



PROVINCIAL
DEVELOPMENT
UNIT

New Zealand Government

DEVELOPMENT PHASE FUNDING AGREEMENT

BETWEEN

**MINISTRY OF BUSINESS,
INNOVATION AND EMPLOYMENT**

AND

**COROMANDEL MARINE FARMERS
ASSOCIATION INC**

FOR

SUGARLOAF WHARF BUSINESS CASE

PROACTIVELY RELEASED

PART 1: KEY DETAILS

1	Parties	<p>MINISTRY The Sovereign in right of New Zealand, acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment (Ministry)</p> <p>RECIPIENT Coromandel Marine Farmers Association Incorporated, an Incorporated Society having its registered offices at PO Box 118, Whitianga 3542, New Zealand (Recipient)</p>
2	Funding Start Date	Commercial Information
3	End Date	Commercial Information
4	Background	<p>Through the Provincial Development Unit, the Ministry is responsible for administering the Provincial Growth Fund, which aims to lift productivity potential in New Zealand’s provinces.</p> <p>The Recipient is an Incorporated Society representing the interest of Mussel and Oyster farmers of the Hauraki Gulf, who are concentrated around Coromandel Peninsula and at Waiheke Island.</p> <p>The Recipient has sought funding for a business case for the expansion of the existing Sugarloaf Wharf Facility to cater primarily for Aquaculture activities with some provision for existing recreational users.</p> <p>The current Sugarloaf Wharf facility that was built in 1994, catered for growth of the marine farming industry to ^{Commercial Inform} harvest tonne. The facility is now handling harvest tonnage of ~ ^{Commercial Inform} T.</p> <p>Congestion issues have resulted in time and cost inefficiencies (boat wait times) and health and safety concerns with both commercial and recreational users.</p> <p>Both vessel and truck volumes are forecast to grow substantially in support of the forecast growth in tonnage.</p> <p>The Recipient has sought a funding contribution from the Ministry for the purposes of carrying out or procuring the Development Phase Project described below. The Ministry has agreed to contribute funding on the terms and conditions of this Agreement (Agreement).</p> <p>Key details of this Agreement are set out in this Part 1. The full terms and conditions are set out in Part 2. Defined terms and rules of interpretation are set out in Part 3.</p>
5	Development Phase Project	<p>The Development Phase Project is a Business Case and it has five Work Streams:</p> <ol style="list-style-type: none"> 1. <u>Stakeholder Engagement</u> This will occur throughout the process and will be tailored to particular stakeholder/group needs and expectations. 2. <u>Technical Studies (including Cultural Impact Assessment)</u> The technical studies will all result in stand-alone reports but will be summarised and amalgamated into the final business case. Studies (with

scope) include the following:

Health and Safety

- Conduct a desk top review of the detailed engineering plans for the new Sugarloaf development, focusing on the safety aspects of the design elements of the wharf plans.

Cultural Impact Assessment

This will include identification of any cultural concerns and potential opportunities that can be addressed through technical studies, the business case or future operations

Engineering and Technical

General : Time Study, Design Basis Statement, Preliminary Design Report, Cost Estimate

Commercial Wharf : Layout Design, Structural Design, Pavement Design, Geotechnical Design, Water/Wastewater/Stormwater Design, Lighting, Drawing Production

Recreational Wharf : Layout Design, Pavement Design, Water/Wastewater/Stormwater Design, Lighting, Revetment Design, Drawing Production

Planning and Consenting Requirements

- The identification of any environmental overlays that apply to the project area in the Waikato Regional Policy Statement, Waikato Regional Coastal Plan, Thames-Coromandel District Plan, Conservation Management Strategy and Iwi Environmental Plans;
- The identification of the resource consents required from the Waikato Regional Council and the Thames-Coromandel District Council
- A summary of the statutory planning framework that will be relevant to the consideration of any resource consent applications for the project;
- The identification of the key environmental issues / challenges that will need to be considered as part of the project (and the nature of the environmental assessments required to address these matters); and
- General recommendations regarding the 'consentability' of the project and next steps.

