



PROVINCIAL  
DEVELOPMENT  
UNIT

Regional Development

## **DEVELOPMENT PHASE FUNDING AGREEMENT**

BETWEEN

**MINISTRY OF BUSINESS,  
INNOVATION AND EMPLOYMENT**

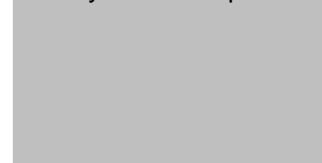
AND

**WAIRARAPA WATER LIMITED**

FOR

**WAIRARAPA COMMUNITY WATER STORAGE  
(WAKAMOEKAU) PROJECT - PRE-FEASIBILITY STUDY**

Privacy of natural persons



## PART 1: KEY DETAILS

- 1 Parties** The Sovereign in right of New Zealand, acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment (**Ministry**)
- Wairarapa Water Limited, company number 5863814, with offices at c/o Southey Sayer Limited, 110 Dixon Street, Masterton 5810 (**Recipient or WWL**)
- 2 Funding Start Date** Commencement Date
- 3 End Date** Commercial Information
- 4 Background** 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. Its priorities are to enhance economic development opportunities, create sustainable jobs, enable Māori to reach full potential, boost social inclusion and participation, build resilient communities, and help meet New Zealand's climate change targets.
- The Recipient's objective is to develop community water storage and distribution infrastructure for public and private use in the Wairarapa. The Recipient has sought a funding contribution from the Ministry for the purposes of carrying out or procuring the Development Phase Project (**Project**) described below. The Ministry has agreed to contribute funding on the terms and conditions of this Agreement (**Agreement**).
- The Project is aligned with the region's identified need for water supply resilience, and regional economic development. This includes supporting the productive capacity of its primary sector industry, and generating increased long-term employment opportunities. Water is one of the three areas of focus in the Wairarapa economic development plan.
- 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**.
- 5 Conditions Precedent** No Funding is payable under this Agreement until the Ministry has confirmed to the Recipient in writing that it has received, and found, in its sole discretion, to be satisfactory to it in form and substance, the following documents and evidence:
- A detailed Project plan;
  - Copy of the contract for services with the supplier who will carry out Tranche 1 of the Project;
  - Directors certificate confirming that the Recipient has duly authorised entry into this Agreement, and the carrying-out of the Project; and
  - Completion of Ministry due diligence.
- 6 Development Phase Project Description** A pre-feasibility study for the construction of a water storage facility at Wakamoekau to provide resilience of freshwater supply to the Wairarapa
- Appendix 1 sets out the scope of works for the Project.
- 7 Development Phase Deliverables and Instalments** The Recipient is to complete the following Deliverables for the Development Phase Project to the satisfaction of the Ministry by the following dates:

Completion Date	Deliverable	Instalment payable on completion
Commercial Information	Funding Agreement executed by both parties and all Conditions Precedent set out in item 5 of this Part 1 have been satisfied or waived by the Ministry.	\$ Commercial Information
Commercial Information	Tranche 1 report, covering the "Tranche 1 Report" matters set out in Appendix 1.	Commercial Information
Commercial Information	Tranche 2 report, covering the "Tranche 2 Report" matters set out in Appendix 1.	Commercial Information

**8 Key Personnel**

Tim Lusk, Executive chairperson  
 Bob Francis, Deputy-chairperson

**9 Approved Contractor**

Commercial Information

**10 Funding**

The total Funding available under this Agreement is up to **NZ\$800,000.00** plus GST (if any). This is the Total Maximum Amount Payable.

The Funding will only be paid on receipt of a Payment Request in accordance with clause 1 of Part 2 and the terms and conditions of this Agreement.

**11 Co-Funding**

The Recipient must have secured and must maintain \$ Commercial Information plus GST (if any) in Co-Funding in cash for Tranche 2 during the course of Tranche 2, in sufficient time to be able to apply the Co-Funding to Eligible Costs with the last \$ Commercial Information of funding under this Agreement, on the basis that Eligible Costs are funded Commercial Information % from Co-funding and Commercial Information % from funding under this Agreement.

**12 Reporting**

The Recipient will provide the Ministry with:

1. Monthly status reports, setting out the status of the project, including whether it is on time and on budget, and any major issues or risks emerging.
2. A Final Report together with the submission of the final Development Phase Deliverable.

**The Final Report** must include the following information:

- (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) an update on media, marketing and communication activities for the Development Phase Project; and
- (e) Any other information that is notified by the Ministry in writing to the Recipient.

