means the Project Deliverables in Schedule 1;

“Monthly Report” means the report completed on the template in Schedule 5;

“Parties” means the Ministry and the Recipient and their respective successors and permitted assigns;

“Project” means the project described in Schedule 1 and Schedule 3;

“Project Costs” means the total costs of the Project described in Schedule 3;

“Social Procurement Objectives” means the agreed objectives described in Schedule 4; and

“Total Maximum Amount Payable” has the meaning given in Schedule 1.

1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.

- 1.3 The headings in this Agreement are for convenience only and have no legal effect.
- 1.4 The singular includes the plural and vice versa.
- 1.5 “Including” and similar words do not imply any limitation.
- 1.6 References to a statute include references to that statute as amended or replaced from time to time.
- 1.7 Monetary references are references to New Zealand currency.
- 1.8 If there is any conflict of meaning between Schedule 1 and Schedule 2, Schedule 2 will prevail.
- 2 FUNDING**
- 2.1 The Ministry must pay the Funding (up to the Total Maximum Amount Payable) at the rate and in the manner set out in Schedule 1 to the Recipient, subject to the terms of this Agreement.
- 2.2 The Recipient must provide a valid GST invoice that complies with the Goods and Services Tax Act 1985 for each Instalment. The invoice must:
- (a) be sent directly to the Ministry via email to monitorpgf@mbie.govt.nz;
 - (b) be copied to the relevant Ministry contact person as set out in clause 9 of Schedule 1;
 - (c) include sufficient information reasonably required to enable the Ministry to validate the claim for payment including a reference to this Agreement (under which the invoice is issued); and
 - (d) be clearly and legibly marked to Ministry staff as advised by the Ministry to the Recipient from time to time.
- 2.3 The Funding is inclusive of all taxation except GST. The Ministry will be entitled to deduct any withholding tax required to be withheld by law from payments made to the Recipient and will not be required to gross-up or increase any such payments in respect of such amounts withheld.
- 2.4 The Recipient must use the Funding only to carry out the Project in accordance with this Agreement.
- 2.5 In consideration of the Funding, the Recipient must:
- (a) progress the Project to the Ministry’s satisfaction;
 - (b) complete the Project to the Ministry’s satisfaction by the Completion Date;
 - (c) carry out the Project in accordance with:
 - (i) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Project; and
 - (ii) all applicable laws, regulations, rules and professional codes of conduct or practice; and
 - (d) refund any unspent Funding to the Ministry within 10 Business Days of the Completion Date.
- 2.6 Where all of the monies received by the Recipient to carry out the Project (including the Funding) exceeds the total Project Costs of the Project, the Recipient must refund to the Ministry the excess amount. The Recipient is not required to refund, under this clause 2.6, any amount that exceeds the Total Maximum Amount Payable.
- 2.7 The Recipient must ensure (and must procure that any contractor it uses ensures) that all agreements it enters into with contractors or any other party in connection with the Project are on an “arm’s length” basis and provides value

for money. To the extent that the expenditure relates to work performed by parties not at “arm’s length”, that expenditure must be assessed at reasonable market value, and contain no unacceptable overhead and no element of “in group profit”.

3 PROJECT DELIVERY AND PROGRESS

3.1

If:

- (a) the Ministry is not satisfied with the progress of the Project;
- (b) the Construction Commencement Date has not been met;
- (c) the Recipient does or omits to do something, or any matter concerning the Recipient comes to the Ministry’s attention, which, in the Ministry’s opinion, may damage the business or reputation of the Ministry; or
- (d) the Recipient breaches any of its obligations under this Agreement,

the Ministry may (without limiting its other remedies):

- (e) renegotiate this Agreement with the Recipient; or
- (f) terminate this Agreement immediately by notice to the Recipient, and clause 4.4, 4.5 and 4.6 will apply.

4 TERM AND TERMINATION

4.1

Subject to clauses 4.2 and 4.3, this Agreement will commence on the Commencement Date and expire when:

- (a) the Final Report is completed and provided to the Ministry; and
- (b) the Project is completed, to the Ministry’s satisfaction.

4.2

The Ministry may terminate this Agreement at any time by giving at least 10 Business Days’ notice to the Recipient.

4.3

The Ministry may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient:

- (a) is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
- (b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
- (c) does or omits to do something, or any matter concerning the Recipient comes to the Ministry’s attention, which in the Ministry’s opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
- (d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
- (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.

4.4

Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.

4.5

On termination of this Agreement, the Ministry may (without limiting any of its other rights or remedies):

- (a) require the Recipient to provide evidence of how the Funding has been spent; and/or
- (b) require the Recipient to refund to the Ministry:

- (i) any of the Funding that has not been spent or committed by the Recipient. For the purposes of this clause, Funding is committed where it has been provided or promised to a third party for the purpose of carrying out the Project and the Recipient, after using reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be); or
 - (ii) the proportion of the Funding that equates to the uncompleted part of the Project, as reasonably determined by the Ministry; and/or
- (c) if the Funding has been misused or misappropriated by the Recipient, require the Recipient to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Recipient was paid the money to the date the Recipient returns the money.

5 REPORTING REQUIREMENTS AND AUDIT

- 5.1 The Recipient must report on the progress of the Project to the Ministry:
- (a) as set out in Schedule 5;
 - (b) as otherwise reasonably required by the Ministry; and
 - (c) in any format and on any medium reasonably required by the Ministry.
- 5.2 The Recipient must:
- (a) maintain true and accurate records in connection with the

- use of the Funding and the carrying out of the Project sufficient to enable the Ministry to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Agreement;
- (b) permit the Ministry, at the Ministry's expense, to inspect or audit (using an auditor nominated by the Ministry), from time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement;
- (c) allow the Ministry reasonable access to the Recipient's premises or other premises where the Project is being carried out; and
- (d) appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding.

6 WARRANTIES

- 6.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.
- 6.2 The Recipient warrants that:
- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Recipient;
 - (b) all information provided by it to the Ministry in connection with this Agreement was, at the time it was provided, true, complete and accurate in all material respects; and

- (c) it is not aware of any material information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.
- 6.3 The Recipient acknowledges that the Ministry has entered into this Agreement in reliance on these warranties.
- 6.4 The Recipient acknowledges and agrees that the Ministry has made no warranty or representation that any funding or financial support is or will be available to the Recipient in respect of the Project other than the Funding.
- 7 INTELLECTUAL PROPERTY**
- 7.1 All Intellectual Property Rights in the reports provided under clause 8, Schedule 1 will be owned by the Ministry from the date the reports are created or developed.
- 7.2 All intellectual property produced by the Recipient or its employees or contractors in relation to the Project is, on creation, jointly owned by the Ministry and the Recipient. Each Party may use (which includes modifying, developing, assigning, or licensing) such intellectual property without obtaining the prior consent of the other Party. On request, the Recipient must provide to the Ministry such intellectual property in any format, and on any medium, reasonably requested by the Ministry.
- 7.3 The Recipient must ensure that material created or developed in connection with the Project does not infringe the Intellectual Property Rights of any person.
- 8 CONFIDENTIALITY**
- 8.1 The Recipient must:
- (a) keep the Confidential Information confidential at all times;
 - (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Project or this Agreement;
 - (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and
 - (d) ensure that any employees or contractors to whom it discloses the Confidential Information are aware of, and comply with, the provisions of this clause 7.
- 8.2 The obligations of confidentiality in clause 8.1 do not apply to any disclosure of Confidential Information:
- (a) to the extent that such disclosure is necessary for the purposes of completing the Project;
 - (b) required by law; or
 - (c) where the information has become public other than through a breach of the obligation of confidentiality in this clause 8 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.
- 8.3 The Recipient must obtain the Ministry's prior written agreement over the form and content of any public statement made by the Recipient relating to this Agreement, the Funding, or the Project.
- 9 LIABILITY AND INSURANCE**
- 9.1 The Recipient must effect and maintain insurance that is adequate to cover its obligations under this Agreement. The Recipient must, on request, provide the Ministry with evidence of its insurance cover required under this clause.

- 9.2 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.
- 9.3 The maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Project had been carried out in accordance with this Agreement.
- 9.4 The Recipient (including its employees, agents, and contractors, if any) is not an employee, agent or partner of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to meet any of the Recipient's obligations under the Health and Safety at Work Act 2015 or to pay to the Recipient:
- (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
 - (b) redundancy or any other form of severance pay; or
 - (c) taxes or levies, including any levies under the Accident Compensation Act 2001.
- 9.5 The Recipient indemnifies the Ministry against any claim, liability, loss or expense (including legal fees on a solicitor own client basis) ("loss") brought or threatened against, or incurred by the Ministry, arising from or in connection with a breach of this Agreement by the Recipient or the Project, or from the negligence or wilful misconduct of the Recipient, its employees or contractors.
- 9.6 Where the Recipient is a trustee, the Ministry acknowledges that the Recipient has entered into this Agreement as a trustee of the trust named in Schedule 1 in an independent capacity without any interest in any of the assets of the trust other than as trustee. Except where the Recipient acts fraudulently, the Recipient is liable under this Agreement only to the extent of the value of the assets of the trust available to meet the Recipient's liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the Recipient's wilful default or dishonesty.
- 9.7 The Recipient must effect and maintain for the term of this Agreement:
- (a) adequate insurance to cover standard commercial risks; and
 - (b) other insurance reasonably required by the Ministry.
- 9.8 The Recipient must, upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.
- 10 DISPUTE RESOLUTION**
- 10.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties' senior managers for resolution if necessary.
- 10.2 If the Parties' senior managers are unable to resolve the dispute within 10 Business Days of it being referred to them, the Parties will refer the dispute to mediation or another form of alternative dispute resolution agreed between the Parties.
- 10.3 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the Parties (or if they cannot agree, appointed by the Chair of the Resolution Institute of New Zealand) and on the terms of the Resolution Institute's standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative

- dispute resolution (unless they agree otherwise).
- 10.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.
- 10.5 Nothing in this clause 10 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand Court.
- 11 FORCE MAJEURE**
- 11.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement ("**Force Majeure Event**"). The Party affected must:
- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
 - (b) use its best endeavours to overcome the Force Majeure Event; and
 - (c) continue to perform its obligations as far as practicable.
- 12 GENERAL**
- 12.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.
- 12.2 Assignment:
- (a) The Recipient must not assign, delegate, subcontract or transfer any or all of its rights and obligations under this Agreement. The Recipient remains liable for performance of its obligations under this Agreement despite any approved subcontracting or assignment.
 - (b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 12.2(a).
- 12.3 This Agreement may only be varied by agreement in writing signed by the Parties.
- 12.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.
- 12.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by email or registered post to the Parties' respective email address, postal address as set out in Schedule 1. A notice is deemed to be received:
- (a) if personally delivered, when delivered;
 - (b) if posted, three Business Days after posting;

- (c) if sent by email, at the time the email enters the Recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error,

provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.