Cost Benefit Analysis

An economic cost-benefit assessment to determine the full range of benefits to the District, and within a regional and national context that will articulate 'value for money'. This will include an investigation of the following through 'what if' scenarios:

- The baseline situation and net additional (intervention vs business as usual)
- The counterfactual situation (different approaches)

- The funding arrangements (cost inefficiencies)
- Summary ratios, including:
 - (a) Cost-benefit ratio;
 - (b) Return on private funding;
 - (c) Return on public funding;
 - (d) NPV of the cost/benefits; and
 - (e) Net position on a per capita basis at a total level and the make-up of the net position (and contribution per component).

3. Financial and Commercial Analysis

- Review historical materials and new information available and provide initial analysis and support to the other work streams.
- Participate in commercial stakeholder engagement and provide analysis, support and advice in terms of the potential operating models and the financial and commercial implications of these options.
- Develop a financial model based on the commercial engagement and options assessment.
- The model will include the required sensitivity analysis and allow the comparison between scenarios where appropriate.

4. Legal and Governance changes required (for future investment)

Define and document optimum legal structure and governance model for future Sugarloaf operation, including identification of:

- Identify desirable characteristics of the optimum legal structure.
- Scan of potential governance models
- Assessment of proposed governance models
- Ownership and access issues to existing wharf facilities
- Recommendation for a steering committee and its composition
- Appropriate ownership model to apply for, and hold, resource consents
- What, if any, new entity should be established to manage resource consent process, source funding, oversee wharf design and build and undertake day to day management of the Wharf / Port.
- In conjunction with key stakeholders, determine the optimum legal structure for development, ownership and management of the wharf/Port.
- Establishment /incorporation requirements for the optimum legal structure, including development of constitutional documents and/or agreements.

5. Compile Business Case

The technical studies, financial modelling and legal and governance work will be amalgamated to form the business case for future investment. This will include working closely with each workstream to ensure they are coordinated and cognisant of changes / scenarios that may affect their respective area.

The Recipient will establish a Steering Group to monitor and oversee the delivery of the Development Phase Project, and a Programme Management Group and Programme Manager to assist with delivery. Administrative support will be provided and paid for by the Recipient.

6 Development Phase Deliverables and Instalments

The Recipient is to complete the following Development Phase Deliverables for the Development Phase Project to the satisfaction of the Ministry by the following dates:

Due Date	Development Phase Deliverable	Instalment payable on completion NZD\$ (excluding GST)
Commercial Information	Satisfy the Conditions Precedent under item 11 of the Key Details	\$ Commercial Information
Commercial Information	Design basis statement completed. Initial H&S review completed Planning review completed	\$ Commercial Information
Commercial Information	Engineering design completed Final report on Legal and Governance Structure for future operations completed Commercial operating model agreed Financial model completed Cultural Impact	\$ Commercial Information

		Assessment completed Economic model completed Health & Safety Review completed	
	Commercial Information	Draft business case completed for feedback from the Ministry	N/A
	Commercial Information	Final business case completed and Final Technical Reports completed and Final Financial and Commercial Analysis completed and Evidence that the co-funding has been contributed to the Development Phase Project.	\$ Commercial Information
	Commercial Information	Final Report complete.	\$ Commercial Information
7 Approved Contractor	<p>Commercial Information – Legal and Governance</p> <p>Commercial Information – Health and Safety</p> <p>Commercial Information – Project Management and Business Case</p> <p>Commercial Information – Financial Modelling and Commercial Analysis</p> <p>Commercial Information – Cost Benefit Analysis</p> <p>Commercial Information – Planning and Consent Requirements</p> <p>Commercial Information – Engineering and Technical</p> <p>Commercial Information – Cultural Impact Assessment</p>		
8 Funding	The total Funding available under this Agreement is up to NZ\$558,000 excluding GST (if any). This is the Total Maximum Amount Payable.		

