



PROVINCIAL
DEVELOPMENT
UNIT

New Zealand Government

PROVINCIAL GROWTH FUND FUNDING AGREEMENT

BETWEEN

**MINISTRY OF BUSINESS,
INNOVATION AND EMPLOYMENT**

AND

KAIPARA DISTRICT COUNCIL

FOR

**KAIPARA ROADING PACKAGE
AGREEMENT 2**

PROACTIVELY RELEASED

PART 1: KEY DETAILS

- 1 **Parties**
- MINISTRY**
The Sovereign in right of New Zealand, acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment (**Ministry**)
- RECIPIENT**
Kaipara District Council, a territorial authority listed in Part 2 of Schedule 2 to the Local Government Act 2002 (**Recipient**)
- 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 (PGF), which aims to lift productivity potential in New Zealand's provinces
- The Recipient has sought a funding contribution from the Ministry for the purposes of the Project described below.
- The Ministry has agreed to contribute funding on the terms and conditions of this Agreement (**Agreement**).
- 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**.
- This Project is expected to support regional economic development in Kaipara by:
- Improving links between the district and major transport hubs and markets;
 - Safeguarding and expanding visitor and business access to and within the district; and
 - Generating employment opportunities through facilitated capability development, the work, and increased investments in the district.
- The Project will also increase resilience, connectivity, and access to communities by providing alternative routes that are fit for purpose.
- The parties in Agreement 1 have agreed to the other parts of the Kaipara Package including the business cases, physical works and programme support. This Agreement deals only with the unsealed roading network part of the package.
- 5 **Conditions Precedent**
- No Funding is payable under this Agreement until the Ministry is satisfied that the following conditions have been met in form and substance:
1. The Recipient's Programme Steering Group has been established and an appropriate Terms of Reference developed. The members of the Steering Group must be appropriately skilled and experienced.
 2. Confirmation from the Recipient the Recipient has commenced the process of submitting a cash flow adjustment to take into account Roads re-metalling projects brought forward under this Agreement, noting that

no payment in relation to these projects (from the NLTF) can be claimed until the cost scope adjustment is completed.

3. Evidence provided to the Ministry of NZTA's confirmation that all usual requirements for local roading projects have been met and that it is appropriate to make the first payment to the Recipient.
4. Completed Programme Support Plan under Agreement 1.

6 Project

Kaipara Roding Package

The Recipient will deliver the Kaipara Roding Package which is made up of Immediate Physical Works which are each set out in detail in **Schedule One**.

Programme Support

The Recipient will deliver the Programme Support for both Agreement 1 and 2 which is set out in detail in Agreement 1.

Expected Outcomes

The expected outcomes for Kaipara from this Project as part of the Kaipara Roding Package which align with the Provincial Growth Fund are:

- increased direct employment opportunities;
- improve viability of existing businesses and create new businesses;
- increase social inclusion and participation;
- training opportunities; for local people;
- complement existing local visitor activities;
- better use of iwi assets and Māori development;
- increased environmental sustainability; and
- increased regional or national resilience.

7 Project Deliverables

Kaipara Roding Package

1. The Recipient must deliver each local roading project that constitutes part of the PGF Kaipara Roding Package as set out in **Schedule One**. Each such local roading project constitutes a Project Deliverable under this Agreement.

Programme Support Plan

2. As set out in detail under Agreement 1.
- 3.

8 Funding

1. The Total Maximum Amount of PGF Funding that can be provided for the Project under this Agreement is NZ\$ ^{Commercial Information} allocated as set out in the **attached** Schedule One.

TIO System

1. The Funding will be paid via NZTA's Transport Investment Online (TIO) system and will be subject to TIO's requirements and the terms and conditions of this Agreement.
2. The Recipient will use the TIO system to submit all documentation required by the NZTA for a new project, and, ongoing payment claims. The Recipient will provide any additional Project updates that cannot be submitted through TIO but requested by the Ministry directly to the Ministry, cc'ing PGF@nzta.govt.nz
3. TIO processing includes:
 - (a) the Recipient submit their payment claims and receiving PGF reimbursement for approved spending to date via TIO;
 - (b) NZTA monitoring progress and ensuring procurement processes meet NZTA requirements; and
 - (c) NZTA alerting the Provincial Development Unit if there are any issues with delivery of the Project upon the NZTA becoming aware of such issues.

