

# INFRASTRUCTURE REFERENCE GROUP

## PROGRAMME OF FLOODPLAIN RISK MANAGEMENT

### FUNDING AGREEMENT

#### FOR

### Kaipara District Council Climate Resilience Programme

**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 District Council listed in Part 2 of Schedule 2 to the Local Government Act 2002, with offices at 42 Hokianga Road Dargaville 0310 ("**Recipient**")

#### BACKGROUND

The Ministry wishes to contribute to the Programme 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 (**Social Procurement Outcomes**), Schedule 4 (**Report Template**) and the Project Plan.

**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: )

\_\_\_\_\_  
Robert Pigou, Head of Kānoa –  
Regional Economic Development &  
Investment Unit

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Louise Miller, Chief Executive

\_\_\_\_\_  
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. The process was supported by Crown Infrastructure Partners.
- 1.3 On 24 June 2020, the Cabinet Economic Development Committee, agreed that the Ministry (acting through Kānoa – Regional Economic Development and Investment 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 [CAB-20-MIN-0341 refers].

### 3 FUNDING

- 3.1 **Funding Total:** this Agreement provides funding for a total amount of up to **\$6,000,000** (plus GST, if any) (**Funding**). This is the Total Maximum Amount Payable by the Ministry.
- 3.2 Subject to the terms of this Agreement, the Ministry will pay the Funding in accordance with the payment schedule set out in the Project Plan.
- 3.3 **Application of Funding:** The Recipient:
  - (a) must apply the Funding in accordance with the Project Plan, subject to any variation agreed with the Ministry in writing;
  - (b) will use its best endeavours to deliver each Work Programme in the manner set out in the Project Plan; and
  - (c) must not use the Funding for any part of a Work Programme 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 to which the Ministry advises the Recipient that it may not apply the Funding to. For the avoidance of doubt, this limitation does not apply to any part of a Work Programme that is co-funded by the Recipient or another party.
- 3.4 **Overruns:** The Parties acknowledge that the Funding in clause 3.1 is the Total Maximum Amount Payable by the Ministry for the Programme (in the aggregate), and that the Recipient will be liable for all cost overruns in relation to the delivery of the Programme. 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 Programme Costs will exceed the Total Maximum Amount Payable under this Agreement.

## 4 PROGRAMME

- 4.1 **Programme:** The Recipient will use the Funding to deliver a floodplain risk management programme of works, the Kaipara Stopbanks Project (the **Programme**). The Programme comprises the following Work Programmes, as set out in the Project Plan:

Work Programme	Start Date	End Date	Construction Commencement Date (by no later than 12 months from the Start Date)	Work Programme Cost, plus GST (if any)	Funding (plus GST, if any)
Dargaville to Te Kopuru Stopbank Project	01/09/21	31/01/24	31/01/22	Up to \$3,500,000	Up to \$3,500,000
Raupo Upgrade	01/09/21	31/01/24	31/01/22	Up to \$2,500,000	Up to \$2,500,000
FUNDING TOTAL: Up to \$6,000,000 (clause 3.1)					

- 4.2 **Programme Outcomes:** the outcomes of the Programme 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 in each Work Programme is no later than 12 months from the relevant Start Date (set out in the Project Plan);
- (b) it obtains all consents required (including without limitation, statutory consents, permissions and licences) to carry out the Work Programmes in accordance with the consenting timeframes set out in the Project Plan. 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 code and consents, as required for the Work Programmes 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 Work Programmes and their delivery (including any identified funding shortfall or potential cost overruns);

- (d) the Work Programmes are 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 reasonable directions of the Ministry, notified by the Ministry in writing on recommendation of the Programme Board, from time to time;
  - (iv) to the high standard set out in any Programme documentation submitted to the Ministry, including any Minister of the Crown or any Government Agency, and any further plans, designs, or other Programme 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 Programme, the Recipient must ensure that all tendering and procurement arrangements for each Work Programme:
  - (a) occur at pace, time being critical; and
  - (b) comply with any agreed Social Procurement Objectives (Schedule 3).