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	<p>The Funding will be paid in instalments on the payment dates set out in item 6, subject to completion of each Deliverable by the relevant due date; receipt of a Payment Request in accordance with clause 1 of Part 2 and the terms and conditions of this Agreement.</p>
9 Co-Funding	<p>The Recipient must have secured the following Co-Funding to be used for the Project:</p> <p>NZ\$ ^{Commercial Information} excluding GST (if any) in co-funding (cash) will be provided by the Recipient. This co-funding will be spent prior to the drawdown of the fourth tranche of Ministry funding as set out in item 6 of the Key Details.</p> <p>In addition to the cash co-funding, the Recipient, ^{Commercial Information} will contribute in-kind co-funding to the value of \$ ^{Commercial Information}</p>
10 Reporting	<p>The Recipient will provide the Ministry with</p> <ol style="list-style-type: none"> 1. A Final Report by the 10th Business Day following the submission of the final Development Phase Deliverable. <p>The Final Report must include the following information:</p> <ol style="list-style-type: none"> (a) Description and analysis of actual progress of the Development Phase Project against planned progress; (b) A summary of Funding and any co-funding received for the Development Phase Project, and a summary of expenditure, actual against budgeted; (c) Detail the Recipient's proposed next steps; (d) Copies of any proposed and any published promotional material, media publicity or other documentation relevant to the Development Phase Project; and (e) Any other information that is notified by the Ministry in writing to the Recipient.
11 Conditions Precedent to Funding and Special Terms	<p><u>Conditions Precedent</u></p> <p>No Funding will be payable until the Ministry has confirmed in writing that it has received (in form and substance satisfactory to the Ministry) the following:</p> <ol style="list-style-type: none"> 1. A duly executed copy of this Agreement. 2. Evidence that \$ ^{Commercial Information} in co-funding is held by the recipient and is available to be used to fund the Development Phase Project. 3. A duly executed copy of the Consultancy Contract(s) detailing (amongst other things) the activities, analysis and reporting to be undertaken in relation to the Development Phase Project and the associated budget and timeline. For the avoidance of doubt, the Recipient will provide the Ministry with a draft copy of the Consultancy Contract(s) to review and provide feedback on (if any) before that agreement is executed. 4. Evidence that funding is in place to undertake a Cultural Values Assessment. 5. Evidence that appropriately qualified and experienced persons have

	<p>been appointed to the:</p> <ol style="list-style-type: none"> a. Steering Group; b. Programme Management Group; and c. Role of Programme Manager. <p>Special Terms</p> <ol style="list-style-type: none"> 1. If at any time the Recipient becomes aware, for any reason, that the land adjacent to Sugarloaf Wharf will not be transferred to TCDC, then the Recipient must suspend all work and payments immediately and notify the Ministry of that within two Business Days 	
12 Contact Person	<p>Ministry's Contact Person:</p> <p>Name: Nicholas Hough</p> <p>Email: Privacy of natural persons</p>	<p>Recipient's Contact Person:</p> <p>Name: Stephen Hand</p> <p>Email: Privacy of natural persons</p>
13 Address for Notices	<p>To the Ministry:</p> <p>15 Stout Street, PO Box 1473 Wellington 6140</p> <p>Email: rmonitorpgf@mbie.govt.nz</p>	<p>To the Recipient:</p> <p>Coromandel Marine Farmers Association PO Box 118, Whitianga 3542</p> <p>Attention: Stephen Hand Email: Privacy of natural persons</p>
SIGNATURES	<p>SIGNED for an on behalf of the SOVEREIGN IN RIGHT OF NEW ZEALAND by the person named below, being a person duly authorised to enter into obligations on behalf of the Ministry of Business, Innovation and Employment:</p> <p>_____</p> <p>Name:</p> <p>Position:</p> <p>Date:</p>	<p>SIGNED for and on behalf of the RECIPIENT by the person named below, being a person duly authorised to enter into obligations on behalf of the Recipient:</p> <p>_____</p> <p>Name: Stephen Hand</p> <p>Position: Chair, Coromandel Marine Farmers Association</p> <p>Date:</p>