**13 Special terms**

- 1. The Recipient undertakes that at all times the Project will be carried-out in a manner that is fully consistent with the PGF Water Storage Investment Principles as set out in Appendix 2.
- 2. The Ministry may terminate this Agreement if the Recipient breaches item 13(a) of this Part 1.
- 3. The maximum amount payable by the Ministry prior to the Ministry receiving the Tranche 1 report, covering the "Tranche 1 Report" matters set out in Appendix 1, and the Ministry providing notice to the Recipient that it has accepted the Tranche 1 report is \$ Commercial Information excluding GST.

Amendments to the Part 2 Standard Terms and Conditions:

- 1. Clause 1 (Funding) sub-clauses: 1.2, 1.3(a), 1.5 and 1.6.

**14 Stop / go milestone**

Tranche 2 will only commence once the Ministry have provided notice in writing that it is satisfied with each of the following (or has waived the condition):

- a) That the Project continues to be economically viable;
- b) That the Project continues to satisfy the PGF investment criteria and the Water Principles;
- c) That the Recipient has provided, and the Ministry is satisfied with, the scope, programme, budget and proposed material consultant(s) and sub-contractors in respect of those consultants for Tranche 2; and
- d) Completion of any due diligence by the Ministry in relation to the above conditions.

**15 Contact Person**

Ministry's Contact Person:

Name: Privacy of natural persons

Email: Privacy of natural persons

Contract ID: Commercial Information

Recipient's Contact Person:

Name: Tim Lusk

Email: Privacy of natural persons

Privacy of  
natural  
persons

16 Address for Notices

To the Ministry:  
15 Stout Street  
PO Box 1473  
Wellington 6140  
Attention: Provincial Development Unit  
Email: [monitorpgf@mbie.govt.nz](mailto:monitorpgf@mbie.govt.nz)

To the Recipient:  
c/o Southey Sayer  
110 Dixon Street  
Masterton 5810  
Attention: Tim Lusk  
Email: Privacy of natural persons

SIGNATURES

**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 his or her authorised delegate:  
Privacy of natural persons

**SIGNED** for and on behalf of the **WAIRARAPA WATER LIMITED** by the person named below, being a person duly authorised to enter into obligations on behalf of the Recipient:  
Privacy of natural persons

[Redacted signature area]

[Redacted signature area]

Name: David van der <sup>2009</sup> ~~den~~  
Position: Head of Investment  
Date: 15/5/2019

Name: TIMOTHY ALAN LUSK  
Position: EXECUTIVE CHAIR  
Date:

1 MAY 2019

Name:  
Position:  
Date:

*Each signatory warrants that the persons signing on behalf of the Recipient have the necessary authority to execute this Agreement on behalf of the Recipient.*

END OF PART 1

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[Redacted area]

PROACTIVELY RELEASED

## PART 2: GENERAL TERMS

### 1 FUNDING

- 1.1 The Ministry must 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. Unless stated otherwise in this Agreement, the Recipient may only claim the Funding to the extent necessary to cover Eligible Costs incurred by the Recipient. If the Recipient receives any Funding before it has incurred corresponding Eligible Costs, the Recipient must use the Funding solely on Eligible Costs.
- 1.2 The Recipient can only submit a Payment Request to [monitorpgf@mbie.govt.nz](mailto:monitorpgf@mbie.govt.nz) and copying in Ministry's Contact Person in accordance with the terms of this Agreement.
- 1.3 Each Payment Request is to be signed by a Director and an authorised signatory of the Recipient 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 any instalment set out in the Key Details, and for any Funding requested that would cause the aggregate amount requested under this Agreement to exceed \$ Commercial Information must not exceed Comma % of the aggregate Eligible Costs that the Recipient is claiming under the Payment Request;
  - (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) 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 if:
- (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 "Total Maximum Amount Payable" specified in the Key Details;
  - (c) if this Agreement has expired or been terminated; and/or
  - (d) while the Recipient is in breach of this Agreement.
- 1.5 Subject to the terms of this Agreement, the Ministry must pay each valid Payment Request by the 17th day of the month that the Payment Request is dated, and if such day is not a Business Day, on the next Business Day provided that a valid Payment Request (with all required supporting information) is received by the 5<sup>th</sup> day of that month.

1.6 Only one Payment Request may be submitted per month.

## 2 CO-FUNDING

If specified at item 11 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 RECIPIENT'S RESPONSIBILITIES

### Standards and compliance with laws

3.1 The Recipient must comply with all applicable laws, regulations, rules and professional codes of conduct or practice.

