



**INFRASTRUCTURE REFERENCE GROUP  
FUNDING AGREEMENT  
FOR  
PAIHIA WATERFRONT DEVELOPMENT**

**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** Far North Holdings Limited, NZBN 9429038130328, with offices at Unit 9B, 15 Baffin Street, Opua 0200 (**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 (**Diagram of Project 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: )

\_\_\_\_\_  
 Robert Pigou  
 Head of Provincial Development Unit

\_\_\_\_\_  
 Date

**SIGNED** for and on behalf of **FAR** )  
**NORTH HOLDINGS LIMITED** 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 \$8,000,000 (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 deliver the construction of breakwaters and abutments, and the completion of associated dredging work at Horututu Beach in Paihia 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 **Commercial Information** 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 \$ <b>Commercial Informat</b>

Within <small>Commercial Information</small> of the Commencement Date	Confirmation of procurement by the Recipient of contractors to undertake the Project works.	Up to \$ <small>Commercial Information</small>
Within <small>Commercial Information</small> of the Construction Commencement Date	The certificate(s) provided by the Recipient by <small>Commercial Information</small> under clause 6.2(c) demonstrates that the Project is at least <small>Comm</small> % complete.	Up to \$ <small>Commercial Information</small>
Within <small>Commercial Information</small> of the Construction Commencement Date	The certificate(s) provided by the Recipient by <small>Commercial Information</small> under clause 6.2(c) demonstrates that the Project is at least <small>Comm</small> % complete.	Up to \$ <small>Commercial Information</small>
<small>Commercial Information</small>	Confirmation of completion of the Project works.	Up to \$ <small>Commercial Informat</small>

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) 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 of 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 Commercial Information 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  Email address: <a href="mailto:vibeke.wright@mbie.govt.nz">vibeke.wright@mbie.govt.nz</a>  Contact person: Vibeke Wright  Attention: Provincial Development Unit	Far North Holdings Limited PO Box 7 OPUA 0241  Email address: <span style="background-color: #cccccc;">Privacy of natural persons</span>  Contact person: Andrew Nock  Attention: Andrew Nock

## 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 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	Paihia Waterfront Development
Location	Paihia
Project description	<p>Construction or completion of the following works:</p> <ul style="list-style-type: none"> <li>a) “Northern breakwater” - A reef type breakwater between Motumaire Island and Taylor Island (approximately 170m). The width at the base will be approximately 30m. The overall footprint of the structure occupies approximately 3,800m<sup>2</sup> of the sea floor;</li> <li>b) “Outer west breakwater” - A reef type breakwater on the western side of Motumaire Island (approximately 150m). The width at the base will be between 10m and 14m. The footprint of the proposed reef structure is to be approximately 1,700m<sup>2</sup>;</li> <li>c) “Inner west breakwater and beach abutment” - A rock abutment extending from Nihonui Point (approximately 100m). The groyne structure proposed for the bluff at the western end of Horututu Beach is to be a naturalistic headland formed of a combination of sandcrete and rock armour to extend approximately 60m from the high-water line (or such other natural looking engineered structure iwi and community approve). The width of the groyne is to be approximately 10m at the base. The footprint area of the new structure would be approximately 600m<sup>2</sup>; and</li> <li>d) Dredging of approximately 40,000 cubic metres of material from the seabed to create a new navigation channel and allow vessel movement within the basin (as consented),</li> </ul> <p>labelled “A”, “B”, “C” and “D” respectively on the diagram included at Schedule 6.</p> <p>The crest level for the structures between Moutumarie Island and the western side of Horututu Beach will be approximately +2.3m C.D. to form a reef structure at low tide. The crest level of the northern breakwater is to be +4.0m C.D.</p> <p>The basin bottom elevation of the harbour basin will be dredged to the elevation of CD -2.5m (according to the AS 3962:2001 – Guidelines for design of marinas). The dredging slope gradient is temporarily set to 1:5 around</p>

	<p>the edge of the inner basin and channel but will be modified if the seabed soils are investigated and require anything different, or as advised by the marine engineer appointed.</p> <p>All works will comply with the conditions and plans set out in resource consents CON200605454 and CON20112921501 issued by the Northland Regional Council.</p>
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## 2 BUDGET