- 12.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.
- 12.7 The provisions of this Agreement relating to termination (clause 4), reporting requirements and audit (clause 5), warranties (clause 6), intellectual property (clause 7), confidentiality (clause 8), and liability and insurance (clause 9) will continue after the expiry or termination of this Agreement.
- 12.8 This Agreement may be signed in any number of counterparts (including emailed copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.
- 12.9 This Agreement will be governed by and construed in accordance with the laws of New Zealand.

SCHEDULE 3 – PROJECT

1 PROJECT DETAILS

Project name	Kaihu Valley Rail Trail (KVRT)
Location	Kaipara District (between Dargaville and Donnelly’s Crossing)
Project description	<p>Construct sections of the Kaihu Valley Rail Trail which will provide a higher quality journey between Dargaville and Donnelly’s Crossing.</p> <p><i>(Noted that the \$4m is less than the \$9m+ estimate from the Business Case (“ Ancient Kauri Trail”) dated November 2019 submitted to CIP and that it will not be possible to create a fully segregated facility at this stage.)</i></p> <p>The KVRT forms part of the Twin Coast Discovery Cycle Implementation Business Case. The existing rail corridor provides opportunity to establish an off-road cycle trail to boost the economy within Kaipara district. The proposed route will not be confirmed until all impacted landowners are consulted with. The programme of work has been established with a key focus to provide employment opportunities and training for the Kaipara community.</p> <p><u>About the KVRT</u></p> <p>KVRT will be a 36km walking and cycling track which will follow along sections of a former rail corridor from Dargaville to Donnelly’s Crossing on Kaipara’s west coast. The track will form part of a longer planned 'Ancient Kauri Trail' (AKT), eventually progressing from Maungaturoto to the southern headland of the Hokianga Harbour.</p> <p>The trail will pass through areas of historical significance to local Māori and will also draw visitors closer to the Waipoua forest estate.</p> <p>The AKT is one of the Northland Journeys incorporating premier parks, and is being developed in partnership with iwi, hapu, communities and stakeholders as part of a “Visitor Management Plan” to support Kaipara’s visitor industry.</p>

	<p><u>Benefits of the KVRT</u></p> <p>Growth - A place for new and interesting business opportunities related to the trail, e.g. hospitality, transit services, cultural tourism, or other recreational activities.</p> <p>Safety – Enhance wellbeing through local employment including those who may be vulnerable through lost employment and low skillset.</p> <p>Tourism - A new tourism addition, bringing people and visitor spending through Kaipara, to Dargaville and surrounds.</p> <p>Environmental protection – a significant length of the Kaihu River will be fenced.</p> <p>A map of the Kaipara Ancient Kauri Trail in its entirety is attached as Appendix One.</p>
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2 BUDGET DETAILS

Item	(\$) Indicative cost
Preliminaries	50,000
Project Management, Design, Environmental, Property	
Project management	250,000
Design & consultants support	350,000
Material Procurement	750,000
Main Construction Contract	
Contractor preliminary & general	450,000
Civil works / site works	1,600,000
Subtotal	3,450,000
Contingency (15%)	517,500
Total Project Costs	3,967,500

3 PROJECT TIMEFRAME

Key milestone	Indicative timeframe
Funding approved	September - October
Plan and design	
Procurement plan endorsed	21 September 2020
Award professional services contracts	30 September 2020
Obtain all consents	18 December 2020
Complete priority site visits	18 December 2020
Construction	
Award physical works contract	30 September 2020
Construction commences (Construction Commencement Date)	11 January 2021
Construction complete	October 2022
Project close	October 2022
Opening event	November 2022

SCHEDULE 4 – SOCIAL PROCUREMENT OBJECTIVES

Outcome	Measure
Employment of targeted workers	<p>Prioritising workers identifying as:</p> <ul style="list-style-type: none"> • Māori (45%) or Pasifika (5%); • Women (20%); and • 30% Youth (18 – 24 years).
Local businesses	40% of the direct contracts and sub-contracts will be awarded to businesses owned and operated by people who reside in the region, and operate in the region.
Supplier diversity	Where possible we will prioritize direct contracts and sub-contractors identifying as Maori and Pacifica.
Skills and training	<p>Training should include, but not be limited to:</p> <ul style="list-style-type: none"> • financial literacy and budgeting; • health and safety; • people management and development; and • marketing.
	<p>The Skills and Training budget is not included in this funding agreement.</p> <p>Once the Skills and Training funding source and budget is confirmed a training package will be developed to align with the deliverables required.</p> <p>A focus should be on individuals obtaining those skills sets and training that will not just benefit them in their current role, but has the ability to keep individuals connected nationally (e.g. traffic management).</p> <p>Training Development Plans should include, but not be limited to:</p> <ul style="list-style-type: none"> • individuals’ aims and goals; • plan to meet aims and goals (if realistic); • clearly identifying needs for skills, knowledge or competence; • selecting appropriate development activities; • recording of training/development opportunities undertaken; • formal recognition/certification of training (e.g. health & safety); and

	<ul style="list-style-type: none"> • other roles undertaken.
Worker conditions	<p>100% of employees will be registered with a suitably qualified health and safety testing organisation including mental health and wellness.</p> <p>All new workers undergo pre-employment induction Health & Safety. Documented Health & Safety Management Systems.</p>
	<p>Employees' wages will increase progressively in line with their career development plan achievements.</p>
Environmental responsibility	<p>Adoption of practises that enable the project to be delivered sustainably, including by:</p> <ul style="list-style-type: none"> • protecting or enhancing the local ecosystem and its indigenous biodiversity; • actively seeking to minimise the carbon impact of project delivery, to support the transition to a net zero emissions economy; • minimising waste, re-using materials, and where possible incorporating the principles of the circular economy; • using water resources efficiently; • using low-impact, sustainably and locally sourced materials and products.

SCHEDULE 5 – MONTHLY REPORT TEMPLATE

MONTHLY REPORT



Kaihu Valley Rail Trail

Location and Region:	
Contracted Amount:	
Report Date:	For the month ending [Insert month]
Programme Outcomes:	

1 Project

1.1 Provide description and analysis of actual against planned progress of each activity to show that the Project is occurring at pace.

Project element	Details of progress

2 Redeployment outcomes

2.1 Complete the following table for the number of people working to deliver the project in the current reporting period.

Project element	Total number of people working	Number of people						Job type Full-time Part-time Contractor Consultant
		Previously unemployed	Local	Aged 15-24	Māori	Pasifika	Women	
Total								

2.2 Complete the following total jobs table, showing total, current, past and expected future jobs.

Current jobs (this should be the Total People Working in the table above)	People previously but no longer employed on the project	Expected jobs in the future

2.3 Provide any additional narrative to explain the table or give other relevant information.

3 Supplier diversity outcomes

3.1 Complete the following table for the number and value of each direct or sub-contract awarded to local, Māori and/or Pasifika-owned businesses during the current reporting period.

Name of business	Business type (eg, Māori, Pasifika, local)	Contract type (direct or sub-contract)	Contract purpose (briefly describe)	Length of contract (months)	Total value of contract (\$)	Number of new employees as a result of contract

4 Social procurement objectives

4.1 In an appendix and in the format that best works for you:

- (a) show achievements to date against the Social Procurement Objectives in table or other useful format; and
- (b) provide additional narrative to show how tendering, procurement, employment and/or training arrangements are helping to achieve the Social Procurement Objectives, identifying any limitations or further support needed.

5 Financials

5.1 Provide a summary of funding received and expenditure to date, actual against budgeted (for each Project Element) in the following table or add an appendix.

Project element	Indicative cost	Actual spend	PGF funds (Yes / No)	Notes
Total				

6 Forward work programme

6.1 Provide an outline of forward work to be completed in the next month.

Key Milestone	Indicative Timeframe	Outline of Planned Work (for next month)

7 Risks/issues/opportunities

7.1 Provide an overview of any risks and/or issues arising or expected to arise, costs and mitigation options.

Risks / Issues	Magnitude / Likelihood	Mitigation

8 Communications

8.1 Provide an update on media, marketing and communications activity for this Project.

9 Other information

9.1 Provide any other relevant information.

APPENDIX ONE – Kaipara Ancient Kauri Trail



**INFRASTRUCTURE REFERENCE GROUP
FUNDING AGREEMENT
FOR
MANGAWHAI SHARED PATH**

BETWEEN The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment (**Ministry**)

AND Kaipara District Council, NZBN 9429041907153, a territorial authority listed in Part 2 of Schedule 2 to the Local Government Act 2002 (**Recipient**)

BACKGROUND

The Ministry wishes to contribute to the Project by providing Funding from the appropriation set out in Schedule 1 (**Details**) on the terms set out in this Agreement.

AGREEMENT

The Ministry will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in Schedule 1 (**Details**), Schedule 2 (**Funding Agreement Standard Terms and Conditions**), Schedule 3 (**Project**), Schedule 4 (**Social Procurement Outcomes**), Schedule 5 (**Monthly Report Template**), Schedule 6 (**Diagram of Project Works**) and Schedule 7 (**Overview of Intersection Works**).

SIGNED by the **SOVEREIGN IN RIGHT**)
OF NEW ZEALAND acting by and)
 through the Chief Executive of the)
 Ministry of Business, Innovation and)
 Employment or their authorised)
 delegate:)

 Ben Dalton
 Chief Operating Officer, Provincial
 Development Unit

 Date

SIGNED for and on behalf of **KAIPARA**)
DISTRICT COUNCIL by its authorised)
 signatory:)

 Signature

 Full name

 Position

 Date

SCHEDULE 1 – DETAILS

1 CONTEXT

- 1.1 In Budget 2020, Cabinet agreed to provide a \$3 billion investment in infrastructure to support New Zealand's economic recovery as part of the 11 May COVID-19 Response and Recovery Fund [CAB-20-MIN-0219.04 refers].
- 1.2 The Government established the Infrastructure Reference Group (**IRG**) to identify a pipeline of shovel-ready projects to support the economy during the COVID-19 rebuild. This process was supported by Crown Infrastructure Partners.
- 1.3 On 24 June 2020, the Cabinet Economic Development Committee, agreed that the Ministry (acting through the Provincial Development Unit) would be responsible for delivering projects approved by IRG Ministers where they are best placed to do so [CAB-20-MIN-0341 refers].