Acknowledgement

4. The Recipient acknowledges that other than as set out directly above, there is no further PGF funding to deliver the Project other than the Funding provided under this Agreement.

As set out in **Schedule One** (if any).

9 Co-Funding

NLTF co-funding is expected for the Project Deliverables as outlined in **Schedule One**. The Recipient will work with the NZTA to support the NLTF funding approval process, including but not limited to business case requirements.

10 Reporting

1. The Recipient will submit Quarterly Progress Reports on the Project in the form required below to the Ministry, cc'ing PGF@nzta.govt.nz. Quarterly Progress Reports must be submitted by the ^{Commercial Information}
2. The Recipient will submit Annual Reports on the Project in the form required below to the Ministry, cc'ing PGF@nzta.govt.nz, within ^{Commercial} Business Days of the end of each 12 month period.
3. The Recipient will carry out accurate forecasting in Programme Monitor in TIO.
4. The Recipient will submit direct to the Ministry a Post Contract Outcomes

Report for each Project Deliverable under this Agreement in the form required below within 6 months of completion of that Project Deliverable.

Each **Quarterly Progress Report** must be in the form as reasonably required by MBIE and include at least the following information:

- (a) summary of each of the Project Deliverables in the Project;
- (b) summary of how each of the Project Deliverables making up the Project is tracking, including delivery against budget and timeframes;
- (c) the amount of co-funding or NLTF funding (if any) contributed to each Project Deliverable making up the Project;
- (d) description of how the Project is delivering on the social outcomes including information on the percentage of local workforce for each Project Deliverable; jobs created and the training being provided;
- (e) progress since last report on Project Deliverable in the Project;
- (f) recommendations, decisions or actions required;
- (g) any major programme risks for each Project Deliverable in the Project;
- (h) upcoming milestones for each Project Deliverable in the Project;
- (i) updates on any marketing, media or communications relating to the Project;
- (j) confirmation that no Termination Event is subsisting and that each of the warranties under clauses 3 and 7 of this Agreement are correct as at the date of the report; and
- (k) any other information that is notified by the Ministry in writing to the Recipient.

Each **Annual Report**

- (a) Overall Project delivery including:
 - actual vs forecast delivery
 - expenditure versus forecast
 - delivery of the Project Deliverables and budget to agreed timeline and expenditure
- (b) commentary to demonstrate that there is a suitable supply market to deliver the Project.
- (c) commentary to demonstrate how the Recipient will/is allocating and maintaining appropriate programme management for the Project.
- (d) The proposed schedule of works for the following 12 month period, reflecting the programme of works (Physical Works and Investigations) outlined in Schedule One.
- (e) Commentary that outlines how the upcoming 12 months programme of works is ensuring that the local roading and state highways networks are working together with a whole of network view to minimise any

disjointed delivery.

- (f) The Resource Support request for the following 12 months, requested under Item 8 of this Agreement.

The **Post Contract Outcome** report must include the following information:

- (a) an analysis of how the Funding has enabled the Recipient to achieve the key outcomes of the Project;
- (b) how the Funding has accelerated regional development through increasing the productivity potential of and contributing to more and better paid jobs in the region;
- (c) the number of jobs that were created during and resulting from the Project;
- (d) how the Project has increased social inclusion and participation;
- (e) how the Project has contributed to Māori development;
- (f) how the Project has contributed to New Zealand's climate change commitments and environmental sustainability;
- (g) how the Project has increased regional and national resilience by improving critical infrastructure and/or growth and diversification of the economy; and
- (h) any other information that is notified by the Ministry in writing to the Recipient.