### Development Phase and Contractors

3.2 The Recipient must 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.

3.3 The Recipient is responsible for the acts and omissions of any contractors.

3.4 The Recipient must 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 3.4 in response to any request by the Ministry from time to time.

### Information Undertakings

3.5 The Recipient must 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.

3.6 The Recipient must provide the Ministry with any other information about the Development Phase Project requested by the Ministry within the timeframe set out in the request.

- 3.7 The Recipient must 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.
- 3.8 The Recipient must 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 must 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**

- 3.9 The Recipient must 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.
- 3.10 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 must allow the Ministry and/or the auditor access to the Recipient's premises, systems and personnel for the purposes of this inspection.

#### **4 INTELLECTUAL PROPERTY**

- 4.1 The Ministry acknowledges that the Recipient and its licensors own 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.
- 4.2 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.
- 4.3 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 4.2 without infringing the intellectual property rights of any third party.

#### **5 TERM AND TERMINATION**

- 5.1 This Agreement will be effective on and from the Commencement Date, which will be the latest 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, if any, have either been satisfied (in the opinion of the Ministry) or waived by the Ministry.



- 5.2 This Agreement will remain in force until the End Date, unless terminated in accordance with this Agreement (the **Term**).
- 5.3 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;
    - (vii) any change in law, regulations, government policy or other circumstances materially affects the Ministry's ability to perform its obligations under this Agreement; or
    - (viii) the Recipient has breached the Special Term (item 13) of Part 1 of this Agreement.
- 5.4 However, where the Ministry considers that a Termination Event set out in clause 5.3(d) can be remedied, the Ministry must give notice to the Recipient requesting a remedy, and must 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.

- 5.5 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 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 5.5, any amount that exceeds the total amount of Funding.
- 5.6 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 <sup>Commercial</sup> % per annum from the date of the mispending to the date the money is repaid.
- 5.7 Clauses 1.4, 3.1, 3.9, 4, 5, 6, 7, 8, 9, 10, 11 and 12 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.

## 6 WARRANTIES

- 6.1 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.
- 6.2 The Recipient warrants that, as at the date of this Agreement:
- (a) 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;
  - (b) 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;
  - (c) 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
  - (d) 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 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).

## 7 LIABILITY

- 7.1 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.
- 7.2 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.

## 8 CONFIDENTIALITY

- 8.1 Subject to clause 8.2 and 8.3, each party must keep the other party's Confidential Information in confidence, and must 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 must 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 documents, reports or information 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.
- 8.2 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.

8.3 The Recipient acknowledges that:

- (a) the contents of this Agreement; and
- (b) information provided to the Ministry (including the Development Phase 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.

## 9 MEDIA AND COMMUNICATIONS

- 9.1 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.
- 9.2 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.
- 9.3 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 in accordance with the PGF Funding Acknowledgement Guidelines on the website: [www.growregions.govt.nz](http://www.growregions.govt.nz). 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).
- 9.4 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.
- 9.5 All correspondence with the Ministry under this clause 9 must be directed to the Ministry's Contact Person and copied to [pducomms@mbie.govt.nz](mailto:pducomms@mbie.govt.nz).

## 10 DISPUTES

- 10.1 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 10. As soon as reasonably practicable following receipt of a Dispute Notice, the parties must meet (in person, or by audio or video conference) and endeavour to resolve the Dispute by discussion, negotiation and agreement.
- 10.2 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 10. However,

nothing in this clause will prevent either party from seeking urgent interim relief from a court (or other tribunal) of competent jurisdiction.

## 11 CONTACT PERSONS

- 11.1 All matters or enquiries regarding this Agreement must be directed to each party's Contact Person (set out in the Key Details).
- 11.2 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.

## 12 GENERAL

12.1 Each notice or other communication given under this Agreement (each a notice) must 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.

- 12.2 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.
- 12.3 No legal partnership, employer-employee, principal-agent or joint venture relationship is created or evidenced by this Agreement.
- 12.4 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.
- 12.5 No amendment to this Agreement will be effective unless agreed in writing and signed by both parties.
- 12.6 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.
- 12.7 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

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provided in connection with, the Recipient, the Development Phase Project, the Project or this Agreement.

- 12.8 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.
- 12.9 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.
- 12.10 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.
- 12.11 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.
- 12.12 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.
- 12.13 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 5.1 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 on or after the Funding Start Date and no later than the End Date 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.