2 APPROPRIATION AND APPROVAL PROCESS

- 2.1 Funding is from a Non-departmental Other Expenses Supporting Infrastructure Appropriation, Vote Business, Science and Innovation authorised by Cabinet on 20 July 2020.

3 FUNDING

- 3.1 **Funding Total:** This Agreement provides funding for a total amount of up to \$2,400,000 (plus GST, if any) (**Funding**). This is the Total Maximum Amount Payable by the Ministry.
- 3.2 **Application of Funding:** The Recipient:
- (a) must apply the Funding in accordance with the Project (Schedule 3), subject to any variation of the Project agreed with the Ministry in writing; and
 - (b) must not use the Funding for any part of the Project that is or was already funded by any party (including the Recipient, unless otherwise approved by the Ministry in writing), or in relation to any activity which the Ministry advises the Recipient that it may not apply the Funding to.
- 3.3 **Overruns:** The Parties acknowledge that the Funding in clause 3.1 is the Total Maximum Amount Payable by the Ministry for the Project, and that the Recipient will be liable for all cost overruns in relation to the delivery of the Project. The Ministry will not be liable for any cost overruns. The Recipient will carefully monitor the likelihood of cost overruns through its budgeting and reporting process, and will notify the Ministry as soon as it is aware that there is a likelihood that Project Costs will exceed the Total Maximum Amount Payable under this Agreement.

4 PROJECT

- 4.1 **Project:** The Recipient will use the Funding to deliver the following:
- (a) construction of approximately 3.8 km of shared pathways;
 - (b) improvements to the intersection of Insley Steet and Moir Street; and
 - (c) improvements to the intersection of Molesworth Drive and Moir Street,
- as set out in Schedule 3.
- 4.2 **Project Outcomes:** The outcomes of the Project that align with the Funding criteria include:
- (a) new employment, the preservation of jobs and the redeployment of workers in communities and within the infrastructure sector hit by COVID-19; and

- (b) investment toward a more productive, sustainable and inclusive economy, enabling our regions to grow and support a modern and connected New Zealand.

4.3 Delivery: The Recipient must ensure that:

- (a) the Construction Commencement Date is within 6 months from the Commencement Date (Schedule 3);
- (b) it obtains all consents required (including without limitation, statutory consents, permissions and licences) to carry out the Project in accordance with the consenting timeframes set out in Schedule 3. The Recipient will notify the Ministry immediately if any consent is not achieved, expires, is withdrawn, is breached or otherwise lapses;
- (c) its contractor(s):
 - (i) have accountability and deliver any construction contracts on time, within budget and to meet the relevant building codes and consents, as required for the Project to be undertaken; and
 - (ii) provide all necessary information to it that will allow the Recipient to promptly notify the Ministry if any material event or circumstance occurs which may be detrimental to the Project and its delivery (including any identified funding short fall or potential cost overruns); and
- (d) the Project is carried out:
 - (i) promptly with due diligence, care and skill, and in a manner that meets or exceeds Best Industry Practice;
 - (ii) by appropriately trained, qualified, experienced and supervised persons;
 - (iii) in accordance with any directions of the Ministry, notified by the Ministry in writing from time to time;
 - (iv) to the high standard set out in any Project documentation submitted to the Ministry, including any Minister of the Crown or any Government Agency, and any further plans, designs, or other Project documents submitted to, and approved by, the Ministry; and
 - (v) in a manner that takes into account the Construction Sector Accord's principles and guidelines.

5 PROCUREMENT

5.1 In delivering the Project, the Recipient must ensure that all tendering and procurement arrangements:

- (a) occur at pace, time being critical; and
- (b) comply with any agreed Social Procurement Objectives detailed in Schedule 4.

6 PAYMENT TERMS

6.1 Subject to the terms of this Agreement, the Ministry will pay the Funding to the Recipient in the following instalments:

Completion Date	Project Deliverable	Instalment payable (plus GST, if any)
Commencement Date	This Agreement executed by both parties.	Up to \$240,000
Within 6 months of the Commencement Date	Detailed design work completed in respect of the Project. All consents required for the Project have been obtained by the Recipient. Appointment of construction contractor for the Project. The Ministry and Recipient have agreed the identity of the construction contractor providing certificates (or similar) under clause 6.2(c).	Up to \$960,000
Within 10 months of the Construction Commencement Date	The certificate provided by the Recipient under clause 6.2(c) demonstrates that the Project is at least 50% complete.	Up to \$480,000
Within 14 months of the Construction Commencement Date	The certificate provided by the Recipient under clause 6.2(c) demonstrates that the Project is at least 75% complete.	Up to \$480,000
Within 24 months of the Commencement Date	Completion of the Project. Final Report delivered to the Ministry under clause 8.3 of Schedule 1.	Up to \$240,000

6.2 **Payment preconditions:** The Ministry is not required to make any payments under this Agreement until the following conditions have been satisfied (in the Ministry's sole discretion):

- (a) in relation to each Instalment (except the First Instalment), the Recipient has provided the Ministry with copies of the GST invoices for all payments over \$1,000 paid by the Recipient to third parties using the previous Instalment;
- (b) the Recipient has provided a valid GST invoice for the Instalment;
- (c) in relation to each Instalment (except the First Instalment), the Recipient provides a certificate (or similar) signed by the relevant construction contractor which:
 - (i) certifies the progress of the Project;
 - (ii) certifies the costs incurred by the Recipient;

- (iii) certifies the Project is on track to be completed by the Completion Date;
- (iv) notifies the Ministry of any variations to the relevant construction contract;
and
- (v) provides the cost to complete the Project;
- (d) the Recipient has delivered all Monthly Reports required under clause 8 to the Ministry's satisfaction;
- (e) the Recipient is not in breach of any provision of this Agreement; and
- (f) the Ministry is satisfied in its sole discretion that:
 - (i) the Project is progressing as approved; and
 - (ii) the Funding has been applied in accordance with clause 4, including pursuant to any discussions with the Recipient.

7 TERM

- 7.1 **Commencement Date:** The Commencement Date is the date that this Agreement has been signed by both Parties.
- 7.2 **Completion Date:** The Completion Date is the date that is 24 months from the Commencement Date.

8 REPORTING REQUIREMENTS

- 8.1 **Monthly Reports:** The Recipient will provide the Ministry with a monthly report, completed on a template attached as Schedule 5, by the 3rd Business Day following the end of each month.
- 8.2 **Ministry satisfaction:** For the avoidance of doubt, if any one or more of the Monthly Reports do not satisfy the Ministry that the Project is progressing in accordance with Clause 4 of this Schedule, the Ministry will be entitled to terminate the Agreement and recoup all unspent funds in accordance with clause 4 of Schedule 2.
- 8.3 **Final Report:** A Final Report within 1 month following the Completion Date in the Ministry's approved form.
- 8.4 **Further information:** The Recipient will promptly provide all information requested by the Ministry necessary to verify the Recipient's performance under this Agreement, including (without limitation) its procurement documentation, subcontracts, financial and technical information, and records of the number and make-up of the workers hired to undertake the Project.

9 ADDRESS FOR NOTICES

Ministry	Recipient
<p>Ministry of Business, Innovation and Employment 15 Stout Street PO Box 1473 WELLINGTON 6011</p> <p>Email address: vibeke.wright@mbie.govt.nz</p> <p>Contact person: Vibeke Wright</p> <p>Attention: Provincial Development Unit</p>	<p>Kaipara District Council Private Bag 1001 DARGAVILLE 0340</p> <p>Email address: tmanning@kaipara.govt.nz</p> <p>Contact person: Tim Manning</p> <p>Attention: Mangawhai Programme Delivery Manager</p>

SCHEDULE 2 – FUNDING AGREEMENT STANDARD TERMS AND CONDITIONS

1 INTERPRETATION

1.1 In this Agreement, the following terms have the following meanings:

“**Agreement**” means this agreement, including Schedules 1 to Schedule 5;

“**Best Industry Practice**” means that degree of skill, care and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Recipient or any contractors (as applicable) under the same or similar circumstances as those contemplated by this Agreement;

“**Business Day**” means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

“**Commencement Date**” means the date that this Agreement has been signed by both Parties;

“**Completion Date**” means the date set out in Schedule 1;

“**Confidential Information**” includes all information and data (in any form) concerning the organisation, administration, operation, business, clients, finance, and methods of the Ministry, including any information provided by the Ministry under or in connection with this Agreement;

“**Construction Commencement Date**” means the date that construction works must commence, as described in Schedule 3.

“**Final Report**” means the report, as described in Schedule 1;

“**Funding**” means the funding amount set out in Schedule 1;

“**GST**” means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

“**Instalment**” means the payment instalments in Schedule 1;

“**Intellectual Property Rights**” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

“**Deliverable**” means the Project Deliverables in Schedule 1;

“**Monthly Report**” means the report completed on the template in Schedule 5;

“**Parties**” means the Ministry and the Recipient and their respective successors and permitted assigns;

“**Project**” means the project described in Schedule 1 and Schedule 3;

“**Project Costs**” means the total costs of the Project described in Schedule 3;

“**Social Procurement Objectives**” means the agreed objectives described in Schedule 4; and

“**Total Maximum Amount Payable**” has the meaning given in Schedule 1.

1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.

1.3 The headings in this Agreement are for convenience only and have no legal effect.

- 1.4 The singular includes the plural and vice versa.
- 1.5 “Including” and similar words do not imply any limitation.
- 1.6 References to a statute include references to that statute as amended or replaced from time to time.
- 1.7 Monetary references are references to New Zealand currency.
- 1.8 If there is any conflict of meaning between Schedule 1 and Schedule 2, Schedule 2 will prevail.