11 **Insurance** Refer to Part 2, clause 3.16

12 **Special Terms** **Project Governance**

- 1 The Recipient will:
 - (i) provide reasonable notice to the Ministry of all of the Recipient's PGF Steering Group meetings; Project management group meetings and Project governance group meetings; and
 - (ii) provide copies of all documents and notices to be tabled at the PGF Steering Group meetings; Project management group meetings and Project governance group meetings to the Ministry no later than a reasonable period prior to the meetings, and the minutes of those meetings within a reasonable period after each meeting
- 2 The Ministry may appoint additional observers (who are not the Oversight Advisor) who will be entitled to attend and speak at all PGF Steering Group meetings; Project management group meetings and Project governance group meetings (but will not be entitled to vote on any matter at those meetings).
- 3 The Recipient shall ensure that its Programme Steering Group are suitably qualified and at all times comply with the approved Terms of Reference (and such terms not to be amended without prior written consent of the Ministry with such consent not to be unreasonably withheld or delayed).

Project Obligations

- 4 The Recipient will prudently oversee the Project and will ensure all contractors have accountability and deliver the works on time, within budget and to meet all relevant codes, consent/Authorisation requirements, as required for such works to be undertaken.
- 5 Upon completion of the Project, the Recipient will maintain the completed Project and related assets in accordance with best industry practice, in any way necessary to be maintained in good and substantial repair and condition and, as appropriate, in good working order. The Recipient acknowledges that the NZTA will assist the Ministry's Provincial Development Unit by processing the Project through TIO and by extending the NZTA's existing Assurance processes to PGF funded projects. In performing these functions, the NZTA will be acting on behalf of PDU.

1 Contact Person

Ministry's Contact Person:

Recipient's Contact Person:

Name: Leah MacDonell

Name: Diane Bussey

Email: **Commercial Information**

Email: **Commercial Information**

Contract ID:

2 Address for Notices

To the Ministry:

To the Recipient: Kaipara District Council

15 Stout Street,

Private Bag 1001,

PO Box 1473

Dargaville 0340

Wellington 6140

Attention: Provincial Development Unit

Attention: The CEO

Email: monitorpgf@mbie.govt.nz

Email: **Commercial Information**

SIGNATURES

SIGNED for an on behalf of the **SOVEREIGN IN RIGHT OF NEW ZEALAND** by the person named below, being a person duly authorised to enter into obligations on behalf of the Ministry of Business, Innovation and Employment:

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:

Name:

Name:

Position:

Position:

Date:

Date:

PART 2: GENERAL TERMS

1 FUNDING

- 1.1 Through the Ministry of Transport and the New Zealand Transport Agency, the Ministry will pay the Funding (up to the “Total Maximum Amount Payable” specified in the Key Details) to the Recipient, subject to the terms of this Agreement. The Recipient must use the Funding on Eligible Costs.
- 1.2 The Recipient must submit each Payment Claim through NZTA’s Transport Investment Online (TIO) portal.
- 1.3 The Ministry shall not interrupt the TIO payment process in any current quarter but in the event of a material dispute, controversy or claim arising out of or in connection with this Agreement (in each case, a Dispute), the Ministry may give written notice to the Recipient specifying the nature of the Dispute and requesting discussions. As soon as reasonably practicable following receipt of such a notice, the parties will meet (in person, or by audio or video conference) and endeavour to resolve the Dispute by discussion, negotiation and agreement. If the matter cannot be resolved the Ministry may advise NZTA to put a hold on those payments that relate to the Deliverable which is subject to the Dispute, or if this is not possible, then undertake arrangements with the parties that have this effect.
- 1.4 Subject to clause 1.3 above, the Ministry is not required to pay any Funding in respect of a Payment Claim:
 - (a) where the Ministry is not satisfied (acting reasonably) with the progress of the Project;
 - (b) if payment will result in the total Funding exceeding the “Maximum Amount Payable”;
 - (c) while there are one or more Termination Event(s);
 - (d) if this Agreement has expired or been terminated; and/or
 - (e) while the Recipient is in breach of this Agreement.