## 6 PAYMENT TERMS

- 6.1 Subject to the terms of this Agreement, the Ministry will pay the Funding to the Recipient in accordance with the payment schedule as set out in the Project Plan.
- 6.2 Invoicing and payments may be aggregated across all Work Programmes within the Programme.
- 6.3 **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) Before the first Instalment, the Recipient has provided, a Project Plan in a form acceptable to the Ministry;
  - (b) The Recipient has completed all Deliverables for the Instalment claimed in the relevant Work Programme, as set out in the Project Plan;
  - (c) in relation to each Instalment (except the First Instalment under a Work Programme), the Recipient will provide the Ministry with access to copies of the GST invoices for all payments over \$1,000 paid by the Recipient to third parties prior to the date of the Instalment;
  - (d) the Recipient has provided a valid GST invoice for the Instalment;
  - (e) the Recipient provides a certificate (or similar) signed by the Recipient's Programme Director which, in respect to the relevant Work Programme:
    - (i) certifies the progress of the Work Programme;
    - (ii) certifies the costs incurred by the Recipient;
    - (iii) certifies that the Work Programme is on track to be completed by the End Date;
    - (iv) notifies the Ministry of any variations to the relevant construction contract(s);

- (v) provides the cost to complete the Work Programme; and
- (vi) either certifies that the Project Plan in its current form remains accurate and complete or attaches an updated Project Plan for approval by the Ministry;
- (f) the Recipient has delivered all Reports required under clause 8 to the Ministry's satisfaction;
- (g) the Recipient is not in breach of any provision of this Agreement; and
- (h) the Ministry is satisfied in its sole discretion that:
  - (i) the relevant Work Programme is progressing in accordance with the relevant Work Programme Budget and Work Programme Timeframes; and
  - (ii) the Funding has been applied in accordance with clause 4, including pursuant to any discussions with the Recipient.
  - (iii) if applicable, the updated Project Plan is in a form acceptable to the Ministry.

## **7 TERM**

- 7.1 This Agreement commences on the date it is signed by the Parties and will continue in full force and effect until **31/01/24 (Expiry Date)**, unless terminated earlier in accordance with its terms.
- 7.2 Each Work Programme starts on the Start Date and ends on the End Date or the date on which anything required to be done by the Recipient under a Work Programme is completed (whichever is the later), unless terminated earlier in accordance with its terms.

## **8 REPORTING REQUIREMENTS**

- 8.1 **Reports:** The Recipient will provide the Ministry with:

- (a) A Monthly Report by email by the 8th Business Day following the end of each month (unless a Quarterly Report is due) detailing the progress of each Work Programme against the relevant Work Programme Budget and Work Programme Timeframes set out in the Project Plan;
- (b) A Quarterly Report completed on a template attached as Schedule 4, by the 8<sup>th</sup> Business Day following the end of each quarter; and
- (c) A Final Report within 8 Business Days of the End Date of a completed Work Programme, on the Ministry's approved form.

- 8.2 **Ministry satisfaction:** For the avoidance of doubt, if any one or more of the Reports do not satisfy the Ministry that a Work Programme is progressing in accordance with the relevant Work Programme Budget and Work Programme Timeframe, the Ministry will be entitled to terminate the relevant Work Programme and recoup all unspent funds in accordance with clause 4 of Schedule 2.

- 8.3 **Final Programme Report:** A Final Programme Report within 1 month following the Expiry 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 Programme or any Work Programme(s).