2 FUNDING

- 2.1 The Ministry must pay the Funding (up to the Total Maximum Amount Payable) at the rate and in the manner set out in Schedule 1 to the Recipient, subject to the terms of this Agreement.
- 2.2 The Recipient must provide a valid GST invoice that complies with the Goods and Services Tax Act 1985 for each Instalment. The invoice must:
 - (a) be sent directly to the Ministry via email to monitorpgf@mbie.govt.nz;
 - (b) be copied to the relevant Ministry contact person as set out in clause 9 of Schedule 1;
 - (c) include sufficient information reasonably required to enable the Ministry to validate the claim for payment including a reference to this Agreement (under which the invoice is issued); and
 - (d) be clearly and legibly marked to Ministry staff as advised by the Ministry to the Recipient from time to time.
- 2.3 The Funding is inclusive of all taxation except GST. The Ministry will be entitled to deduct any withholding tax required to be withheld by law from payments made to the Recipient and will not be

required to gross-up or increase any such payments in respect of such amounts withheld.

- 2.4 The Recipient must use the Funding only to carry out the Project in accordance with this Agreement.
- 2.5 In consideration of the Funding, the Recipient must:
 - (a) progress the Project to the Ministry’s satisfaction;
 - (b) complete the Project to the Ministry’s satisfaction by the Completion Date;
 - (c) carry out the Project in accordance with:
 - (i) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Project; and
 - (ii) all applicable laws, regulations, rules and professional codes of conduct or practice; and
 - (d) refund any unspent Funding to the Ministry within 10 Business Days of the Completion Date.
- 2.6 Where all of the monies received by the Recipient to carry out the Project (including the Funding) exceeds the total Project Costs of the Project, the Recipient must refund to the Ministry the excess amount. The Recipient is not required to refund, under this clause 2.6, any amount that exceeds the Total Maximum Amount Payable.
- 2.7 The Recipient must ensure (and must procure that any contractor it uses ensures) that all agreements it enters into with contractors or any other party in connection with the Project are on an “arm’s length” basis and provides value for money. To the extent that the expenditure relates to work performed by parties not at “arm’s length”, that

expenditure must be assessed at reasonable market value, and contain no unacceptable overhead and no element of “in group profit”.

3 PROJECT DELIVERY AND PROGRESS

3.1 If:

- (a) the Ministry is not satisfied with the progress of the Project;
- (b) the Recipient does or omits to do something, or any matter concerning the Recipient comes to the Ministry’s attention, which, in the Ministry’s opinion, may damage the business or reputation of the Ministry; or
- (c) the Recipient breaches any of its obligations under this Agreement,

the Ministry may (without limiting its other remedies):

- (d) renegotiate this Agreement with the Recipient; or
- (e) terminate this Agreement immediately by notice to the Recipient, and clause 4.4, 4.5 and 4.6 will apply.

4 TERM AND TERMINATION

4.1 Subject to clauses 4.2 and 4.3, this Agreement will commence on the Commencement Date and expire when:

- (a) the Final Report is completed and provided to the Ministry; and
- (b) the Project is completed, to the Ministry’s satisfaction.

4.2 The Ministry may terminate this Agreement at any time by giving at least 10 Business Days’ notice to the Recipient.

4.3 The Ministry may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient:

- (a) is in breach of any of its obligations under this

Agreement and that breach is not capable of being remedied;

- (b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
- (c) does or omits to do something, or any matter concerning the Recipient comes to the Ministry’s attention, which in the Ministry’s opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
- (d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
- (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.

4.4 Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.

4.5 On termination of this Agreement, the Ministry may (without limiting any of its other rights or remedies):

- (a) require the Recipient to provide evidence of how the Funding has been spent; and/or
- (b) require the Recipient to refund to the Ministry:
 - (i) any of the Funding that has not been spent or committed by the Recipient. For the purposes of this clause, Funding is committed where it has been provided or promised to a third party for the purpose of carrying out the Project and the Recipient, after using

reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be); or

(ii) the proportion of the Funding that equates to the uncompleted part of the Project, as reasonably determined by the Ministry; and/or

(c) if the Funding has been misused or misappropriated by the Recipient, require the Recipient to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Recipient was paid the money to the date the Recipient returns the money.

5 REPORTING REQUIREMENTS AND AUDIT

5.1 The Recipient must report on the progress of the Project to the Ministry:

- (a) as set out in Schedule 1;
- (b) as otherwise reasonably required by the Ministry; and
- (c) in any format and on any medium reasonably required by the Ministry.

5.2 The Recipient must:

- (a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Project sufficient to enable the Ministry to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Agreement;
- (b) permit the Ministry, at the Ministry's expense, to inspect or audit (using an auditor nominated by the Ministry), from

time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement;

(c) allow the Ministry reasonable access to the Recipient's premises or other premises where the Project is being carried out; and

(d) appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding.

6 WARRANTIES

6.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.

6.2 The Recipient warrants that:

- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Recipient;
- (b) all information provided by it to the Ministry in connection with this Agreement was, at the time it was provided, true, complete and accurate in all material respects; and
- (c) it is not aware of any material information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.

6.3 The Recipient acknowledges that the Ministry has entered into this Agreement in reliance on these warranties.

6.4 The Recipient acknowledges and agrees that the Ministry has made no warranty

or representation that any funding or financial support is or will be available to the Recipient in respect of the Project other than the Funding.

7 INTELLECTUAL PROPERTY

7.1 All Intellectual Property Rights in the reports provided under clause 8, Schedule 1 will be owned by the Ministry from the date the reports are created or developed.

7.2 All intellectual property produced by the Recipient or its employees or contractors in relation to the Project is, on creation, jointly owned by the Ministry and the Recipient. Each Party may use (which includes modifying, developing, assigning, or licensing) such intellectual property without obtaining the prior consent of the other Party. On request, the Recipient must provide to the Ministry such intellectual property in any format, and on any medium, reasonably requested by the Ministry.

7.3 The Recipient must ensure that material created or developed in connection with the Project does not infringe the Intellectual Property Rights of any person.

8 CONFIDENTIALITY

8.1 The Recipient must:

- (a) keep the Confidential Information confidential at all times;
- (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Project or this Agreement;
- (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and
- (d) ensure that any employees or contractors to whom it discloses

the Confidential Information are aware of, and comply with, the provisions of this clause 7.

8.2 The obligations of confidentiality in clause 8.1 do not apply to any disclosure of Confidential Information:

- (a) to the extent that such disclosure is necessary for the purposes of completing the Project;
- (b) required by law; or
- (c) where the information has become public other than through a breach of the obligation of confidentiality in this clause 8 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.

8.3 The Recipient must obtain the Ministry's prior written agreement over the form and content of any public statement made by the Recipient relating to this Agreement, the Funding, or the Project.

9 LIABILITY AND INSURANCE

9.1 The Recipient must effect and maintain insurance that is adequate to cover its obligations under this Agreement. The Recipient must, on request, provide the Ministry with evidence of its insurance cover required under this clause.

9.2 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.

9.3 The maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Project had been carried out in accordance with this Agreement.

9.4 The Recipient (including its employees, agents, and contractors, if any) is not an

- employee, agent or partner of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to meet any of the Recipient's obligations under the Health and Safety at Work Act 2015 or to pay to the Recipient:
- (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
 - (b) redundancy or any other form of severance pay; or
 - (c) taxes or levies, including any levies under the Accident Compensation Act 2001.
- 9.5 The Recipient indemnifies the Ministry against any claim, liability, loss or expense (including legal fees on a solicitor own client basis) ("loss") brought or threatened against, or incurred by the Ministry, arising from or in connection with a breach of this Agreement by the Recipient or the Project, or from the negligence or wilful misconduct of the Recipient, its employees or contractors.
- 9.6 Where the Recipient is a trustee, the Ministry acknowledges that the Recipient has entered into this Agreement as a trustee of the trust named in Schedule 1 in an independent capacity without any interest in any of the assets of the trust other than as trustee. Except where the Recipient acts fraudulently, the Recipient is liable under this Agreement only to the extent of the value of the assets of the trust available to meet the Recipient's liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the Recipient's wilful default or dishonesty.
- 9.7 The Recipient must effect and maintain for the term of this Agreement:
- (a) adequate insurance to cover standard commercial risks; and
 - (b) other insurance reasonably required by the Ministry.
- 9.8 The Recipient must, upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.
- 10 DISPUTE RESOLUTION**
- 10.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties' senior managers for resolution if necessary.
- 10.2 If the Parties' senior managers are unable to resolve the dispute within 10 Business Days of it being referred to them, the Parties will refer the dispute to mediation or another form of alternative dispute resolution agreed between the Parties.
- 10.3 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the Parties (or if they cannot agree, appointed by the Chair of the Resolution Institute of New Zealand) and on the terms of the Resolution Institute's standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).
- 10.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.
- 10.5 Nothing in this clause 10 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand Court.
- 11 FORCE MAJEURE**
- 11.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any

cause or circumstance beyond the Party's reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement ("Force Majeure Event"). The Party affected must:

- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
- (b) use its best endeavours to overcome the Force Majeure Event; and
- (c) continue to perform its obligations as far as practicable.

12 GENERAL

12.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

12.2 Assignment:

- (a) The Recipient must not assign, delegate, subcontract or transfer any or all of its rights and obligations under this Agreement. The Recipient remains liable for performance of its obligations under this Agreement despite any approved subcontracting or assignment.

- (b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 12.2(a).

12.3 This Agreement may only be varied by agreement in writing signed by the Parties.

12.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.

12.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by email or registered post to the Parties' respective email address, postal address as set out in Schedule 1. A notice is deemed to be received:

- (a) if personally delivered, when delivered;
- (b) if posted, three Business Days after posting;
- (c) if sent by email, at the time the email enters the Recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error,

provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.

12.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or

arrangements relating to its subject matter.

- 12.7 The provisions of this Agreement relating to termination (clause 4), reporting requirements and audit (clause 5), warranties (clause 6), intellectual property (clause 7), confidentiality (clause 8), and liability and insurance (clause 9) will continue after the expiry or termination of this Agreement.
- 12.8 This Agreement may be signed in any number of counterparts (including emailed copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.
- 12.9 This Agreement will be governed by and construed in accordance with the laws of New Zealand.

