

INFRASTRUCTURE FUNDING FRAMEWORK AGREEMENT

TĀMAKI PRECINCT

between

AUCKLAND COUNCIL

and

AUCKLAND TRANSPORT

and

TĀMAKI REDEVELOPMENT COMPANY LIMITED



THIS AGREEMENT dated the 6th day of September 2016

BETWEEN AUCKLAND COUNCIL (Council)

AND AUCKLAND TRANSPORT (AT)

AND TĀMAKI REDEVELOPMENT COMPANY LIMITED (TRC)

BACKGROUND

- A. TRC has been mandated by its ultimate shareholders, New Zealand Government and Auckland Council, to lead on urban regeneration activity within the Tāmaki Precinct to achieve social transformation, economic development, place-making, and housing purposes. Specifically:
1. TRC's subsidiary, Tāmaki Regeneration Limited (TRL), owns the majority of residential land within the Tāmaki Precinct;
 2. TRC currently manages approximately 2,800 existing social houses in the Tāmaki Precinct and intends to replace approximately 2,500 of these houses with a minimum of 7,500 mixed tenure houses over the next 10-15 year period; and
 3. TRC wishes to progress with the Redevelopment and intends to achieve its objectives by partnering with private sector development companies.
- B. The Council and AT are supportive of the Redevelopment because it will help achieve the strategic outcomes and objectives sought in Council planning and strategy documents, including the Auckland Plan and Proposed Auckland Unitary Plan.
- C. In order to achieve the respective parties' objectives, TRC has asked the Council to provide a fund to support the Approved Works within the Tāmaki Precinct that are critical to the successful enabling of the Redevelopment.
- D. On 17 March 2016 the Council agreed to make \$18 million available to support infrastructure outcomes in Tāmaki; and on 17 March 2016, the Council's Finance and Performance Committee resolved:
- 4) *agree in principle that Auckland Council and Auckland Transport capex budgets (including those funded by development contributions collected within the Tāmaki Regeneration Area) will be reprioritised to ensure that the infrastructure investment requirement can be funded once they are known and approved via an appropriate business case process.*
 - 5) *agree that at a minimum, the council will invest an amount equivalent to the local development contributions collected within the Tāmaki Regeneration Area in local infrastructure that will benefit development in the Tāmaki Regeneration Area. This is currently estimated to be \$63 million and is in addition to the \$18 million infrastructure investment provided for in the council's Long-term Plan.*



- E. The Council, AT, and TRC have agreed to work together to facilitate the Redevelopment within the timeframes set out in Schedule 2; and to apply the Tāmaki Infrastructure Investment Fund to the Approved Works over the term of this agreement. This will be achieved by establishing the Project Steering Group, comprised of senior members of the parties, to make recommendations as to the Council and AT as to which Indicative Works should be Approved Works and, therefore, the subject of infrastructure funding agreements.
- F. The Council is responsible for the public open space land within the Tāmaki Precinct. It is recognised that the Redevelopment creates an opportunity to reconfigure and enhance the quality of public open space land so that it can better meet the needs of the future Tāmaki community, which may include the Council and TRC agreeing to swap certain land for the Redevelopment.
- G. The purpose of this agreement is to establish a relationship framework for the parties to enable expeditious redevelopment of the Tāmaki Precinct and to give effect to the parties' intentions and objectives set out above.

THE PARTIES AGREE:

1. INTERPRETATION

In this agreement unless the context indicates otherwise:

1.1 Definitions:

Approved Works means those particular Indicative Works approved under paragraph 6.3 of this agreement, as being appropriate works against which the Tāmaki Infrastructure Investment Fund may be applied (whether in whole or in part) and in respect of which an infrastructure funding agreement may be entered.

Company associated with TRC includes any private sector development company or entity which contracts with TRC (or TRL) in relation to all or part of the Redevelopment and includes TRL.

Indicative Works means those proposed network infrastructure (including roads and other transport infrastructure and stormwater), community infrastructure and public open space works, and programmes of works, identified in Schedule 2 as being works that may be required to support the Redevelopment, as may be updated by the Project Steering Group. For the avoidance of doubt, the term Indicative Works does not include any wastewater or water supply works, any works for which the Council is not responsible for funding through its Long-term Plan or under this agreement, or any land exchanges or land transactions.

