



**PROVINCIAL
GROWTH
FUND**

**DEVELOPMENT PHASE
FUNDING AGREEMENT**

BETWEEN

MINISTRY OF TRANSPORT

AND

NEW ZEALAND TRANSPORT AGENCY

FOR

**TWIN COAST DISCOVERY ROUTE BUSINESS
CASES**

Agreement number: MOT/01
Contract version: 01

PROACTIVELY RELEASED

PART 1: KEY DETAILS

<p>1. Parties</p>	<p>MINISTRY</p> <p>The Sovereign in right of New Zealand, acting by and through the Chief Executive of the Ministry of Transport (Ministry)</p> <p>RECIPIENT</p> <p>New Zealand Transport Agency, having its head offices at 50 Victoria Street, Wellington 6141, New Zealand (Recipient)</p>
<p>2. Funding Start Date</p>	<p>Commercial Information</p>
<p>3. End Date</p>	<p>Commercial Information</p>
<p>4. Background</p>	<p>Through the Provincial Development Unit (PDU) the Ministry of Business, Innovation and Employment (MBIE) is responsible for administering the Provincial Growth Fund, which aims to lift productivity potential in New Zealand's provinces.</p> <p>The Recipient is a Crown Entity under the Crown Entities Act 2004. Its responsibilities include managing the State highway system, including planning, funding, design, supervision, construction, and maintenance and operations. The objective of the Recipient is to undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest.</p> <p>The Recipient has sought a funding contribution from MBIE for the purposes of carrying out or procuring a series of business cases in respect of the Development Phase Project described below. MBIE has agreed to contribute funding on the terms and conditions of this Agreement (Agreement).</p> <p>MBIE has transferred Provincial Growth Fund (PGF) funding to Vote Transport, and the funding contribution for this Project will be provided by the Ministry of Transport from this funding. The Ministry will act as the contracting party under this funding agreement, but not to the exclusion of MBIE's role as administrator of the PGF.</p> <p>A Programme Business Case was developed for the Twin Coast Discovery Route (TCDR) in 2017. The Twin Coast Discovery Highway is a 800 kilometre circular route of both east and west coasts of Northland which connects key tourist attractions and infrastructure.</p> <p>The TCDR Programme Business Case identified that Northland is not making the most of its tourism and visitor appeal, and needs to address significant transport problems. Better connectivity is needed within the region, with Auckland, and with export markets (so as to facilitate economic development).</p> <p>The Programme Business Case identified a number of transport business cases to address existing safety and resilience problems or gaps in expected levels of service. These Business Cases are a necessary step to progress the TCDR from the high-level programme identified in the Programme Business Case into a</p>

	<p>package of robust potential investment activities, which may be considered for funding from the National Land Transport Fund (NLTF), the PGF or other funding sources as appropriate in the future.</p> <p>The Development Phase Project (“the Project”) has been approved for PGF funding and is described in more detail below.</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>
<p>5. Conditions Precedent</p>	<p>No Funding is payable under this Agreement until the Recipient has provided, and MBIE and the Ministry have confirmed to the Recipient in writing that they have received and found, in their sole discretion, to be satisfactory in form and substance, Recipient’s proposed project scoping document. The parties accept that the proposed project scoping document will be based on the content contained in the original PGF application for funding.</p> <p>The Recipient’s normal procurement process adopted to source suppliers will apply.</p>
<p>6. Development Phase Project</p>	<p>The Project is the Twin Coast Discovery Route Business Cases (the Twin Coast Package). The Twin Coast Package is a series of seven business cases related to the Twin Coast Discovery Route in Northland. The business cases will determine the best solutions for improving safety, resilience and reliability along the route, including assessment of each of the Objectives as they are applicable to the Route, and will be prepared in accordance with Best Industry Practice.</p> <p>The Twin Coast Package is being led by the Recipient. The components of the package are:</p> <ul style="list-style-type: none"> • SH11 Kawakawa to SH10 Puketona (cost estimate \$ <small>Commercial Information</small>) • SH12 Rawene to Waipoua (cost estimate \$ <small>Commercial Information</small>) • Rest Area Strategy and Implementation Plan (cost estimate \$ <small>Commercial Information</small>) • Passing and Overtaking Opportunities (cost estimate \$ <small>Commercial Information</small>) • Integrated Cycle Plan (cost estimate \$ <small>Commercial Information</small>) • Township Plans (cost estimate \$ <small>Commercial Information</small> per plan; up to <small>Comm</small> plans) • Twin Coast Discovery Route Wayfinding Signage (cost estimate \$ <small>Commer</small>) • Resource support (e.g. project management costs, procurement costs, internal review) for delivery of the Package (cost estimate <small>Commercial Information</small>)