END OF PART 1

PART 2: GENERAL TERMS

1 FUNDING

- 1.1 The Ministry will pay the Funding (up to the “Total Maximum Amount Payable” specified in the Key Details) to the Recipient, subject to the terms of this Agreement. The Recipient must use the Funding on Eligible Costs.
- 1.2 The Recipient will submit a Payment Request to the Ministry’s Contact Person on completion of Deliverables in accordance with item 6 (Development Phase Deliverables and Instalments) in the Key Details
- 1.3 Each Payment Request is to be signed by the Chair of the Coromandel Marine Farmers Association and must be in the form set out in the Schedule and include the confirmations set out therein, and must include:
- (a) the amount of Funding requested, which must not exceed the Instalment set out in the Key Details;
 - (b) a breakdown of total Eligible Costs incurred by the Recipient for the Development Phase Project and confirmation that such costs are Eligible Costs for the purpose of this Agreement and have been paid or are currently due and payable (not required for any initial payment to be paid on the Commencement Date),
 - (c) copies of invoices received by the Recipient from the Approved Contractor or third parties in relation to the Eligible Costs where those Eligible Costs are more than \$1,000 (on an individual basis or when grouped by supplier or subject matter) and statements and accounts showing the Eligible Costs incurred;
 - (d) if the Payment Request includes a GST component, contain a valid GST invoice complying with the Goods and Services Tax Act 1985; and
 - (e) contain any other information required by the Ministry.
- 1.4 The Ministry is not required to pay any Funding in respect of a Payment Request:
- (a) if any Deliverable(s) have not been completed by the relevant “Completion Date” (if any) specified in the Key Details;
 - (b) if payment will result in the Funding exceeding the “Maximum Amount Payable” specified in the Key Details;
 - (c) if the Ministry is not satisfied that the Recipient has applied Co-Funding in accordance with clause 2.11(a)(ii) of this Agreement;
 - (d) if this Agreement has expired or been terminated; and/or
 - (e) while the Recipient is in breach of this Agreement.
- 1.5 Subject to the terms of this Agreement, the Ministry will pay each valid Payment Request by the 20th day of the month after the month the Payment Request is dated, and if such day is not a Business Day, on the next Business Day.

2 RECIPIENT'S RESPONSIBILITIES

Standards and compliance with laws

- 2.1 The Recipient will comply with all applicable laws, regulations, rules and professional codes of conduct or practice.

Development Phase Study and Contractors

- 2.2 The Recipient will ensure that the Development Phase Project is carried out:
- (a) promptly with due diligence, care and skill, and in a manner that meets or exceeds Best Industry Practice;
 - (b) by appropriately trained, qualified, experienced and supervised persons; and
 - (c) in accordance with any directions of the Ministry, notified by the Ministry in writing from time to time.
- 2.3 The Recipient is responsible for the acts and omissions of any contractors.
- 2.4 The Recipient will ensure that all agreements it enters into with the Approved Contractor or any other party in connection with the Development Phase Project are on an "arm's length" basis, provide value-for-money and do not give rise to any Conflict of Interest. The Recipient must provide the Ministry with reasonable evidence of compliance with this clause 2.4 in response to any request by the Ministry from time to time.

Information Undertakings

- 2.5 The Recipient will provide the Ministry with the reports (if any) specified in the Key Details, in accordance with the timeframes and reporting requirements set out in the Key Details.
- 2.6 The Recipient will provide the Ministry with any other information about the Development Phase Project requested by the Ministry within the timeframe set out in the request.
- 2.7 The Recipient shall promptly notify the Ministry if:
- (a) the Recipient (or any of its personnel or contractors) becomes aware of, or subject to, a Conflict of Interest;
 - (b) the Recipient becomes aware of any matter that could reasonably be expected to have an adverse effect on the Development Phase Project and any related project, or result in a Termination Event or a breach of any term of this Agreement by the Recipient.
- 2.8 The Recipient will not at any time do anything that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of the Ministry. The Recipient will keep the Ministry informed of any matter known to the Recipient which could reasonably be expected to have such an effect.

Funding, records and auditors

- 2.9 The Recipient will receive and manage all Funding in accordance with good financial management and accounting practices and to a high standard that demonstrates appropriate use of public funds.

- 2.10 The Recipient must keep full and accurate records (including accounting records) of the Development Phase Project, and retain them for at least 7 years after the last payment of Funding under this Agreement. The Recipient must permit the Ministry (or any auditor nominated by the Ministry) to inspect all records relating to the Development Phase Project and will allow the Ministry and/or the auditor access to the Recipient's premises, systems and personnel for the purposes of this inspection.

Co-Funding

- 2.11 If specified at item 9 of the Key Details, the Recipient must:
- (a) ensure that during the term of this Agreement the Co-Funding:
 - (i) is and remains secured and available to the Recipient to be applied towards the Project on the same terms and conditions approved by the Ministry; and
 - (ii) is applied to Eligible Costs as set out in the Key Details; and
 - (b) immediately notify the Ministry if it becomes aware of any circumstances that may result in the Co-Funding (or any part of the Co-Funding) not being secured and available to the Recipient to be applied towards the Project.