2 CO-FUNDING

- 2.1 The Recipient must 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.
- 2.2 NLTF co-funding is expected for the Project Deliverables as outlined in Schedule One. The Recipient will work with the NZTA to support the NLTF funding approval process, including but not limited to business case requirements.
- 2.3 The Recipient must immediately notify the Ministry if it becomes aware of any circumstances that may result in the Co-Funding or the NLTF co-funding (or any part of the NLTF 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 will use reasonable endeavours to undertake the Project as described in this Agreement.
- 3.2 In undertaking the Project, the Recipient will comply with all applicable laws, regulations, rules and professional codes of conduct or practice.
- 3.3 The Recipient will ensure the Project is constructed to the appropriate standards and meets all requirements of these standards as determined by the New Zealand Transport Agency, including the appropriate safety audits.

Project Deliverables, Key Personnel, Contractors and the Project

- 3.4 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 the NZTA's procurement and contracting requirements for Approved Organisations and the Special Terms of this Agreement.
- 3.5 The Recipient will ensure that the Project Deliverables are completed by the relevant "Completion Date" specified in the Key Details (if any).
- 3.6 The Recipient will ensure that the Key Personnel undertake their respective roles in connection with the Project as specified in the Key Details, except as otherwise approved in writing by the Ministry. If any Key Personnel become unavailable to perform their role, the Recipient must promptly arrange replacement Key Personnel acceptable to the Ministry.
- 3.7 The Recipient is responsible for the acts and omissions of any contractors.
- 3.8 The Recipient will ensure (and will procure that the head contractor when engaging with any other contractor 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, 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 3.8 in response to any request by the Ministry from time to time.

Information Undertakings

- 3.9 The Recipient will provide the Ministry, copied to PGF@nzta.govt.nz with the reports specified in the Key Details, in accordance with the timeframes and reporting requirements set out in the Key Details.
- 3.10 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.
- 3.11 The Recipient will 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.

3.12 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

3.13 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.

3.14 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 third party 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.

3.15 The Recipient must appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding.

Insurance

3.16 The Recipient must effect and maintain insurance that is adequate to cover its obligations under this Agreement, plus any other insurance specified in the Key Details. The Recipient will, on request, provide the Ministry with evidence of its insurance cover required under this clause.

Health and Safety

3.17 Without limiting its other obligations under this Agreement, the Recipient will:

- (a) consult, cooperate and coordinate with the Ministry to the extent required by the Ministry to ensure that the Ministry and the Recipient will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this Agreement and the Project;
- (b) perform its, and ensure that the contractors perform their, obligations under this Agreement and the Project (as applicable) in compliance with its and their obligations under the Health and Safety at Work Act 2015;
- (c) comply with all directions of the Ministry relating to health, safety, and security; and
- (d) report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Ministry to the extent that it relates to, or affects, this Agreement or the Project.

4 MAINTENANCE

Upon completion of each Project Deliverable, the Recipient will ensure the maintenance of and maintain the completed road and all related facilities and assets in accordance with all statutory requirements.

5 INTELLECTUAL PROPERTY

- 5.1 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.
- 5.2 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, the Ministry of Transport or the NZTA under or in connection with the Project and this Agreement.
- 5.3 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 5.2 without infringing the intellectual property rights of any third party.

6 TERM AND TERMINATION

- 6.1 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.
- 6.2 This Agreement will remain in force until the End Date, unless terminated in accordance with this Agreement (the **Term**).
- 6.3 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 abandons the Project;
 - (iii) the Recipient has provided the Ministry or NZTA with information in connection with or under this Agreement that (whether intentionally or not) is materially incorrect or misleading, and/or omits material information;

- (iv) 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);
- (v) the Recipient is involved in any intentional or reckless conduct which, in the opinion of the Ministry, has damaged or could damage the reputation, good standing or goodwill of the Ministry, or is involved in any material misrepresentation or any fraud;
- (vi) the Recipient (or any of its personnel or contractors) is subject to a Conflict of Interest which cannot be managed to the Ministry's satisfaction; or
- (vii) any change in law, regulations, government policy or other circumstances materially affects the Ministry's ability to perform its obligations under this Agreement.

6.4 However, where the Ministry considers that a Termination Event set out in clause 6.3(d) can be remedied, the Ministry will give notice to the Recipient requesting a remedy, and will not exercise its right of termination unless the relevant event remains unremedied for at least 14 days (or any longer period agreed with the Recipient) after that notice has been provided by the Ministry.