<p>7. Development Phase Deliverables and Instalments</p>	<p>The Recipient will use its best endeavours to complete the following Deliverables for the Project to the satisfaction of the Ministry by the following dates:</p> <table border="1" data-bbox="414 313 1372 1456"> <thead> <tr> <th data-bbox="414 313 837 459">Development Phase Deliverable</th> <th data-bbox="837 313 1125 459">Due Date (estimated)</th> <th data-bbox="1125 313 1372 459">Total Cost (estimate) NZ\$ (excl GST)</th> </tr> </thead> <tbody> <tr> <td data-bbox="414 459 837 616">SH11 Kawakawa to SH10 Puketona</td> <td data-bbox="837 459 1125 616">Final Business Case: Commercial Information</td> <td data-bbox="1125 459 1372 616">\$ Commercial Information</td> </tr> <tr> <td data-bbox="414 616 837 772">SH12 Rawene to Waipoua</td> <td data-bbox="837 616 1125 772">Final Business Case: Commercial Information</td> <td data-bbox="1125 616 1372 772">\$ Commercial Information</td> </tr> <tr> <td data-bbox="414 772 837 929">Rest Area Strategy and Implementation Plan</td> <td data-bbox="837 772 1125 929">Final Business Case: Commercial Information</td> <td data-bbox="1125 772 1372 929">\$ Commercial Information</td> </tr> <tr> <td data-bbox="414 929 837 1086">Passing and Overtaking Opportunities</td> <td data-bbox="837 929 1125 1086">Final Business Case: Commercial Information</td> <td data-bbox="1125 929 1372 1086">\$ Commercial Information</td> </tr> <tr> <td data-bbox="414 1086 837 1243">Integrated Cycle Plan</td> <td data-bbox="837 1086 1125 1243">Final Business Case: Commercial Information</td> <td data-bbox="1125 1086 1372 1243">\$ Commercial Information</td> </tr> <tr> <td data-bbox="414 1243 837 1377">Township Plans (up to 12 plans)</td> <td data-bbox="837 1243 1125 1377">Final Business Case: Commercial Information</td> <td data-bbox="1125 1243 1372 1377">\$ Commercial Information per plan</td> </tr> <tr> <td data-bbox="414 1377 837 1456">Twin Coast Discovery Route Wayfinding Signage</td> <td data-bbox="837 1377 1125 1456">Final Business Case: Commercial Information</td> <td data-bbox="1125 1377 1372 1456">\$ Commercial Information</td> </tr> </tbody> </table>	Development Phase Deliverable	Due Date (estimated)	Total Cost (estimate) NZ\$ (excl GST)	SH11 Kawakawa to SH10 Puketona	Final Business Case: Commercial Information	\$ Commercial Information	SH12 Rawene to Waipoua	Final Business Case: Commercial Information	\$ Commercial Information	Rest Area Strategy and Implementation Plan	Final Business Case: Commercial Information	\$ Commercial Information	Passing and Overtaking Opportunities	Final Business Case: Commercial Information	\$ Commercial Information	Integrated Cycle Plan	Final Business Case: Commercial Information	\$ Commercial Information	Township Plans (up to 12 plans)	Final Business Case: Commercial Information	\$ Commercial Information per plan	Twin Coast Discovery Route Wayfinding Signage	Final Business Case: Commercial Information	\$ Commercial Information
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<p>8. Funding</p>	<p>The total Funding available for the Twin Coast Package under this Agreement is NZ\$ 6.25M excluding GST (if any). This is the Total Maximum Amount Payable across all business cases and is for the Package as a whole.</p> <p>The cost estimate for each Development Phase Deliverable in items 6 and 7 is a guide as to how funding is intended to be distributed across the business cases in the Package. It is anticipated that there could be variations in these cost estimates (under or over), but the final costs of all the business cases will be managed within the NZ\$6.25M total Funding envelope.</p> <p>Under normal circumstances, the Funding will be paid quarterly in arrears, on receipt of a Payment Request in accordance with clause 1 of Part 2 and the terms and conditions of this Agreement. However, the Ministry will provide funding in respect of a Payment Request made on a shorter period (but otherwise in accordance with clause 1 of Part 2 and the terms and conditions of this Agreement) if the Recipient's management of NLTF cash-flows necessitates that.</p>																								