3 INTELLECTUAL PROPERTY

- 3.1 The Ministry acknowledges that the Recipient and its licensors own all pre-existing intellectual property in connection with the Development Phase Project, and all intellectual property created in the course of the Development Phase Project.
- 3.2 The Recipient grants an irrevocable, perpetual, royalty-free, sub-licensable licence to the Ministry to use all reports, documents, information and other materials created or provided by the Recipient to the Ministry under or in connection with the Project and this Agreement.
- 3.3 The Recipient warrants that it has obtained (or will obtain, prior to creation of each relevant work) all rights and permissions necessary to enable the grant and exercise of the licence in clause 3.2 without infringing the intellectual property rights of the Approved Contractor or any third party.

4 TERM AND TERMINATION

- 4.1 This Agreement will be effective on and from the date this Agreement has been signed by both parties (the **Commencement Date**) and will remain in force until the End Date, unless terminated in accordance with this Agreement (the **Term**).
- 4.2 The Ministry can terminate this Agreement with immediate effect, by giving notice to the Recipient, at any time while:
- (a) the Ministry reasonably considers that the Recipient has become or is likely to become, insolvent or bankrupt;
 - (b) the Recipient is subject to the appointment of a liquidator, receiver, manager or similar person in respect of any of its assets;
 - (c) the Recipient has ceased to carry on its operations or business (or a material part of them) in New Zealand; or

- (d) any one or more of the follow events or circumstances remains unremedied:
- (i) the Recipient is materially in breach of any obligation, or a condition or warranty, under this Agreement;
 - (ii) the Recipient has provided the Ministry with information in connection with or under this Agreement that (whether intentionally or not) is materially incorrect or misleading, and/or omits material information;
 - (iii) the Ministry reasonably considers that this Agreement or the Development Phase Project has caused, or may cause, the Ministry and/or the New Zealand Government to breach any legal obligations (including its international trade obligations);
 - (iv) the Recipient abandons the Development Phase Project or if it becomes apparent that any related project that the Development Phase Project is investigating will not proceed;
 - (v) the Recipient is involved in any intentional or reckless conduct which, in the opinion of the Ministry, has damaged or could damage the reputation, good standing or goodwill of the Ministry, or is involved in any material misrepresentation or any fraud;
 - (vi) the Recipient (or any of its personnel or contractors) is subject to a Conflict of Interest which cannot be managed to the Ministry's satisfaction; or
 - (vii) any change in law, regulations, government policy or other circumstances materially affects the Ministry's ability to perform its obligations under this Agreement.

4.3 However, where the Ministry considers that a Termination Event set out in clause 4.2(d) can be remedied, the Ministry will give notice to the Recipient requesting a remedy, and will not exercise its right of termination unless the relevant event remains unremedied for at least 14 days (or any longer period agreed with the Recipient) after that notice has been provided by the Ministry.

4.4 On expiry or termination of this Agreement, where the total Funding paid under this Agreement and any other money received by the Recipient to carry out the Development Phase Project exceeds the funding required to perform the Development Phase Project, the Recipient must upon request refund to the Ministry the excess amount. The Recipient is not required to refund, under this clause 4.4, any amount that exceeds the total amount of Funding.

4.5 If Co-Funding is required as set out in the Key Details, on expiry or termination of this Agreement, if the Co-Funding has not been used for the Project, the Ministry may recover an amount that represents the same proportion of the Funding as the proportion of Co-Funding that has not been used is of the total Co-Funding.

4.6 At any time the Ministry may recover the amount of any Funding that has been spent or used other than in accordance with this Agreement, together with interest on all such amounts calculated at 10% per annum from the date of the mispending to the date the money is repaid.

4.7 Clauses 1.4, 2.1, 2.9, 2.10, 3, 4, 5, 6, 7, 8, 9, 10 and 11 survive expiry or termination of this Agreement, along with any other parts of this Agreement necessary to give effect to those provisions. Expiry or termination of this Agreement does not affect any accrued rights, including any rights in respect of a breach of this Agreement or Termination Event that occurred before expiry or termination.

5 WARRANTIES

- 5.1 The Recipient warrants that, in the course of its activities in connection with the Development Phase Project, it will not infringe any intellectual property or other rights of the Approved Contractor or any third party.
- 5.2 The Recipient warrants that, as at the date of this Agreement:
- (a) all information and representations disclosed or made to the Ministry by the Recipient in connection with this Agreement are true and correct, do not omit any material matter, and are not likely to mislead or deceive the Ministry as to any material matter;
 - (b) it has disclosed to the Ministry all matters known to the Recipient (relating to Development Phase Project, the Recipient or its personnel) that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of the Ministry; 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.
- 5.3 The Recipient acknowledges that the Ministry has entered into this Agreement in reliance on these warranties.
- 5.4 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 Development Phase Project, or any subsequent phase of that project, other than the Funding. The Recipient must not make any statement or representation to any person (including the media) that the Ministry has agreed to provide any funding or financial support to the Project (other than the funding of the Development Phase Project).