## 9 GOVERNANCE

- 9.1 The Parties acknowledge that, once established, a programme board comprising suitably qualified and experienced personnel will provide oversight of all “Climate Resilience Programmes” subject to Ministry funding agreements, including this Programme (the **Programme Board**).
- 9.2 The Programme Board will be provided with the Recipient’s Reports, budget forecasts, any updated Project Plans, and any other project information necessary in order for it to perform its oversight function.
- 9.3 The Recipient will promptly provide all further information reasonably requested by the Programme Board in order to perform its oversight functions.
- 9.4 The Programme Board will:
- (a) provide advice about whether or not the Recipient is meeting its performance obligations under this Agreement; and
  - (b) provide the Recipient with advice about any action or change recommended to meet its performance obligations;
  - (c) monitor the progress of the Programme, compliance, risk identification and mitigation, and quality assurance; and
  - (d) establish channels for two-way communication of information or escalation of issues between the Recipient and Ministry.
- 9.3 The Programme Board may make recommendations to the Ministry in respect to the Recipient’s performance under this Agreement and to ensure the improvement and profitable management of the Programme against planned progress (Project Plan).

## 10 ADDRESS FOR NOTICES

Ministry:	Recipient:
Ministry of Business, Innovation and Employment 15 Stout Street PO Box 1473 WELLINGTON 6011  Email address: Vibeke.Wright@mbie.govt.nz Contact person: Vibeke Wright Attention: Kate Jefferd	Kaipara District Council Private Bag 1001 Dargaville, 0340  Email address: chiefexec@kaipara.govt.nz Contact person: Louise Miller Attention: Jim Sephton

## 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 all Schedules;

**"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"** is the date this Agreement is signed by both Parties;

**"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 under each Work Programme must commence;

**"Deliverable"** means the deliverables in each Work Programme;

**"End Date"** means the end date of a Work Programme as set out in the relevant Work Programme;

**"Expiry Date"** means the expiry date of this Agreement, as described in Schedule 1;

**"Final Report"** means the final report, as described in Schedule 1;

**"Final Programme Report"** means the final programme report, as described in Schedule 1;

**"Funding"** means the funding total, as

described 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 each Work Programme;

**"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;

**"Monthly Report"** means the monthly report, as described in Schedule 1;

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

**"Payment Schedule"** means the payment schedule in each Work Programme;

**"Programme"** means the programme described in Schedule 1, which consists of the Work Programmes;

**"Programme Board"** means the governance board, as described in Schedule 1;

**"Programme Director"** means an officer of the Recipient with the authority to certify requests for payment of the Instalments described in Schedule 1;

**"Programme Costs"** means the total costs of the Work Programmes (in the aggregate);

**"Project Plan"** means a project plan for the Programme, providing details for each Work Programme, in the form approved by the Ministry;

**"Report"** means the reports described in clause 8 of Schedule 1;

**"Schedule"** means a schedule to this Agreement, including all Work Programmes;

**“Social Procurement Objectives”** means the agreed objectives described in Schedule 3;

**“Start Date”** means the start date of a Work Programme as set out in the relevant Work Programme;

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

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

**“Work Programme”** means a work programme in Schedule 5 of this Agreement.

**“Work Programme Budget”** means the budget in each Work Programme;

**“Work Programme Costs”** means the total costs of a Work Programme;

**“Work Programme Timeframe”** means the work programme timeframes in each Work Programme.

- 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) in accordance with the Payment Schedule in

relevant Work Programme 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](mailto:monitorpgf@mbie.govt.nz);
- (b) be copied to the relevant Ministry contact person as set out in clause 10 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 Programme in accordance with this Agreement.

- 2.5 In consideration of the Funding, the Recipient must:

- (a) progress each Work Programme to the Ministry’s satisfaction;
- (b) complete each Work Programme to the Ministry’s satisfaction by the Expiry Date;
- (c) carry out each Work Programme in accordance with:
  - (i) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Work Programme; and
  - (ii) all applicable laws, regulations, rules and professional codes of conduct or practice; and



- (d) refund any unspent Funding in respect to the relevant Work Programme, to the Ministry within 10 Business Days of the End Date.