SCHEDULE 3 – PROJECT

1 PROJECT DETAILS

Project name	Mangawhai Shared Path
Location	Mangawhai
Project description	<p>Construction or completion of the following works:</p> <p>a) Shared pathways - Construction of approximately 3.8 km of shared pathway, comprising:</p> <ul style="list-style-type: none"> • approximately 1.3 km of 3.5 m wide concreted shared path; • approximately 1 km of 3.5 m wide timber boardwalk; • approximately 900 m of 3.5 m wide aggregate path; and • approximately 600 m of 3.5 m wide grass path. <p>The location of the shared paths are shown as nodes 2A, 6A, 7, 8, 9, 10, 15 and 21 in the diagram included in Schedule 6 (shown in yellow).</p> <p>b) Insley Steet / Moir Street intersection – Construction of new roundabout, shared path and the associated service diversion works. The location of the intersection is shown as node 15 in the diagram included in Schedule 6. An overview of the intersections works is included in Schedule 7.</p> <p>c) Molesworth Drive / Moir Street intersection – Construction of new roundabout, shared path and the associated service diversion works. The location of the intersection is shown as node 15 in the diagram included in Schedule 6. An overview of the intersections works is included in Schedule 7.</p>

2 BUDGET

Item	Indicative cost
Preliminaries	\$362,000
Project Management, Design, Environmental, Property	
Project management	\$143,600

Programme/project management support	\$100,000
Design & consultants support	\$670,000
Environmental costs	\$45,200
Property costs	\$132,500
Main Construction Contract	
Contractor preliminary & general	\$616,520
Civil works / site works	\$5,548,680
Subtotal	\$7,618,500
Contingency	\$306,800
Total Project Costs	\$7,925,300

3 PROJECT TIMEFRAME

Key milestone	Indicative timeframe
Plan and design	
Award detailed design contract	Completed
Award procurement contract	Completed
Obtain all consents	26/03/2021
Obtain all property rights	26/03/2021
Construction	
Award construction contract	12/03/2021
Construction commences (Construction Commencement Date)	26/03/2021
Construction complete	July 2022
Project close	
Opening event	August 2022

SCHEDULE 4 – SOCIAL PROCUREMENT OBJECTIVES

Social Procurement Objectives	Target
Local (regional) businesses prioritised for employment	40% of direct contract and sub-contract values will be awarded to businesses owned and operated by people who reside in the region.
Maori and Pasifika enterprises prioritised for employment	15% of the direct and subcontract values to be awarded to Maori or Pasifika enterprises.
Targeted employment (Employment targets <ul style="list-style-type: none"> a. 45% Maori b. 5% Pasifika c. 20% Woman d. 30% Youth (18 – 24 years) 	At least 25% extra fixed term roles within the workforce (new employment or existing roles that would have otherwise been disestablished).
Skills and training delivered	Provision of relevant training to ensure all workers are skilled, qualified and safe in the workplace
Improved Conditions for Workers	All new workers undergo pre-employment induction H&S). Documented H&S Management Systems.
Environmental Responsibility	Protecting local ecosystems. Actively seeking to minimise carbon impact of project delivery. Minimising waste – reusing materials. Build resilience back into work areas through replanting etc.).

SCHEDULE 5 – MONTHLY REPORT TEMPLATE

MONTHLY REPORT



MANGAWHAI SHARED PATH

Location and Region:	
Contracted Amount:	
Report Date:	For the month ending [Insert month]
Programme Outcomes:	

1 Project

1.1 Provide description and analysis of actual against planned progress of each activity to show that the Project is occurring at pace.

Project element	Details of progress

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2 Redeployment outcomes

2.1 Complete the following table for the number of people working to deliver the project in the current reporting period.

Project element	Total number of people working	Number of people						Job type Full-time Part-time Contractor Consultant
		Previously unemployed	Local	Aged 15-24	Māori	Pasifika	Women	
Total								

2.2 Complete the following total jobs table, showing total, current, past and expected future jobs.

Current jobs (this should be the Total People Working in the table above)	People previously but no longer employed on the project	Expected jobs in the future

2.3 Provide any additional narrative to explain the table or give other relevant information.

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3 Supplier diversity outcomes

3.1 Complete the following table for the number and value of each direct or sub-contract awarded to local, Māori and/or Pasifika-owned businesses during the current reporting period.

Name of business	Business type (eg, Māori, Pasifika, local)	Contract type (direct or sub-contract)	Contract purpose (briefly describe)	Length of contract (months)	Total value of contract (\$)	Number of new employees as a result of contract

4 Social procurement objectives

4.1 In an appendix and in the format that best works for you:

- (a) show achievements to date against the Social Procurement Objectives in table or other useful format; and
- (b) provide additional narrative to show how tendering, procurement, employment and/or training arrangements are helping to achieve the Social Procurement Objectives, identifying any limitations or further support needed.

5 Financials

5.1 Provide a summary of funding received and expenditure to date, actual against budgeted (for each Project Element) in the following table or add an appendix.

Project element	Indicative cost	Actual spend	PGF funds (Yes / No)	Notes
Total				

6 Forward work programme

6.1 Provide an outline of forward work to be completed in the next month.

Key Milestone	Indicative Timeframe	Outline of Planned Work (for next month)

7 Risks/issues/opportunities

7.1 Provide an overview of any risks and/or issues arising or expected to arise, costs and mitigation options.

Risks / Issues	Magnitude / Likelihood	Mitigation

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8 Communications

8.1 Provide an update on media, marketing and communications activity for this Project.

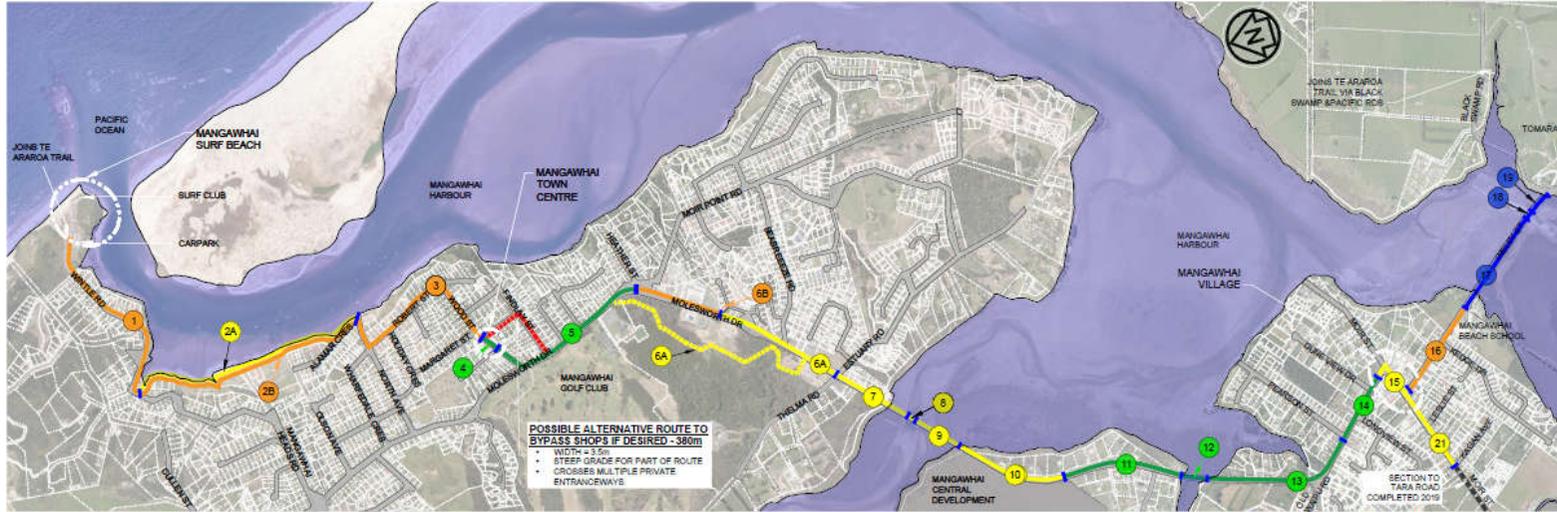
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9 Other information

9.1 Provide any other relevant information.

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SCHEDULE 6 – DIAGRAM OF PROJECT WORKS