	<p>The final payment for each Development Phase Deliverable is subject to completion of the Deliverable in accordance to item 7.</p>
<p>9. Reporting</p>	<p>The Recipient will provide the Ministry and MBIE with the following quarterly reports by the 10th Business Day following the end of each quarter and within 20 Business Days of completion of the Project.</p> <p>Each quarterly report must include the following information:</p> <p>(a) Description and analysis of actual progress of the Project against planned progress;</p> <p>(b) Plans for the next quarter (not required in the final report following completion of the Project);</p> <p>(c) A statement of the Funding received, spent and remaining and how this relates to the budget for the Project;</p> <p>(d) Any major risks arising or expected to arise with the Project (including the quality or timing of the Deliverables), costs or performance of this Agreement;</p> <p>and</p> <p>(e) any other information that is notified by the Ministry and/or MBIE in writing to the Recipient.</p> <p>If the Recipient makes a Payment Request in respect to a shorter period than quarterly, as allowed for in item 8, it will provide a report in support of that Request containing an explanation of the reason for the early Request, together with the information specified in paras (a), (c) and (e) above.</p> <p>The Recipient will also provide the Ministry and MBIE no later than the End Date with a completion report (the Report) that summarises the outcome of the Business Cases, the Recipient's proposals in respect of the proposed package of investment activities for the TCDR, and any other information that is notified by the Ministry and / or MBIE in writing to the Recipient.</p>
<p>10. Special Terms</p>	<p>The Parties' approach to cost escalation/cost adjustment is set out in the February 2018 Cabinet paper: Operational Design of the Tuawhenua Provincial Growth Fund, paragraph 45, bullet point 6. This principle sets out that any cost escalation should be apportioned between the PGF and NLTF to reflect the original investment across the two funds, and that any change to scope would require further approval.</p> <p>Cost adjustments: in the event that the total Funding under this Agreement is not sufficient to cover all Business Cases due to cost adjustments, the Recipient will:</p> <ul style="list-style-type: none"> - Advise the Ministry and PDU; and - Seek further PGF funding to cover any cost adjustment (and, where other funding has been obtained in addition to PGF funding, seek other funding

	<p>in the same proportion as the original investment in the Project); and</p> <p>- If further PGF or other funding is not available to cover the cost adjustment, reduce the scope of one or more of the Business Cases to fit the available funds.</p> <p>Until the Business Cases have been produced, PDU cannot indicate what, if any, funding might be available to support implementation of the proposed package of investment activities for the TCDR.</p> <p>Timing of Deliverables: if a quarterly report indicates that the delivery due dates in item 7 will not be met, the Parties will vary this Agreement in accordance with clause 11.5 of Part 2.</p>	
11. Contact Person	<p>Ministry's Contact Person</p> <p>Name: Helen White</p> <p>Email: Commercial Information</p>	<p>Recipient's Contact Person:</p> <p>Name: Stephanie Rolfe Email: Commercial Information</p>
12. Address for Notices	<p>To the Ministry:</p> <p>Level 2</p> <p>318-324 Lambton Quay</p> <p>PO Box: 3175</p> <p>Wellington 6140</p> <p>Attention: Helen White</p> <p>Email: Privacy of natural persons</p>	<p>To the Recipient:</p> <p>Physical Address:</p> <p>50 Victoria Street</p> <p>Wellington 6141</p> <p>Mailing Address:</p> <p>Private Bag 6995</p> <p>Wellington</p> <p>Attention: Stephanie Rolfe</p> <p>Email: Privacy of natural persons</p>
SIGNATURES	<p>SIGNED for and 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 Transport:</p> <p>Position: Deputy Chief</p> <p>Executive 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>Position: General Manager</p> <p>Execution Date:</p>