6 LIABILITY

- 6.1 The maximum liability of the Ministry under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to the total amount of Funding paid or payable under this Agreement.
- 6.2 The Ministry is not liable for any claim under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, where such claim is or relates to any loss of profit, loss of revenue, loss of use, loss of reputation, loss of goodwill, loss of opportunity (in each case whether direct, indirect or consequential) or any other indirect, consequential or incidental loss or damages of any kind whatsoever.

7 CONFIDENTIALITY

- 7.1 Subject to clause 7.2 and 7.3, each party will keep the other party's Confidential Information in confidence, and will use or disclose that Confidential Information only to the extent necessary to perform its obligations, and/or take the intended benefit of its rights, under this Agreement. However, this will not prohibit:
- (a) either party from using or disclosing any information with the written prior consent of the other party;
 - (b) use or disclosure of information that has become generally known to the public other than through a breach of this Agreement;

- (c) either party from disclosing information to its personnel or contractors with a need to know, so long as the relevant personnel and contractors use the information solely to enable that party to perform its obligations and/or take the intended benefit of its rights under this Agreement, and so long as they are informed of the confidential nature of the information and in the case of the Recipient, the Recipient receives an acknowledgement from its personnel or contractors that they acknowledge, and will comply with, the confidentiality obligations in this Agreement as if they were party to it;
- (d) disclosure required by any law, or any compulsory order or requirement issued pursuant to any law; or
- (e) the Ministry from using or disclosing to any party any information, documents, reports or other material received in relation to this Agreement, provided that prior to any such disclosure the Ministry removes all information that is commercially sensitive to the Recipient from the relevant work.

7.2 The Recipient acknowledges and agrees that nothing in this Agreement restricts the Ministry's ability to:

- (a) discuss, and provide all information in respect of, any matters concerning the Recipient, the Development Phase Project or this Agreement with any Minister of the Crown, any other government agency or any of their respective advisors;
- (b) meet its obligations under any constitutional or parliamentary convention (or other obligation at law) of or in relation to the New Zealand Parliament, the New Zealand House of Representatives or any of its Committees, any Minister of the Crown, or the New Zealand Auditor-General, including any obligations under the Cabinet Manual including the "no surprises" principle; and
- (c) publicise and report on the awarding of the Funding, including the Recipient's and any of its contractor's names, the amount and duration of the Funding and a brief description of the Development Phase Project, on websites; in media releases; general announcements and annual reports.

7.3 The Recipient acknowledges that:

- (a) the contents of this Agreement; and
- (b) information provided to the Ministry (including the Deliverables),

may be official information in terms of the Official Information Act 1982 and, in line with the purpose and principles of the Official Information Act 1982, this Agreement and such information may be released to the public unless there is good reason under the Official Information Act 1982 to withhold it.

8 PUBLICITY

8.1 Before making any media statements or press releases (including social media posts) regarding this Agreement and/or the Ministry's involvement with the Development Phase Project, the Recipient will consult with the Ministry, and will obtain the Ministry's prior approval to any such statements or releases.

8.2 The Recipient will refer any enquiries from the media or any other person about the terms or performance of this Agreement to the Ministry's Contact Person.

8.3 The Recipient will acknowledge the Ministry as a source of funding in all publications (including any digital presence) and publicity regarding the Development Phase Project, provided that the Recipient must obtain the Ministry's approval of the form and wording of the acknowledgement prior to including the acknowledgement in the publication or publicity (as the case may be).

8.4 The Recipient does not have the right to enter into any commitment, contract or agreement on behalf of the Ministry or any associated body, or to make any public statement or comment on behalf of the Ministry.

9 DISPUTES

9.1 In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, or in relation to any question regarding its existence, breach, termination or invalidity (in each case, a *Dispute*), either party may give written notice to the other, specifying the nature of the Dispute and requesting discussions under this clause 9. As soon as reasonably practicable following receipt of a Dispute Notice, the parties will meet (in person, or by audio or video conference) and endeavour to resolve the Dispute by discussion, negotiation and agreement.