2.6 Where all of the monies received by the Recipient to carry out the Programme (including the Funding) exceeds the Programme Costs, 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 Programme 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. PROGRAMME DELIVERY AND PROGRESS

If:

- (a) the Ministry is not satisfied with the progress of a Work Programme;
- (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 the relevant Work Programme(s) with the Recipient; or
- (f) terminate the relevant Work Programme(s) immediately by notice to the Recipient, and clause 4.4, 4.5 and 4.6 will apply.

### 4. TERMINATION

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

4.2 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.

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

4.4 On termination of this Agreement or relevant Work Programme(s), 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 Programme 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 relevant Work Programme, as reasonably determined by the Ministry; and/or;

(iii) 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 Programme 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 Programme 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 any of the works are being carried out;

(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 Programme 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 Programme 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 Programme 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 Programme 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 8.

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 Programme;
- (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 Programme.

## **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 Programme 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 Programme, 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.

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, pandemic, epidemic, 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; or
  - (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 – SOCIAL PROCUREMENT OUTCOMES

Taking into account the regional social context and the tenders received, the Recipient will use reasonable endeavours to ensure that the social procurement objectives outlined in Schedule 3 are provided for.

Outcome	Measure	When Applied
<b>Employment of workforce</b>		
Employment of targeted workers	Where possible, prioritising workers identifying as: <ol style="list-style-type: none"> <li>1. Māori or Pasifika</li> <li>2. Local workers</li> <li>3. With the employment of women prioritised at each level.</li> </ol>	All
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 operating in the region (targeting Māori and Pasifika businesses in particular).	All
Supplier Diversity	15% of the direct contracts and sub-contracts will be awarded to Maori and Pasifika businesses.	All
<b>Workforce</b>		
Skills and training	Contractors to ensure that any youth (aged 18-24) who are employed for these projects receive appropriate skills training and a reference upon completion of the project.  Encouraging contractors to engage with a Work and Income work broker for potential employment and training opportunities for the project.	Work Programmes over 6 months in duration
	Contractors will be encouraged to: <ul style="list-style-type: none"> <li>• Create a career development plan for employees.</li> <li>• Carry out internal assessments of all employees' career development plans at least every three months and at the end of the contracted works to ensure each employee's career development is progressing.</li> <li>• Focus on individuals obtaining 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). These should be through an accredited training provider so units are reported correctly on NZQA.</li> </ul>	Work Programmes over 6 months in duration
Worker Conditions	If provided for in tender procurement documents, 100% of employees will be registered with a suitably qualified health and safety testing organisation including mental health and wellness.	Work Programmes over 6 months in duration
	Contractors will be encouraged to ensure that employees' wages increase progressively in line with their career development plan achievements.	Work Programmes over 6 months in duration
<b>Environmental Responsibility</b>		

Environmental Responsibility	<p>Wherever appropriate, and if provided for in tender procurement documents, adoption of practices that enable the Work Programme(s) to be delivered sustainably, including by:</p> <ul style="list-style-type: none"> <li>• complying with any resource consent(s)</li> <li>• including environmental best practice in project planning</li> <li>• protecting or enhancing the local ecosystem and its indigenous biodiversity</li> <li>• actively seeking to minimise the carbon impact of the Programme delivery, to support the transition to a net zero emissions economy</li> <li>• minimising waste, re-using materials, and where possible incorporating the principles of the circular economy</li> <li>• using water resources efficiently</li> <li>• using low-impact, sustainably and locally sourced materials and products; and</li> <li>• Building resilience to the impacts of a changing climate.</li> </ul>	All
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## SCHEDULE 4 – REPORT TEMPLATE