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 for the purposes of funding the Project.
- 1.2 The Recipient can only request payment of the Funding in accordance with this Agreement and to the extent necessary to cover Eligible Costs. Payments will be made in arrears.
- 1.3 The Recipient may submit a Payment Request quarterly to the Ministry’s Contact Person. However, the Ministry will provide funding in respect of a Payment Request made on a shorter period (but otherwise in accordance with clause 1 of Part 2 and the terms and conditions of this Agreement) if the Recipient’s management of NLTF cash-flows necessitates that.
- 1.4 A Payment Request is to be signed by an authorised signatory of the Recipient and must be in the form set out in the Schedule and include the confirmations set out there, and must include:
- (a) the amount of Funding requested;
 - (b) a description of the total Eligible Costs incurred by the Recipient for the 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 or will become payable within 30 days of the date of this Payment Request;
 - (c) copies of originals of invoices received by the Recipient from third parties in relation to the Eligible Costs where those Eligible Costs and statements and accounts show the Eligible Costs incurred;
 - (d) if the Payment Request includes a GST component, a valid GST invoice complying with the Goods and Services Tax Act 1985; and
 - (e) any other information reasonably required by the Ministry.
- 1.5 The Ministry is not required to pay any Funding in respect of a Payment Request:
- (a) if payment does not relate to Eligible Costs for the Project;
 - (b) if payment will result in the Funding exceeding the “Total Maximum Amount Payable” specified in the Key Details;
 - (c) if the Ministry or MBIE, acting reasonably, is not satisfied with the contents of the quarterly reports;
 - (d) while there are one or more Termination Events;
 - (e) if this Agreement has expired or been terminated; and/or
 - (f) while the Recipient is in breach of this Agreement.

- 1.6 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 In undertaking the Project, the Recipient will comply with all applicable laws, regulations, rules and professional codes of conduct or practice.
- 2.2 The Recipient will ensure the Report is capable of being disclosed to the Ministry

Contractors

- 2.3 The Recipient will ensure that the 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.
- 2.4 The Recipient is responsible for the acts and omissions of any contractors.
- 2.5 The Recipient will ensure that all agreements it enters into with any other party in connection with the 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 2.5 in response to any request by the Ministry from time to time.

Information Undertakings

- 2.6 The Recipient will provide the Ministry with the reports specified in the Key Details, in accordance with the timeframes and reporting requirements set out in the Key Details.
- 2.7 The Recipient will provide the Ministry with any other information about the Project requested by the Ministry within the timeframe set out in the request.
- 2.8 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 Project, or result in a Termination Event or a breach of any term of this Agreement by the Recipient.
- 2.9 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

- 2.10 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.
- 2.11 The Recipient must keep full and accurate records (including accounting records) of the 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 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.

3 INTELLECTUAL PROPERTY

- 3.1 The Ministry acknowledges that the Recipient and its licensors will retain ownership of all pre-existing intellectual property which they contribute to the Project, and all new intellectual property which they create in the course of the Project.
- 3.2 The Recipient grants a royalty-free licence (including the right to sublicense) to the Ministry to use all reports, documents, information and other materials 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 any third party.