6.5 In the event that the Recipient abandons any Project Deliverable without the prior written approval of the Ministry, the Ministry may terminate that Project Deliverable on 5 days written notice and the recovery of funding in clause 6.6 applies.

6.6 For the avoidance of doubt, nothing in clause 1.3 shall prohibit the Ministry from recovering Funding from the Recipient for any of the matters set out below. The intent of clause 1.3 is that the Ministry does not interrupt any TIO payment process in any current quarter. If the Ministry intends to recover monies under this clause, any such claim shall not be made under the TIO system (and instead will be between the Ministry and the Recipient only) and any refunds shall be paid directly from the Recipient to the Ministry (and shall not involve NZTA or the TIO system). The Ministry may recover Funding from the Recipient as follows:

- (a) **Misspent Funding.** 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 misspending to the date the money is repaid.
- (b) **Uncommitted Funding.** On expiry or termination of this Agreement, the Ministry may recover any Funding paid to the Recipient, which the Recipient:
 - (i) has not spent or contractually committed to spend in accordance with this Agreement; or
 - (ii) has spent or contractually committed to spend in accordance with this Agreement but which the Recipient can have refunded or released from that commitment.
- (c) **Co-Funding not provided.** If Co-Funding is required as set out in the Key Details, on expiry or termination of this Agreement, if the Co-Funding has not been used for the Project, the Ministry may recover an amount that represents the same proportion of the Funding as the proportion of Co-Funding that has not been used is of the total Co-Funding.
- (d) **Project abandoned.** If the Recipient has abandoned the Project or stated an intention to abandon the Project, and does not within 30 Business Days of being requested to do so by the Ministry demonstrate to the Ministry's satisfaction that the Recipient will proceed with the

Project, the Ministry may recover an amount up to the total value of the Funding, provided the Ministry may not recover under this subclause if the Recipient satisfies the Ministry that it acted on reasonable grounds in deciding to abandon the Project.

- (e) **Excess Funding.** 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 6.6(e), any amount that exceeds the total amount of Funding.

6.7 Clauses 4, 3.2, 3.3, 3.13, 3.14, 5, 6, 7, 8, 9, 10, 11, 12 and 13 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.

7 WARRANTIES

7.1 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.

7.2 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 Project, the Recipient, its contractors 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.

7.3 The Recipient acknowledges that the Ministry has entered into this Agreement in reliance on these warranties.

7.4 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.

8 LIABILITY

8.1 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.

8.2 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.

9 CONFIDENTIALITY

9.1 Subject to clause 9.2 and 9.3, each party will keep the other party's Confidential Information in confidence, and will use or disclose that Confidential Information only to the extent necessary to perform its obligations, and/or take the intended benefit of its rights, under this Agreement. However, this will not prohibit:

- (a) either party from using or disclosing any information with the written prior consent of the other party;
- (b) use or disclosure of information that has become generally known to the public other than through a breach of this Agreement;
- (c) either party from disclosing information to its personnel or contractors with a need to know, so long as the relevant personnel and contractors use the information solely to enable that party to perform its obligations and/or take the intended benefit of its rights under this Agreement, and so long as they are informed of the confidential nature of the information and in the case of the Recipient, the Recipient receives an acknowledgement from its personnel or contractors that they acknowledge, and will comply with, the confidentiality obligations in this Agreement as if they were party to it;
- (d) disclosure required by any law, or any compulsory order or requirement issued pursuant to any law; or
- (e) the Ministry from using or disclosing to any third party any information, document, report or other material licensed under clause 5, provided that prior to any such disclosure the Ministry removes all information that is commercially sensitive to the Recipient from the relevant work.

9.2 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 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 subcontractor'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.

9.3 The parties acknowledges that:

- (a) the contents of this Agreement; and

(b) information provided to the Ministry,

may be official information in terms of the Official Information Act 1982 and/or the Local Government Official Information and Meetings Act 1987 and, in line with the purpose and principles of the Official Information Act 1982 those Acts, this Agreement and such information may be released to the public unless there is good reason, in terms of under the Official Information Act 1982, (for the Ministry) or Local Government Official Information and Meetings Act 1987 (for the Recipient) to withhold it.