Category	Item description	Unit	Quantity	Unit cost	Item cost	Subtotal
<i>Northern breakwater</i>						
	Geotechnical investigations	-		\$ Commercial Infor	\$ Commercial Infor	\$ Commercial Information
	Dredging of base (assumed 1m <sup>3</sup> per m <sup>2</sup> of footprint)	m <sup>3</sup>		Commer	Commercial Informa	\$ Commercial Inform
	Breakwater core	m <sup>3</sup>		Commer	Commercial Informa	\$ Commercial Inform
	Breakwater armour	m <sup>3</sup>		Commer	Commercial Informa	\$ Commercial Inform
	Establishment of contractor	% of category running subtotal		Co%	\$ Commercial Infor	\$ Commercial Infor
	Professional fees	% of category running subtotal		Co%	\$ Commercial Infor	\$ Commercial Infor
	Contingency	% of category running subtotal		Com%	\$ Commercial Inform	\$ Commercial Inform
<i>Inner west breakwater and beach abutment</i>						
	Geotechnical investigations	-		Co	Commercial Informa	\$ Commercial In
	Preparation of seabed for keying in structure	m <sup>3</sup>		Comin	Commercial Informa	\$ Commercial Infor
	Sandcrete core (tidal zone)	m <sup>3</sup>		Comin	Commercial Informa	\$ Commercial Infor
	Gunite protection and shaping (150mm thick layer in the tidal zone)	m <sup>3</sup>		Com	Commercial Informa	\$ Commercial Informatio
	Establishment of contractor	% of category running subtotal		Co%	\$ Commercial Infor	\$ Commercial Infor
	Professional fees	% of category running subtotal		Co%	\$ Commercial Infor	\$ Commercial Infor
	Contingency	% of category running subtotal		Com%	\$ Commercial Inform	\$ Commercial Inform
<i>Outer west breakwater</i>						
	Geotechnical investigations	-		Co	\$ Commercial Infor	\$ Commercial Infor
	Dredging of base (assumed 1m <sup>3</sup> per m <sup>2</sup> of footprint)	m <sup>3</sup>		Commer	Commercial Informa	\$ Commercial Infor
	Breakwater armour	m <sup>3</sup>		Commer	Commercial Informa	\$ Commercial Inform
	Establishment of contractor	% of category running subtotal		Co%	\$ Commercial Infor	\$ Commercial Infor
	Professional fees	% of category running subtotal		Co%	\$ Commercial Infor	\$ Commercial Infor
	Contingency	% of category running subtotal		Com%	\$ Commercial Inform	\$ Commercial Inform
<i>Navigation channel</i>						
	Dredging	-	-	-	\$ Commercial Informatio	\$ Commercial Informatio
<i>Miscellaneous</i>						
	Consultant fees, preliminary works, site establishment, etc	% of Project running subtotal		Com%	\$ Commercial Inform	\$ Commercial Inform
<b>Total</b>					\$ Commercial Informatio	\$ Commercial Informatio

## 3 PROJECT TIMEFRAME

Key milestone	Indicative timeframe
<b>Plan and design</b>	
Award detailed design contract	Commercial Information
Award procurement contract	Commercial Information
Obtain all consents	Secured
Obtain all property rights	Secured

<b>Construction</b>	
Award construction contract	Commercial Information
Construction commences ( <b>Construction Commencement Date</b> )	Commercial Information
Construction complete	Commercial Information
<b>Project close</b>	
Opening event	Commercial Information



## SCHEDULE 4 – SOCIAL PROCUREMENT OBJECTIVES

Outcome	Measure
Employment of targeted workers	Prioritising workers identifying as: <ul style="list-style-type: none"> <li>• Māori or Pasifika; and</li> <li>• local workers,</li> </ul> with the employment of women prioritised at each level where possible.
Local businesses	Priority for the awarding of direct contracts and sub-contracts will be given to businesses owned and operated by people who reside in the region operating in the region (targeting Māori and Pasifika businesses in particular), provided that the quote is commercially competitive given normal tender procedures.
Supplier diversity	Priority for the awarding of direct contracts and sub-contracts will be awarded to Māori and Pasifika businesses, provided that the quote is commercially competitive given normal tender procedures.
Environmental responsibility	Adoption of practices that enable the project to be delivered sustainably, including by: <ul style="list-style-type: none"> <li>• protecting or enhancing the local ecosystem and its indigenous biodiversity;</li> <li>• actively seeking to minimise the carbon impact of project 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/or</li> <li>• including resilience to the impacts of a changing climate.</li> </ul>

SCHEDULE 5 – MONTHLY REPORT TEMPLATE

# MONTHLY REPORT




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## Paihia Waterfront Development

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

**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	
<b>Total</b>								

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
<b>Total</b>				

**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