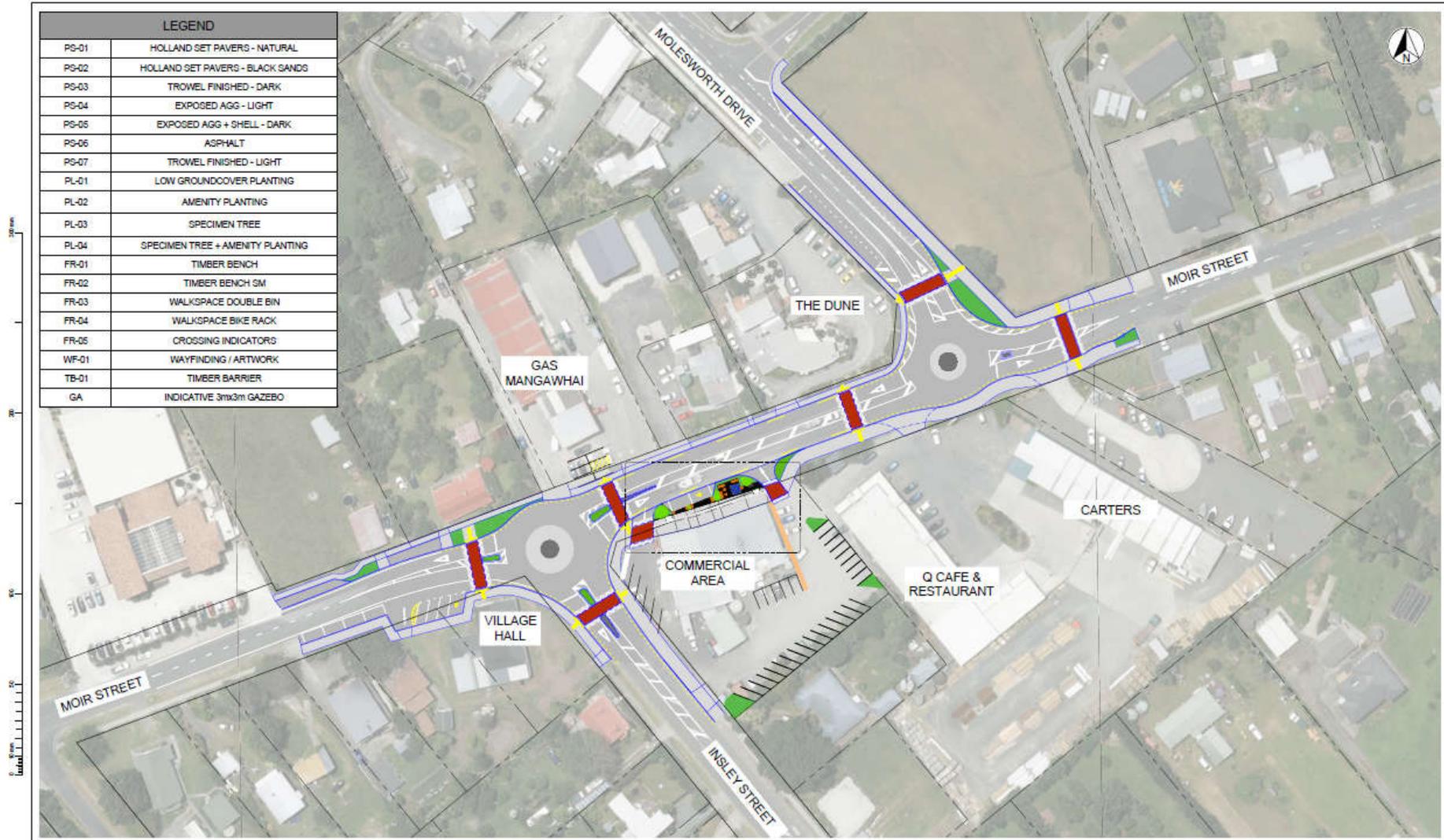
SCHEDULE OF PROPOSED WORKS

NODE	LTP	NODE	LTP	NODE	LTP	NODE	LTP
1 SURF BEACH CAR PARK SOUTH BDY TO BEACH ACCESS NO 10	2	6A ITM TO ESTUARY DRIVE & MANGAWHAI COMMUNITY PARK SHARED PATH	0	10 MANGAWHAI CENTRAL DEVELOPMENT	0	15 MANGAWHAI VILLAGE COMMERCIAL AREA	0
2A BEACH ACCESS NO 10 TO NORTH AVE	0	6B MOIR POINT RD TO ITM	2	11 MANGAWHAI CENTRAL DEVELOPMENT TO CAUSE WAY	1	16 MANGAWHAI VILLAGE COMMERCIAL AREA TO SCHOOL	2
2B BEACH ACCESS NO 10 TO NORTH AVE	2	7 ESTUARY DRIVE TO BRIDGE	0	12 CAUSE WAY	1	17 SCHOOL TO INSLEY STREET BRIDGE	3
3 NORTH AVE TO WOOD ST COMMERCIAL AREA	2	8 MOLESWORTH DRIVE BRIDGE	0	13 CAUSE WAY TO PEARSON STREET	1	18 INSLEY STREET BRIDGE	3
4 WOOD ST (MANGAWHAI TOWN CENTRE)	1	9 BRIDGE TO MANGAWHAI CENTRAL DEVELOPMENT	0	14 PEARSON ST TO MANGAWHAI VILLAGE COMMERCIAL AREA	1	19 BRIDGE TO TOMARATA RD INTERSECTION	3
5 WOOD ST COMMERCIAL AREA TO MOIR POINT RD	1					21 MOIR ST: KAGAN AVE TO INSLEY ST	0

KEY:

- LTP 0 (2018/21)
- LTP 1 (2021/24)
- LTP 2 (2024/27)
- LTP 3 (2027/30)

SCHEDULE 7 – OVERVIEW OF INTERSECTION WORKS







INFRASTRUCTURE REFERENCE GROUP FUNDING AGREEMENT

FOR

KAIWAKA FOOTBRIDGES AND LINKED PATHWAYS

BETWEEN The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment (**Ministry**)

AND Kaipara District Council, a territorial authority listed in Part 2 of Schedule 2 to the Local Government Act 2002, with offices at 42 Hokianga Road, Dargaville 0310, New Zealand (**Recipient**)

BACKGROUND

The Ministry wishes to contribute to the Project by providing Funding from the appropriation set out in Schedule 1 (**Details**) on the terms set out in this Agreement.

AGREEMENT

The Ministry will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in Schedule 1 (**Details**), Schedule 2 (**Funding Agreement Standard Terms and Conditions**), Schedule 3 (**Project**), Schedule 4 (**Social Procurement Outcomes**), Schedule 5 (**Monthly Report Template**) and Schedule 6 (**Layout drawing of bridges and pathways**).

SIGNED by the **SOVEREIGN IN RIGHT**)
OF NEW ZEALAND acting by and)
through the Chief Executive of the)
Ministry of Business, Innovation and)
Employment or their authorised)
delegate:)

Nicki Sutherland, Director Regional
Development (North), Provincial
Development Unit

Date

SIGNED for and on behalf of **KAIPARA**)
DISTRICT COUNCIL by its authorised)
signatory:)

Louise Miller, Chief Executive Officer

Date

SCHEDULE 1 – DETAILS

1 CONTEXT

- 1.1 In Budget 2020, Cabinet agreed to provide a \$3 billion investment in infrastructure to support New Zealand's economic recovery as part of the 11 May COVID-19 Response and Recovery Fund [CAB-20-MIN-0219.04 refers].
- 1.2 The Government established the Infrastructure Reference Group (**IRG**) to identify a pipeline of shovel-ready projects to support the economy during the COVID-19 rebuild. This process was supported by Crown Infrastructure Partners.
- 1.3 On 24 June 2020, the Cabinet Economic Development Committee, agreed that the Ministry (acting through the Provincial Development Unit) would be responsible for delivering projects approved by IRG Ministers where they are best placed to do so [CAB-20-MIN-0341 refers].

2 APPROPRIATION AND APPROVAL PROCESS

- 2.1 Funding is from a Non-departmental Other Expenses Supporting Infrastructure Appropriation, Vote Business, Science and Innovation authorised by Cabinet on 20 July 2020.

3 FUNDING

- 3.1 **Funding Total:** This Agreement provides funding for a total amount of up to \$750,000 (plus GST, if any) (**Funding**). This is the Total Maximum Amount Payable by the Ministry.
- 3.2 **Application of Funding:** The Recipient:
- (a) must apply the Funding in accordance with the Project (**Schedule 3**), subject to any variation of the Project agreed with the Ministry in writing; and
 - (b) must not use the Funding for any part of the Project that is or was already funded by any party (including the Recipient, unless otherwise approved by the Ministry in writing), or in relation to any activity which the Ministry advises the Recipient that it may not apply the Funding to.
- 3.3 **Overruns:** The Parties acknowledge that the Funding in clause 3.1 is the Total Maximum Amount Payable by the Ministry for the Project, and that the Recipient will be liable for all cost overruns in relation to the delivery of the Project. The Ministry will not be liable for any cost overruns. The Recipient will carefully monitor the likelihood of cost overruns through its budgeting and reporting process, and will notify the Ministry as soon as it is aware that there is a likelihood that Project Costs will exceed the Total Maximum Amount Payable under this Agreement.

4 PROJECT

- 4.1 **Project:** The Recipient will use the Funding to construct two bridges in Kaiwaka, which are approximately 25 metres each in length. The project will also construct a pathway with associated landscaping which will provide safe walking and cycling through Kaiwaka township. The pathway will link shops, schools, public transport stops and the park so that the community do not have to navigate SH1 to move around the township. Further detail of the Project is provided in **Schedule 3**.
- 4.2 **Project Outcomes:** The outcomes of the Project that align with the Funding criteria include:
- (a) new employment, the preservation of jobs and the redeployment of workers in communities and within the infrastructure sector hit by COVID-19; and

- (b) investment toward a more productive, sustainable and inclusive economy, enabling our regions to grow and support a modern and connected New Zealand.

4.3 **Delivery:** The Recipient must ensure that:

- (a) the Construction Commencement Date is within 12 months from the Commencement Date (**Schedule 3**);
- (b) it obtains all consents required (including without limitation, statutory consents, permissions and licences) to carry out the Project in accordance with the consenting timeframes set out in Schedule 3. The Recipient will notify the Ministry immediately if any consent is not achieved, expires, is withdrawn, is breached or otherwise lapses;
- (c) its contractor(s):
 - (i) have accountability and deliver any construction contracts on time, within budget and to meet the relevant building codes and consents, as required for the Project to be undertaken; and
 - (ii) provide all necessary information to it that will allow the Recipient to promptly notify the Ministry if any material event or circumstance occurs which may be detrimental to the Project and its delivery (including any identified funding short fall or potential cost overruns); and
- (d) the Project is carried out:
 - (i) promptly with due diligence, care and skill, and in a manner that meets or exceeds Best Industry Practice;
 - (ii) by appropriately trained, qualified, experienced and supervised persons;
 - (iii) in accordance with any directions of the Ministry, notified by the Ministry in writing from time to time;
 - (iv) to the high standard set out in any Project documentation submitted to the Ministry, including any Minister of the Crown or any Government Agency, and any further plans, designs, or other Project documents submitted to, and approved by, the Ministry; and
 - (v) in a manner that takes into account the Construction Sector Accord's principles and guidelines.

5 PROCUREMENT

5.1 In delivering the Project, the Recipient must ensure that all tendering and procurement arrangements:

- (a) occur at pace, time being critical; and
- (b) comply with any agreed Social Procurement Objectives detailed in Schedule 4.

6 PAYMENT TERMS

6.1 Subject to the terms of this Agreement, the Ministry will pay the Funding to the Recipient in the following instalments:

Completion Date	Project Deliverable	Instalment payable (plus GST, if any)
Commencement Date	This Agreement executed by both parties.	Up to \$150,000
March 2021	Design period commences and the lead construction contractor has been appointed. Recipient to provide evidence to the Ministry the previous instalment is spent.	Up to \$100,000
July 2021	Construction commences. All consents have been obtained. Recipient to provide evidence to the Ministry the previous instalment is spent.	Up to \$400,000
December 2021	Construction complete.	Up to \$100,000 (or the remainder of the Funding Total, as set out in clause 3.1)

Commented [A1]: Please review the dates and deliverables and amend where necessary.