9.2 A party must not commence any proceedings in connection with a Dispute unless at least 40 days have elapsed since the issue of a corresponding Dispute Notice, and that party has used reasonable endeavours to comply with this clause 9. However, nothing in this clause will prevent either party from seeking urgent interim relief from a court (or other tribunal) of competent jurisdiction.

10 CONTACT PERSONS

10.1 All matters or enquiries regarding this Agreement will be directed to each party's Contact Person (set out in the Key Details). Each party may from time to time change the person designated as its Contact Person on 10 Business Days' written notice to the other Party.

11 GENERAL

11.1 Each notice or other communication given under this Agreement (each a notice) will be in writing and delivered personally or sent by post or email to the address of the relevant party set out in the Key Details or to any other address from time to time designated for that purpose by at least 10 Business Days' prior written notice to the other party. A notice under this Agreement is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
- (b) **Post:** posted, 5 Business Days after posting or, in the case of international post, 7 Business Days after posting; and
- (c) **Email:** sent by email:
 - (i) If sent between the hours of 9am and 5pm (local time) on a Business Day, at the time of transmission; or
 - (ii) If subclause (i) does not apply, at 9am (local time) on the Business Day most immediately after the time of sending,

provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

- 11.2 The Recipient agrees to execute and deliver any documents and to do all things as may be required by the Ministry to obtain the full benefit of this Agreement according to its true intent.
- 11.3 No legal partnership, employer-employee, principal-agent or joint venture relationship is created or evidenced by this Agreement.
- 11.4 This Agreement constitutes the sole and entire understanding with respect to the subject matter hereof and supersedes all prior discussions, representations and understandings, written or oral.
- 11.5 No amendment to this Agreement will be effective unless agreed in writing and signed by both parties.
- 11.6 The Recipient may not assign or transfer any of its contractual rights or obligations under this Agreement, except with the Ministry's prior written approval.
- 11.7 The Ministry may assign or transfer any of its contractual rights or obligations under this Agreement without the Recipient's prior approval. The Ministry may at any time disclose to a proposed assignee or transferee any information which relates to, or was provided in connection with, the Recipient, the Development Phase Project, the Project or this Agreement.
- 11.8 No failure, delay or indulgence by any party in exercising any power or right conferred on that party by this Agreement shall operate as a waiver. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights.
- 11.9 The exercise by a party of any express right set out in this Agreement is without prejudice to any other rights, powers or remedies available to a party in contract, at law or in equity, including any rights, powers or remedies which would be available if the express rights were not set out in this Agreement.
- 11.10 This Agreement is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this Agreement.
- 11.11 Any provision of this Agreement that is invalid or unenforceable will be deemed deleted, and will not affect the other provisions of this Agreement, all of which remain in force to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 11.12 This Agreement is to be governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 11.13 This Agreement may be executed in any number of counterparts (including scanned and emailed copies). So long as each party has received a counterpart signed by each of the other parties, the counterparts together shall constitute a binding and enforceable agreement.

END OF PART 2

PART 3: DEFINITIONS AND CONSTRUCTION**Defined terms**

In this Agreement, unless the context requires otherwise:

Approved Contractor means an “Approved Contractor” specified in the Key Details.

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 other than a Saturday, Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003.

Commencement Date has the meaning given in clause 4.1 of Part 2.

Confidential Information of a party (*Owner*), means any information in the possession or control of another party (*Holder*) that:

- (a) was originally acquired by the Holder in connection with this Agreement through disclosures made by or at the request of the Owner; and/or
- (b) was originally acquired by the Holder in connection with this Agreement through any access to, or viewing, inspection or evaluation of, the premises, facilities, documents, systems or other assets owned or controlled by the Owner; and/or
- (c) is derived from information of a kind described in paragraph (a) or (b) above; but excludes any information which the Holder can show:
- (d) was lawfully acquired by the Holder, entirely independently of its activities in connection with this Agreement, and is free of any other obligation of confidence owed to the Owner; and/or

- (e) has been independently developed by the Holder without reference to the Owner’s Confidential Information, and without breaching any other obligation of confidence owed to the Owner.

Notwithstanding the foregoing, the terms of this Agreement are Confidential Information of which each Party is both an Owner and a Holder.