4 TERM AND TERMINATION

- 4.1 This Agreement will be effective on and from the Commencement Date, which will be the later to occur of:
- (a) the date this Agreement has been signed by both parties; and
 - (b) the date on which the Ministry has provided written notice to the Recipient that the Conditions Precedent specified in the Key Details have either been satisfied (in the opinion of the Ministry) or waived by the Ministry.
- 4.2 This Agreement will remain in force until the End Date, unless terminated in accordance with this Agreement (the **Term**).
- 4.3 The Ministry can terminate this Agreement with immediate effect, by giving notice to the Recipient, at any time while any one or more of the following events or circumstances remains unremedied:
- (a) the Recipient is materially in breach of any obligation, or a condition or warranty, under this Agreement;
 - (b) the Recipient has provided the Ministry or MBIE with information in connection with or under this Agreement that (whether intentionally or not) is materially incorrect or misleading, and/or omits material information;
 - (c) the Ministry reasonably considers that this Agreement or the Project has caused, or may cause, the Ministry and/or the New Zealand Government to breach any legal obligations (including its international trade obligations);

- (d) the Recipient abandons the Project or if it becomes apparent that any related project that the Development Phase Project is investigating will not proceed;
 - (e) 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;
 - (f) 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;
 - (g) any change in law, regulations, or other circumstances materially affects the Ministry's ability to perform its obligations under this Agreement; or
 - (h) any change in government policy in respect of the continuation of, or funding under, the Provincial Growth Fund.
- 4.4 However, where the Ministry considers that a Termination Event set out in clause 4.3 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.
- 4.5 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 Project exceeds the funding required to perform the Project, the Recipient must upon request refund to the Ministry the excess amount. The Recipient is not required to refund, under this clause 4.5, any amount that exceeds the total amount of 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 1.5, 2.1, 2.10, 2.11, 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 Project, it will not infringe any intellectual property or other rights of 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 or MBIE 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 or MBIE as to any material matter;
 - (b) it has disclosed to the Ministry and MBIE all matters known to the Recipient (relating to the 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 or MBIE; and

- (c) it is not aware of any material information that has not been disclosed to the Ministry or MBIE which may, if disclosed, materially adversely affect the decision of the Ministry or MBIE 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 neither the Ministry nor MBIE has made any 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. The Recipient must not make any statement or representation to any person (including the media) that the Ministry or MBIE has agreed to provide any funding or financial support to the Project (other than the funding of the Project).

6 LIABILITY

6.1 The maximum liability of the Ministry and MBIE 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 Neither the Ministry nor MBIE is 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 prior written 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 or MBIE from using or disclosing to any party any Licensed Work, provided that prior to any such disclosure the Ministry or MBIE 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 or MBIE's ability to:
- (a) discuss, and provide all information in respect of, any matters concerning the Recipient, the 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 "no surprises" policy advised by Ministers of the Crown; 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 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 Report),

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, in terms of the Official Information Act 1982, to withhold it.

8 PUBLICITY

8.1 Before making any media statements or press releases regarding this Agreement and/or the Ministry's involvement with the 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 MBIE as a source of funding in all publications and publicity regarding the Project, provided that the Recipient must obtain MBIE and 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 (*Dispute Notice*). 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).

10.2 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 its subject matter 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 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, with the exception of MBIE which in its role as administrator of the Provincial Growth Fund is a beneficiary for the purposes of section 12 of the Contract and Commercial Law Act 2017.
- 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:

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 sub-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 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 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;
- (b) for the commissioned Project and delivery of the Report; and
- (c) including the resource support costs referred to in Item 6 of Part 1

End Date means the “End Date” specified in the Key Details.

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) Maori 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.

Report means the written report in respect of the Project.

Termination Event means any one or more of the events or circumstances set out in clause 4.3.

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

PROACTIVELY RELEASED

Schedule: Payment Request

To: MINISTRY OF TRANSPORT

Dated: [•]

PAYMENT REQUEST

1. We refer to the Funding Agreement dated [•] and agreement number MOT/01 between New Zealand Transport Agency as recipient (**Recipient**) and The Sovereign in right of New Zealand, acting by and through the Chief Executive of the Ministry of Transport (**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 1.4 of the Agreement.
3. The Deliverables which are the subject of this Payment Request are *[insert description]*.
4. The amount of Funding requested is \$[x] 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.
7. 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.

By and on behalf of the Recipient by

New Zealand Transport Agency

Authorised Officer