6.2 **Payment preconditions:** The Ministry is not required to make any payments under this Agreement until the following conditions have been satisfied (in the Ministry's sole discretion):

- (a) in relation to each Instalment (except the First Instalment), the Recipient has provided the Ministry with copies of the GST invoices for all payments over \$1,000 paid by the Recipient to third parties using the previous Instalment;
- (b) in relation to each Instalment (except the First Instalment), the Recipient has provided a valid GST invoice for the Instalment;
- (c) in relation to each Instalment (where applicable), the Recipient provides a certificate (or similar) signed by the relevant construction contractor which:
 - (i) certifies the progress of the Project;
 - (ii) certifies the costs incurred by the Recipient;
 - (iii) certifies the Project is on track to be completed by the Completion Date;
 - (iv) notifies the Ministry of any variations to the relevant construction contract; and
 - (v) provides the cost to complete the Project;
- (d) the Recipient has delivered all Monthly Reports required under clause 5, Schedule 2 to the Ministry's satisfaction;

- (e) the Recipient is not in breach of any provision of this Agreement; and
- (f) the Ministry is satisfied in its sole discretion that:
 - (i) the Project is progressing as approved; and
 - (ii) the Funding has been applied in accordance with clause 4 of this Schedule including pursuant to any discussions with the Recipient.

7 TERM

- 7.1 **Commencement Date:** The Commencement Date is the date that this Agreement has been signed by both Parties.
- 7.2 **Completion Date:** The Completion Date is the date that is 13 months from the Commencement Date.

8 REPORTING REQUIREMENTS

- 8.1 **Monthly Reports:** The Recipient will provide the Ministry with a monthly report, completed on a template attached as Schedule 5, by the 3rd Business Day following the end of each month.
- 8.2 **Ministry satisfaction:** For the avoidance of doubt, if any one or more of the Monthly Reports do not satisfy the Ministry that the Project is progressing in accordance with Clause 4 of this Schedule, the Ministry will be entitled to terminate the Agreement and recoup all unspent funds in accordance with clause 4 of Schedule 2.
- 8.3 **Final Report:** A Final Report within 1 month following the Completion Date in the Ministry’s approved form.
- 8.4 **Further information:** The Recipient will promptly provide all information requested by the Ministry necessary to verify the Recipient’s performance under this Agreement, including (without limitation) its procurement documentation, subcontracts, financial and technical information, and records of the number and make-up of the workers hired to undertake the Project.

9 ADDRESS FOR NOTICES

Ministry	Recipient
Ministry of Business, Innovation and Employment 15 Stout Street PO Box 1473 WELLINGTON 6011 Attention: Vibeke Wright, PDU Email address: Vibeke.wright@mbie.govt.nz Contact person: Vibeke Wright	Kaipara District Council 42 Hokianga Road DARGAVILLE 0310 New Zealand Attention: Jim Sephton Email address: tmanning@kaipara.govt.nz Contact person: Tim Manning

SCHEDULE 2 – FUNDING AGREEMENT STANDARD TERMS AND CONDITIONS

1 INTERPRETATION

1.1 In this Agreement, the following terms have the following meanings:

“**Agreement**” means this agreement, including Schedules 1 to Schedule 5;

“**Best Industry Practice**” means that degree of skill, care and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Recipient or any contractors (as applicable) under the same or similar circumstances as those contemplated by this Agreement;

“**Business Day**” means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

“**Commencement Date**” means the date that this Agreement has been signed by both Parties;

“**Completion Date**” means the date set out in Schedule 1;

“**Confidential Information**” includes all information and data (in any form) concerning the organisation, administration, operation, business, clients, finance, and methods of the Ministry, including any information provided by the Ministry under or in connection with this Agreement;

“**Construction Commencement Date**” means the date that construction works must commence, as described in Schedule 3.

“**Final Report**” means the report, as described in Schedule 1;

“**Funding**” means the funding amount set out in Schedule 1;

“**GST**” means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

“**Instalment**” means the payment instalments in Schedule 1;

“**Intellectual Property Rights**” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

“**Deliverable**” means the Project Deliverables in Schedule 1;

“**Monthly Report**” means the report completed on the template in Schedule 5;

“**Parties**” means the Ministry and the Recipient and their respective successors and permitted assigns;

“**Project**” means the project described in Schedule 1 and Schedule 3;

“**Project Costs**” means the total costs of the Project described in Schedule 3;

“**Social Procurement Objectives**” means the agreed objectives described in Schedule 4; and

“**Total Maximum Amount Payable**” has the meaning given in Schedule 1.

1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.

1.3 The headings in this Agreement are for convenience only and have no legal effect.

- 1.4 The singular includes the plural and vice versa.
- 1.5 "Including" and similar words do not imply any limitation.
- 1.6 References to a statute include references to that statute as amended or replaced from time to time.
- 1.7 Monetary references are references to New Zealand currency.
- 1.8 If there is any conflict of meaning between Schedule 1 and Schedule 2, Schedule 2 will prevail.
- 2 FUNDING**
- 2.1 The Ministry must pay the Funding (up to the Total Maximum Amount Payable) at the rate and in the manner set out in Schedule 1 to the Recipient, subject to the terms of this Agreement.
- 2.2 The Recipient must provide a valid GST invoice that complies with the Goods and Services Tax Act 1985 for each Instalment. The invoice must:
- (a) be sent directly to the Ministry via email to monitorpgf@mbie.govt.nz;
 - (b) be copied to the relevant Ministry contact person as set out in clause 9 of Schedule 1;
 - (c) include sufficient information reasonably required to enable the Ministry to validate the claim for payment including a reference to this Agreement (under which the invoice is issued); and
 - (d) be clearly and legibly marked to Ministry staff as advised by the Ministry to the Recipient from time to time.
- 2.3 The Funding is inclusive of all taxation except GST. The Ministry will be entitled to deduct any withholding tax required to be withheld by law from payments made to the Recipient and will not be required to gross-up or increase any such payments in respect of such amounts withheld.
- 2.4 The Recipient must use the Funding only to carry out the Project in accordance with this Agreement.
- 2.5 In consideration of the Funding, the Recipient must:
- (a) progress the Project to the Ministry's satisfaction;
 - (b) complete the Project to the Ministry's satisfaction by the Completion Date;
 - (c) carry out the Project in accordance with:
 - (i) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Project; and
 - (ii) all applicable laws, regulations, rules and professional codes of conduct or practice; and
 - (d) refund any unspent Funding to the Ministry within 10 Business Days of the Completion Date.
- 2.6 Where all of the monies received by the Recipient to carry out the Project (including the Funding) exceeds the total Project Costs of the Project, the Recipient must refund to the Ministry the excess amount. The Recipient is not required to refund, under this clause 2.6, any amount that exceeds the Total Maximum Amount Payable.
- 2.7 The Recipient must ensure (and must procure that any contractor it uses ensures) that all agreements it enters into with contractors or any other party in connection with the Project are on an "arm's length" basis and provides value for money. To the extent that the expenditure relates to work performed by parties not at "arm's length", that

expenditure must be assessed at reasonable market value, and contain no unacceptable overhead and no element of "in group profit".

3 PROJECT DELIVERY AND PROGRESS

3.1 If:

- (a) the Ministry is not satisfied with the progress of the Project;
- (b) the Construction Commencement Date has not been met;
- (c) the Recipient does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which, in the Ministry's opinion, may damage the business or reputation of the Ministry; or
- (d) the Recipient breaches any of its obligations under this Agreement,

the Ministry may (without limiting its other remedies):

- (e) renegotiate this Agreement with the Recipient; or
- (f) terminate this Agreement immediately by notice to the Recipient, and clause 4.4, 4.5 and 4.6 will apply.

4 TERM AND TERMINATION

4.1 Subject to clauses 4.2 and 4.3, this Agreement will commence on the Commencement Date and expire when:

- (a) the Final Report is completed and provided to the Ministry; and
- (b) the Project is completed, to the Ministry's satisfaction.

4.2 The Ministry may terminate this Agreement at any time by giving at least 10 Business Days' notice to the Recipient.

4.3 The Ministry may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient:

- (a) is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
- (b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
- (c) does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which in the Ministry's opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
- (d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
- (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.

4.4 Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.

4.5 On termination of this Agreement, the Ministry may (without limiting any of its other rights or remedies):

- (a) require the Recipient to provide evidence of how the Funding has been spent; and/or
- (b) require the Recipient to refund to the Ministry:
 - (i) any of the Funding that has not been spent or committed by the Recipient. For the

purposes of this clause, Funding is committed where it has been provided or promised to a third party for the purpose of carrying out the Project and the Recipient, after using reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be); or

- (ii) the proportion of the Funding that equates to the uncompleted part of the Project, as reasonably determined by the Ministry; and/or
- (c) if the Funding has been misused or misappropriated by the Recipient, require the Recipient to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Recipient was paid the money to the date the Recipient returns the money.

5 REPORTING REQUIREMENTS AND AUDIT

- 5.1 The Recipient must report on the progress of the Project to the Ministry:
 - (a) as set out in Schedule 5;
 - (b) as otherwise reasonably required by the Ministry; and
 - (c) in any format and on any medium reasonably required by the Ministry.
- 5.2 The Recipient must:
 - (a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Project sufficient to enable the Ministry to meet its obligations under the

Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Agreement;

- (b) permit the Ministry, at the Ministry's expense, to inspect or audit (using an auditor nominated by the Ministry), from time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement;
- (c) allow the Ministry reasonable access to the Recipient's premises or other premises where the Project is being carried out; and
- (d) appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding.

6 WARRANTIES

6.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.

6.2 The Recipient warrants that:

- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Recipient;
- (b) all information provided by it to the Ministry in connection with this Agreement was, at the time it was provided, true, complete and accurate in all material respects; and
- (c) it is not aware of any material information that has not been disclosed to the Ministry which may, if disclosed, materially

adversely affect the decision of the Ministry whether to provide the Funding.

6.3 The Recipient acknowledges that the Ministry has entered into this Agreement in reliance on these warranties.

6.4 The Recipient acknowledges and agrees that the Ministry has made no warranty or representation that any funding or financial support is or will be available to the Recipient in respect of the Project other than the Funding.

7 INTELLECTUAL PROPERTY

7.1 All Intellectual Property Rights in the reports provided under clause 8, Schedule 1 will be owned by the Ministry from the date the reports are created or developed.

7.2 All intellectual property produced by the Recipient or its employees or contractors in relation to the Project is, on creation, jointly owned by the Ministry and the Recipient. Each Party may use (which includes modifying, developing, assigning, or licensing) such intellectual property without obtaining the prior consent of the other Party. On request, the Recipient must provide to the Ministry such intellectual property in any format, and on any medium, reasonably requested by the Ministry.