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*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

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 5.3.

#### **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

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**SCHEDULE: PAYMENT REQUEST**

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To: MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT

Dated: [•]

**PAYMENT REQUEST**

1. We refer to the Funding Agreement dated [•] 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 \$[•] plus GST if any.
5. The Funding requested in this Payment Request is required to meet the Eligible Costs.
6. Invoices/statements and accounts evidencing the above
7. *Eligible Costs* are attached
8. 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

\_\_\_\_\_  
Position: Director

\_\_\_\_\_  
Authorised Officer

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## Appendix 1: Scope of Work for the Project

### Tranche 1 activities:

- Review of 2015 prefeasibility study by **Commercial Information** Prefeasibility Review Scope DRAFT – 6 November 2018 - Appendix 5)
- Consultation with GWRC on the plan change required as a result of the Waitua recommendations
- Development of a community engagement strategy
- Employment / contracting of a Community Engagement Manager
- Recruitment / contracting of a Project Manager and Technical Officer

### Tranche 1 Report scope:

1. **Commercial Information** Component
  - a. independent review of project feasibility with latest GWRC Plan Change and Climate Forecast information including assessment against PGF Water Storage Investment Principles
  - b. Incorporation of Urban Water and Environmental Flow needs based on Councils Integrated Water Management Program
  - c. Consenting and Procurement Strategy
  - d. Capital Raising Strategy and Corporate Structures
  - e. Indicative programme and budget to financial closure
2. WWL Component
  - a. Progress against plan Community Engagement Strategy
  - b. Proposed Tranche 2 Program and budget based on **Commercial Information** findings.
  - c. Project Risk Register and Mitigation Plans

### Tranche 2 activities ( Subject to review and confirmation in Tranche 1 Report):

- Prepare and run an EOI process to obtain additional funding from private water users required for the **Commercial Information**
- Staff expenses for the staff detailed above (Project Manager, Technical Officer and Community Engagement Manager)
- Preparing a confirmed budget and work plan for the remaining **Commercial Information** activities (informed by the Tranche 1 result)
- Implementation of the community engagement strategy and work programme
- Establishing the **Commercial Information** entity for the Feasibility, Resource Consenting and Design & Contracting Phases
- Final prefeasibility check
- **Commercial Information**
- Preparing a budget and work plan for the Feasibility and Resource Consenting Phases
- Developing a water offtake pricing model
- Preparing funding applications for the Feasibility, Resource Consenting and Design & Contracting Phases

### Tranche 2 Report scope ( Subject to review and confirmation in Tranche 1 Report):

1. State of readiness to proceed to detailed Feasibility, Consenting and Procurement Phase
2. Assessment against PGF Water Storage Investment Principles

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3. Updated program and budget
4. Detailed funding arrangements
5. Commercial Structures agreed in principle and ready to operationalise
6. Project Risk Register and Mitigation Plans

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## Appendix 2: PGF Water Storage Investment Principles

### Economic

- Water storage will strengthen regional economies by shifting land use to higher value, sustainable uses, while avoiding increases in livestock intensification.
- Water storage will help address disparities in Māori access to water for land development.

### Community

- Small scale community level projects will be supported rather than mega irrigation schemes.
- There must be public benefit from government funding of a project.
- Projects will involve stronger partnerships at the local level, including with regional councils.
- The Crown Irrigation Investments Limited (CIIL)'s programme of work will not be progressed, although communities that were involved in CIIL initiatives can submit PGF proposals that align with PGF objectives.

### Environment

- Water storage proposals should demonstrate that they will support land use that does not increase - and ideally reverses - negative impacts on water quality.
- Proposals should maintain the health of waterways.
- Water storage will not be used to increase the intensity of ruminant agriculture or other land uses in a catchment where this puts greater cumulative pressure on water and risks compromising water quality.
- Water storage proposals should incorporate activities that improve water quality – e.g. activities that improve E. coli levels and ecological health, restoration and protection projects such as improvements in wetlands, fish and wildlife habitats, riverbanks, biodiversity activities, soil health and sediment control.

### Climate change

- Where practicable, proposals should contribute positively to the target of reducing greenhouse gases, and demonstrate how they will contribute to mitigating or adapting to climate change effects and a just transition to a low emissions economy.
- Proposals should consider the potential to contribute to community resilience to climate change. Strengthening municipal water supply is not an objective of PGF funding. However, the PGF will work with councils to include municipal supply as a component of wider water initiatives, if it enables councils to contribute more to regional water management.