10 MEDIA AND COMMUNICATIONS

- 10.1 Before delivering any key stakeholder briefing or making any media statements, press releases (including social media posts) 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.
- 10.2 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
- 10.3 The Recipient will acknowledge the Ministry as a source of funding in all publications (including any digital presence) and publicity including signage regarding the Project in accordance with the PGF Funding Acknowledgement Guidelines on the website: 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).
- 10.4 If requested by the Ministry, the Recipient will establish or erect temporary and/or permanent signage (which may be in the form of a plaque) at the site of the Project acknowledging the Ministry as a source of funding for the Project. The Ministry may provide such signage and the Ministry will consult with the Recipient in respect of a suitable location for such signage. Any PGF signage will comply with NZTA's Traffic Control Devices Manual.
- 10.5 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.
- 10.6 All correspondence with the Ministry under this clause 10 must be directed to the Ministry's Contact Person and copied to pducomms@mbie.govt.nz.

11 DISPUTES

- 11.1 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 11. 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.
- 11.2 A party must not commence any proceedings in connection with a Dispute unless at least 40 Business Days have elapsed since the issue of a corresponding Dispute Notice, and that party has used reasonable endeavours to comply with this clause 11. However, nothing in this clause will prevent either party from seeking urgent interim relief from a court (or other tribunal) of competent jurisdiction.

12 CONTACT PERSONS

- 12.1 All matters or enquiries regarding this Agreement will be directed to each party's Contact Person (set out in the Key Details).
- 12.2 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.

13 GENERAL

13.1 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.

- 13.2 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.
- 13.3 No legal partnership, employer-employee, principal-agent or joint venture relationship is created or evidenced by this Agreement.
- 13.4 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.
- 13.5 No amendment to this Agreement will be effective unless agreed in writing and signed by both parties.
- 13.6 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.
- 13.7 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 Project or this Agreement.

- 13.8 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.
- 13.9 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.
- 13.10 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.
- 13.11 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.
- 13.12 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.
- 13.13 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:

Agreement means this agreement including Parts 1, 2 and 3 and Schedule 1 (and any other annexures or attachments).

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.

Co-Funding means the “Co-Funding” (if any), or any part of the Co-Funding (as the context requires), described in the Key Details

Commencement Date has the meaning given in clause 6.1 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 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.

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) in good faith for the purpose of carrying out the Project or for purposes incidental to the Project, including all internal costs, disbursements and expenses incurred by the Recipient for such purposes (and to the extent the Recipient is carrying out any other activities) reasonably and

proportionately allocated towards such purposes; and

- (c) at "arm's length", that expenditure is assessed at reasonable market value, and contains no unacceptable overhead and no element of "in group profit".

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.

Funding Start Date means the "Funding Start Date" specified in the Key Details.

Key Details means Part 1 of this Agreement.

Key Personnel means the "Key Personnel" specified in the Key Details.

Payment Claim means a request submitted by the Recipient seeking payment of Funding.

Project means the "Project" described in the Key Details and each reference to the Project includes each Project Deliverable.

Project Deliverable means a deliverable to be delivered by the Recipient, as specified in the Key Details

Recipient means the Recipient specified in the Key Details.

Termination Event means any one or more of the events or circumstances set out in clause 6.3.

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

Schedule: One

Projects for the Kaipara Roothing Package

Project Deliverable	Project description	Expected Outcomes	Expected Term	PGF Funding	NLTF co-funding and any other	PGF Funding Conditions Precedent
Unsealed Roothing Network	Physical Works	<p>Improving the quality of existing road surfaces</p> <p>Remediation and upgrade of existing roads to improve level of service</p>	[To be inserted - Recipient to provide details to Ministry for approval]	\$3.15m (plus GST if any)	<p>Commercial In</p> <p>\$ Commercial Info plus GST (if any)</p>	<p>The \$3.15m PGF funding is not payable until the Ministry has approved a table of deliverables/ timeframes in relation to this project.</p> <p>Upon approval of the milestones/ deliverables by the Ministry, those milestones/ deliverables will be deemed to be part of this Agreement as a Project Deliverable.</p>
TOTALS				\$3.15m		