Project Steering Group means the group established under clause 3.2 of this agreement comprising senior representatives of the parties.

Project Timelines means the indicative timelines for the various Indicative Works set out in Schedule 2 (amended by agreement from time to time).



Redevelopment means the urban renewal and urban regeneration of land within the Tāmaki Precinct, and all associated infrastructure works including the Indicative Works and subsequent Approved Works pursuant to clause 6.3 of this agreement being undertaken in accordance with the Project Timelines as amended and agreed by the parties.

Regulatory Process means any application made by TRC, or a Company associated with TRC, for consent or approval from the Council or AT, as the case may be, under any enactment, regulation or bylaw, including, but not limited to, the RMA, the Housing Accords and Special Housing Areas Act 2013 to authorise the Redevelopment.

RMA means the Resource Management Act 1991.

Statutory Process means any application identified below made by the Council or AT, as the case may be, under any enactment, regulation or bylaw, including, but not limited to, the RMA, the Reserves Act 1977, the Public Works Act 1981, and the Local Government Acts 1974 and 2002 to support the Redevelopment.

Tāmaki Infrastructure Investment Fund means the fund comprising of the sums referred to in clause 5.3, as may be adjusted in accordance with this agreement.

Tāmaki Precinct means the broader area known as Tāmaki and includes the suburbs of Point England, Glen Innes and Panmure as depicted on the map attached as Schedule 1 to this agreement.

TRC means Tāmaki Redevelopment Company Limited, registered under company number 3937662 on the New Zealand Company Register.

TRL means Tāmaki Regeneration Limited, registered under company number 5840214 on the New Zealand Company Register.

Working Day has the meaning given to the term in the RMA.

- 1.2 **Defined Expressions:** Expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the background.
- 1.3 **Headings:** Section, clause and other headings are for ease of reference only and will not affect this agreement's interpretation.
- 1.4 **Negative Obligations:** Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.
- 1.5 **Persons:** References to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.
- 1.6 **Plural and Singular:** Words importing the singular number include the plural and vice versa.



- 1.7 **Schedules:** The schedules to this agreement and the provisions and conditions contained in these schedules have the same effect as if set out in the body of this agreement.
- 1.8 **Sections, Clauses and Schedules:** References to sections, clauses and schedules are references to this agreement's sections, clauses and schedules.
- 1.9 **Statutes and Regulations:** References to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2. TERM AND REVIEW

- 2.1 **Commencement:** This agreement commences on the date it is executed by all parties.
- 2.2 **Review:** Unless otherwise agreed, the parties agree to review this agreement within three months following the third anniversary of the date of this agreement; and, thereafter, within three months of the date of the end of each successive three year period. The scope of such review will be limited to:
- (a) the extent and scope of the Indicative Works, and the Project Timelines;
 - (b) the terms of reference for the Project Steering Group; and
 - (c) any additional funding contributions to be made by the Council and/or AT under this agreement towards the Indicative Works.
- 2.3 **Expiry Date:** Unless otherwise agreed by the parties in writing, this agreement expires 15 years after the date referred to in clause 2.1.

3. RELATIONSHIP

- 3.1 **Joint Outcomes:** In entering this agreement, the parties jointly seek the expeditious redevelopment of the Tāmaki Precinct, in accordance with the Project Timelines contained in Schedule 2. In order to achieve that outcome, the parties agree that they will co-operate and work together:
- (a) to provide the necessary public infrastructure within the Tāmaki Precinct; and
 - (b) to prioritise and streamline consenting, and other Regulatory Processes and Statutory Processes, as necessary.
- 3.2 **Project Steering Group:** The parties agree to form a Project Steering Group to discuss all matters relating to, and arising from, this agreement with representation from senior members of each party. The Project Steering Group will operate as follows:
- (a) The Project Steering Group can determine how to conduct its business in the future, except that it shall hold its first meeting within 30 days of the commencement of this agreement, and shall meet at



- least once a month for the first year of this agreement, and shall otherwise comply with the terms of reference in Schedule 3.
- (b) The membership of the Project Steering Group will be nominated in accordance with the terms of reference in Schedule 3.
 - (c) The terms of reference for the Project Steering Group and an indicative governance structure is set out in Schedule 3.