### IRG Shovel Ready Reporting Template

<b>Project Name:</b>	Kaipara District Council Climate Resilience Programme			<b>Project Number:</b>	R01.02822
<b>Project Owner:</b>	Kaipara District Council	<b>Project Sponsor:</b>	Regional Economic Development & Investment Unit		
<b>Project Manager:</b>	Jim Sephton	<b>Mobile:</b>	0276545319	<b>E-mail:</b>	<a href="mailto:jsephton@kaipara.govt.nz">jsephton@kaipara.govt.nz</a>
<b>Total Project Cost (\$'m):</b>	\$6,000,000	<b>Govt. Funded (\$'m)</b>	\$6,000,000	<b>Co-Funded (\$'m):</b>	N/A
<b>Estimated FTE:</b>	35	<b>Target Start Date:</b>	XX	<b>Target Completion Date:</b>	XX
<b>Month end date:</b>					

<b>Project Costs</b>						<b>Total Project Cost (\$'m):</b>		
<b>Month</b>			<b>Project to Date</b>			<b>Project Complete</b>		
<b>Actual \$'m</b>	<b>Plan \$'m</b>	<b>Var %</b>	<b>Actual \$'m</b>	<b>Plan \$'m</b>	<b>Var %</b>	<b>Forecast \$'m</b>	<b>Plan \$'m</b>	<b>Var %</b>
<b>Commentary:</b>		[Commentary on variance and forecast cost to complete]						

Project Milestones [Add milestones as required]							
Milestone	Milestone Name	Contract Date	Latest Actual / Forecast Date	Variance (+/- days)	Govt. Funding Drawn \$'m	Co-Funding Drawn \$'m	
1							
2							
3							
4							
5							
<b>Average</b>							
<b>Commentary</b>		[Commentary on progress towards milestones and variance between contract and forecast]					

Project Cashflows		Costs to Date		Cashflow Forecast		
		Month \$'m	Project to Date \$'m	Forecast Project Complete \$'m	Next Month \$'m	Second Month \$'m
Govt. Funding Received						
Co-Funding Received						
Total Funding Received						
<b>Commentary</b>						

Personnel					
	Month	Project to Date	Forecast Project Complete	Target	Variance %
FTE					-
Resident					
Non-resident					
Apprentices					
No. previously unemployed					
No. local					
No. aged 15-24					



No. Māori			
No. Pasifika			
No. Women			
TRIFR			
Injuries			
Hours worked			
Commentary:	[Commentary on workers movement in period and progress towards stated FTE target]		

#### Supplier Diversity Outcomes

Name of business	Business type (Māori, Pasifika, local)	Contract type (direct, sub-contract)	Contract purpose (briefly describe)	Length of contract (months)	Total value of contract (\$)	No. new employees (as result of contract)

#### Top 5 Risks and Contractor Claims [Choose Low/Medium/High]

Risk #	Risk Name	Impact	Likelihood	Treated	Commentary on mitigants
1					
2					
3					
4					
5					
Contractor Claims:	[List any material contractor claims in dispute]				

#### Scope and Progress commentary

Commentary:	[Commentary on progress during period, i.e. consents gained, work done etc... Progress towards scope and any major changes to scope]
Media Announcements:	[Any major media announcements or upcoming opportunities for media announcements]

#### Pre-work commencement status

		Status	Expected completion date	Commentary on progress issues
RMA	1	[Drop down options]		
Building Consent	1	[Drop down options]		
PWA Designation	1	[Drop down options]		
Other Consents	1	[Drop down options]		
Design	2	[Drop down options]		
Main Contract	3	[Drop down options]		
Drop Down options are:				
1 - In Preparation; Filed with Authority; Approved; Rejected/Reworked; N/A				
2 - Yet to Commence; Underway; Completed; Reviewed; N/A				
3 - RFP in Preparation; RFP Issued; RFP Closed; Contract Evaluation; Contract Negotiation; Contract Executed				

#### Social Procurement Objectives

<i>State your Social Procurement Objectives (as agreed within two weeks of contracting)</i>	<i>Show achievements to date against each of the Social Procurement Objectives</i>	<i>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.</i>

DRAFT