7.3 The Recipient must ensure that material created or developed in connection with the Project does not infringe the Intellectual Property Rights of any person.

8 CONFIDENTIALITY

8.1 The Recipient must:

- (a) keep the Confidential Information confidential at all times;
- (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure

is necessary for purposes of the Project or this Agreement;

(c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and

(d) ensure that any employees or contractors to whom it discloses the Confidential Information are aware of, and comply with, the provisions of this clause 7.

8.2 The obligations of confidentiality in clause 8.1 do not apply to any disclosure of Confidential Information:

(a) to the extent that such disclosure is necessary for the purposes of completing the Project;

(b) required by law; or

(c) where the information has become public other than through a breach of the obligation of confidentiality in this clause 8 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.

8.3 The Recipient must obtain the Ministry's prior written agreement over the form and content of any public statement made by the Recipient relating to this Agreement, the Funding, or the Project.

9 LIABILITY AND INSURANCE

9.1 The Recipient must effect and maintain insurance that is adequate to cover its obligations under this Agreement. The Recipient must, on request, provide the Ministry with evidence of its insurance cover required under this clause.

9.2 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.

- 9.3 The maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Project had been carried out in accordance with this Agreement.
- 9.4 The Recipient (including its employees, agents, and contractors, if any) is not an employee, agent or partner of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to meet any of the Recipient's obligations under the Health and Safety at Work Act 2015 or to pay to the Recipient:
- (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
 - (b) redundancy or any other form of severance pay; or
 - (c) taxes or levies, including any levies under the Accident Compensation Act 2001.
- 9.5 The Recipient indemnifies the Ministry against any claim, liability, loss or expense (including legal fees on a solicitor own client basis) ("loss") brought or threatened against, or incurred by the Ministry, arising from or in connection with a breach of this Agreement by the Recipient or the Project, or from the negligence or wilful misconduct of the Recipient, its employees or contractors.
- 9.6 Where the Recipient is a trustee, the Ministry acknowledges that the Recipient has entered into this Agreement as a trustee of the trust named in Schedule 1 in an independent capacity without any interest in any of the assets of the trust other than as trustee. Except where the Recipient acts fraudulently, the Recipient is liable under this Agreement only to the extent of the value of the assets of the trust available to meet the Recipient's liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the Recipient's wilful default or dishonesty.
- 9.7 The Recipient must effect and maintain for the term of this Agreement:
- (a) adequate insurance to cover standard commercial risks; and
 - (b) other insurance reasonably required by the Ministry.
- 9.8 The Recipient must, upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.
- 10 DISPUTE RESOLUTION**
- 10.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties' senior managers for resolution if necessary.
- 10.2 If the Parties' senior managers are unable to resolve the dispute within 10 Business Days of it being referred to them, the Parties will refer the dispute to mediation or another form of alternative dispute resolution agreed between the Parties.
- 10.3 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the Parties (or if they cannot agree, appointed by the Chair of the Resolution Institute of New Zealand) and on the terms of the Resolution Institute's standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).
- 10.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had

- arisen pending final resolution of the dispute.
- 10.5 Nothing in this clause 10 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand Court.
- 11 FORCE MAJEURE**
- 11.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement ("**Force Majeure Event**"). The Party affected must:
- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
- (b) use its best endeavours to overcome the Force Majeure Event; and
- (c) continue to perform its obligations as far as practicable.
- 12 GENERAL**
- 12.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.
- 12.2 Assignment:
- (a) The Recipient must not assign, delegate, subcontract or transfer any or all of its rights and obligations under this Agreement. The Recipient remains liable for performance of its obligations under this Agreement despite any approved subcontracting or assignment.
- (b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 12.2(a).
- 12.3 This Agreement may only be varied by agreement in writing signed by the Parties.
- 12.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.
- 12.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by email or registered post to the Parties' respective email address, postal address as set out in Schedule 1. A notice is deemed to be received:
- (a) if personally delivered, when delivered;
- (b) if posted, three Business Days after posting;
- (c) if sent by email, at the time the email enters the Recipient's information system as evidenced by a delivery receipt requested by the sender and it is

not returned undelivered or as an error,

provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.

- 12.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.
- 12.7 The provisions of this Agreement relating to termination (clause 4), reporting requirements and audit (clause 5), warranties (clause 6), intellectual property (clause 7), confidentiality (clause 8), and liability and insurance (clause 9) will continue after the expiry or termination of this Agreement.
- 12.8 This Agreement may be signed in any number of counterparts (including emailed copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.
- 12.9 This Agreement will be governed by and construed in accordance with the laws of New Zealand.

SCHEDULE 3 – PROJECT

1 PROJECT DETAILS

Project name	Kaiwaka Footbridges and linked pathways
Location	Kaiwaka township, Kaipara District
Project description	<p>This project encompasses the design, construct and delivery of two bridges approximately 25 metres each in length. It will also construct a pathway with landscaping providing safe walking and cycling through Kaiwaka township – linking shops, schools, public transport stops and the park - without having to navigate SH1. See layout drawing under Schedule 6.</p> <p><u>Background</u></p> <p>In 2014 Kaipara District Council undertook a Community Planning exercise in Kaiwaka. From this a “Township Improvement plan” was developed and shared with Iwi, Taumata Council and community representatives, then finalised in November 2016.</p> <p>With State Highway 1 (SH1 Auckland/Northland corridor) splitting the township, connectivity was a safety issue crossing from one side of the road to the other. Several solutions have been identified and some implemented.</p> <p>A high risk identified was the lack of safe crossings through the township and across the waterways. Pedestrian bridges were identified as the safest way to achieve these crossings.</p> <p>Implementing the pedestrian bridges will also align to the walking and cycling strategy, plus provide linkages to the Ancient Kauri Trail, as well as provide support for the</p>

	<p>growth and economic development for the township.</p> <p>The implementation of the project will create employment opportunities for approximately 15 workers. The resultant increased commercial activity will provide further employment opportunities for existing business through increased visitor numbers, and the opportunity for the development of new businesses providing new employment opportunities in the commercial centre of the town.</p>
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2 BUDGET DETAILS

Item	(\$) Indicative cost
Project Management, Design, Environmental, Property	
Project management	40,000
Design & consultants support	50,000
Environmental costs	30,000
Main Construction Contract	
Bridge 1	250,000
Bridge 2	250,000
Pathway	100,000
Subtotal	730,000
Contingency	30,000
Total Project Costs	750,000

3 PROJECT TIMEFRAME

Key milestone	Indicative timeframe
Plan and design	
Obtain all property rights	October and November 2020
Award procurement contract	March 2021
Obtain all consents	May and June 2021
Construction	
Construction commences (Construction Commencement Date)	July 2021
Construction complete	December 2021
Project close and opening blessing	January 2021

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SCHEDULE 4 – SOCIAL PROCUREMENT OBJECTIVES

Outcome	Measure
Employment of targeted workers	Where possible the Project will prioritise workers identifying as: <ul style="list-style-type: none"> • Māori or Pasifika; • Women; and • Youth (18 – 24 years).
Local businesses	Where possible the direct contracts and sub-contracts will be awarded to businesses owned and operated by people who reside in the region, and operate in the region.
Supplier diversity	Where possible we will prioritise direct contracts and sub-contractors identifying as Maori and Pacifica.
Skills and training	Provision of relevant training to ensure all workers are skilled, qualified and safe in the workplace.
Worker conditions	All new workers undergo pre-employment induction Health & Safety. Documented Health & Safety Management Systems.
Environmental responsibility	Adoption of practises that enable the project to be delivered sustainably, including by: <ul style="list-style-type: none"> • protecting or enhancing the local ecosystem and its indigenous biodiversity; • actively seeking to minimise the carbon impact of project delivery, to support the transition to a net zero emissions economy; and • minimising waste, re-using materials, and where possible incorporating the principles of the circular economy.

MONTHLY REPORT



Kaiwaka Footbridges and linked pathways

Location and Region:	
Contracted Amount:	
Report Date:	For the month ending [insert month]
Programme Outcomes:	

1 Project

1.1 Provide description and analysis of actual against planned progress of each activity to show that the Project is occurring at pace.

Project element	Details of progress

2 Redeployment outcomes

2.1 Complete the following table for the number of people working to deliver the project in the current reporting period.

Project element	Total number of people working	Number of people						Job type Full-time Part-time Contractor Consultant
		Previously unemployed	Local	Aged 15-24	Māori	Pasifika	Women	
Total								

2.2 Complete the following total jobs table, showing total, current, past and expected future jobs.

Current jobs (this should be the Total People Working in the table above)	People previously but no longer employed on the project	Expected jobs in the future

2.3 Provide any additional narrative to explain the table or give other relevant information.

3 Supplier diversity outcomes

3.1 Complete the following table for the number and value of each direct or sub-contract awarded to local, Māori and/or Pasifika-owned businesses during the current reporting period.

Name of business	Business type (eg, Māori, Pasifika, local)	Contract type (direct or sub-contract)	Contract purpose (briefly describe)	Length of contract (months)	Total value of contract (\$)	Number of new employees as a result of contract

4 Social procurement objectives

4.1 In an appendix and in the format that best works for you:

- (a) show achievements to date against the Social Procurement Objectives in table or other useful format; and
- (b) provide additional narrative to show how tendering, procurement, employment and/or training arrangements are helping to achieve the Social Procurement Objectives, identifying any limitations or further support needed.

5 Financials

5.1 Provide a summary of funding received and expenditure to date, actual against budgeted (for each Project Element) in the following table or add an appendix.

Project element	Indicative cost	Actual spend	PGF funds (Yes / No)	Notes
Total				

6 Forward work programme

6.1 Provide an outline of forward work to be completed in the next month.

Key Milestone	Indicative Timeframe	Outline of Planned Work (for next month)

7 Risks/issues/opportunities

7.1 Provide an overview of any risks and/or issues arising or expected to arise, costs and mitigation options.

Risks / Issues	Magnitude / Likelihood	Mitigation

8 Communications

8.1 Provide an update on media, marketing and communications activity for this Project.

9 Other information

9.1 Provide any other relevant information.

SCHEDULE 6 – Layout drawing of bridges and pathways