Conflict of Interest means any matter, circumstance, interest or activity of the Recipient, its personnel or contractors, or any other person with whom the Recipient has a relationship that:

- (a) conflicts with:
 - (i) the obligations of the Recipient (or its personnel or contractors) to the Ministry under this Agreement; or
 - (ii) the interests of the Recipient in relation to this Agreement and/or the procuring of the Development Phase Project; or
- (b) otherwise impairs or might appear to impair the ability of the Recipient (or any of its personnel or contractors) to diligently and independently carry out the Development Phase Project in accordance with this Agreement.

Deliverable means a deliverable to be provided by the Recipient to the Ministry, as set out in the Key Details.

Eligible Costs means the actual costs reasonably incurred by the Recipient:

- (a) on or after the Funding Start Date and no later than the End Date; and
- (b) to carry out the Development Phase Project and to deliver the Development Phase Deliverables.

Funding means the funding or any part of the funding (as the context requires) payable by the Ministry to the Recipient in accordance with the

terms of this Agreement, as described in the Key Details.

Key Details means Part 1 of this Agreement.

Objectives means each of the following:

- (a) jobs and sustainable economic development;
- (b) social inclusion and participation;
- (c) Māori development;
- (d) Climate change commitments and environmental sustainability; and
- (e) increasing the resilience of the regional and national economy through critical infrastructure and diversification of New Zealand's economy.

Payment Request means a request submitted to the Ministry by the Recipient seeking payment of Funding substantially in the form set out in the Schedule to this Agreement.

Termination Event means any one or more of the events or circumstances set out in clause 4.2.

Construction

In the construction of this Agreement, unless the context requires otherwise:

Currency: a reference to any monetary amount is to New Zealand currency;

Defined Terms: words or phrases appearing in this Agreement with capitalised initial letters are defined terms and have the meanings given to them in this Agreement;

Documents: a reference to any document, including this Agreement, includes a reference to

that document as amended or replaced from time to time;

Inclusions: a reference to “includes” is a reference to “includes without limitation”, and “include”, “included” and “including” have corresponding meanings;

Joint and Several Liability: any provision of this Agreement to be performed or observed by two or more persons binds those persons jointly and severally;

Parties: a reference to a party to this Agreement or any other document includes that party's personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Precedence: if there is any conflict between the different parts of this Agreement, then unless specifically stated otherwise, Part 2 will prevail over the Key Details, and the Key Details will prevail over any Attachments;

Related Terms: where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

Writing: a reference to “written” or “in writing” includes email and any commonly used electronic document format such as .DOC or .PDF.

END OF PART 3

Schedule: Payment Request

To: MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT

Dated: [•]

PAYMENT REQUEST

1. We refer to the Funding Agreement dated [•] and agreement number [•] between [•] as recipient (**Recipient**) and the Ministry of Business, Innovation and Employment (**Ministry**) (the **Agreement**). Terms defined in the Agreement have the same meaning in this Payment Request.
2. This is a Payment Request for the purpose of clause 1.3 of the Agreement.
3. Each of the Deliverables that have been completed are: *[insert description of each Deliverable completed]*
4. The amount of Funding requested is \$[•] excluding GST if any.
5. The Funding requested in this Payment Request is required to meet the Eligible Costs.
6. The Invoices/statements and accounts evidencing the above Eligible Costs are attached.

**Note that for any Eligible Costs that are more than \$1,000 (on an individual basis or when grouped by supplier or subject matter) a copy of the original invoices received from third parties in relation to the Eligible Costs must be provided.*

7. That each of the items referred to in paragraph 5 are Eligible Costs for the purpose of the Agreement have been paid or are currently due and payable.
8. [Co-Funding will be used to meet the following Eligible Costs that have been incurred by us:

[include breakdown description of Eligible Costs that Co-Funding will meet]

9. *[include valid GST invoice if relevant].*

10. We confirm that:

- (a) no Termination Event is subsisting; and
- (b) each of the warranties set out in the Agreement are correct as at the date of this Payment Request.

Except to the extent otherwise agreed in writing by the Ministry, all those items forming part of the Eligible Costs identified in any previous Payment Request as due or becoming due and payable, have been paid in full.

By and on behalf of the Recipient by

[insert name of Recipient]

Position: [insert] [*for example, Director/Officer/Trustee*]

Authorised Officer

PROACTIVELY RELEASED