3.3 **Collaboration:** In their dealings with each other, the parties shall work collaboratively and at all times act reasonably towards the other, and within reasonable timeframes, in implementing the terms of this agreement, and in facilitating the Approved Works in accordance with the Project Timelines in Schedule 2.

4. REGULATORY AND STATUTORY PROCESSES

- 4.1 **Council Regulatory Processes:** Without forming a view on the merits of any Regulatory Process for which the Council is responsible, the Council agrees to prioritise and expedite all such processes.
- 4.2 **AT Regulatory Processes:** Without forming a view on the merits of any Regulatory Process for which AT is responsible, AT agrees to prioritise and expedite all such processes.
- 4.3 **Further Statutory Assistance:** The Council and AT, as appropriate, each agree to consider any reasonable request, made in writing, by TRC to undertake a Statutory Process for appropriate purposes to support the Redevelopment.
- 4.4 TRC acknowledges that, where the Council or AT have been requested to undertake a Statutory Process on behalf of TRC under clause 4.3 above, then Council or AT:
- (a) may require an undertaking from TRC to meet their reasonable costs and fees, together with the provision of appropriate security, before any Statutory Process would be considered; and
 - (b) must act reasonably, and strictly in accordance with law, in considering whether or not it would be appropriate to use the Statutory Process.
- 4.5 TRC agrees that:
- (a) neither the Council nor AT can guarantee an outcome favourable to TRC as a result of undertaking any Statutory Process; and
 - (b) neither the Council nor AT may be compelled under this agreement to commence, or defend, any litigation whatsoever as a result of it having commenced any process under clause 4.3 of this agreement.

5. FUNDING MECHANISMS

- 5.1 **Funding Mechanisms:** TRC acknowledges that nothing in this agreement prevents, or restricts, the Council's ability to adopt any funding mechanism



(including, but not limited to, any general or targeted rate, or development contribution) to recover its costs for the Approved Works under this agreement.

- 5.2 **Development Contributions:** TRC acknowledges that TRC, and any developer within the Tāmaki Precinct (including a Company associated with TRC), is liable to pay full development contributions for all activities required by the applicable development contributions policy and that nothing in this agreement entitles it to a credit or offset on any development contributions payable for any development that may be undertaken.
- 5.3 **Tāmaki Infrastructure Investment Fund:** The parties acknowledge the minimum aggregate amount of the Tāmaki Infrastructure Investment Fund is comprised of:
- (a) the cash sum of \$18 million (excluding GST), which has been provided in the Council's 2015 Long-term Plan to support infrastructure outcomes within the Tāmaki Precinct; and
 - (b) the cash sum equivalent of the "local component" of the development contributions payable by developers, including TRC or a Company associated with TRC, within the Tāmaki Precinct (as set in the Background recital D of this agreement, this sum is currently estimated to be \$63 million based on the Auckland Council Contributions Policy 2015 and the anticipated levels of development within the Tāmaki Precinct).
- 5.4 For the purposes of calculating the local component of the development contributions identified in clause 5.3 above, the parties agree that the "local component" is that proportion of the total development contributions payable by developers, including TRC or a Company associated with TRC, within the Tāmaki Precinct that the Council determines, acting reasonably and in accordance with the Auckland Council Contributions Policy 2015 (or any successor policy), would be allocated to projects within, or in the vicinity of, the Tāmaki Precinct that reasonably support development within the Tāmaki Precinct.
- 5.5 Notwithstanding clause 5.3, the parties acknowledge that the Council's commitment to the Tamaki Infrastructure Investment Fund is contingent on the relevant parties entering into the infrastructure funding agreements contemplated by clause 6.5.

6. APPROVED WORKS AND INFRASTRUCTURE FUNDING AGREEMENTS

- 6.1 **Consideration of Indicative Works:** At the request of any party to this agreement, the Project Steering Group will consider, on a case-by-case basis, which of the Indicative Works may be funded, in whole or in part, by the Tāmaki Infrastructure Investment Fund.
- 6.2 **Recommendation:** Once the Project Steering Group considers that it has sufficient information (including such technical reports as it considers necessary) to consider one, or more, of the Indicative Works for funding



through the Tāmaki Infrastructure Investment Fund, it shall make a collective recommendation to the parties' respective decision makers as to whether or not the specified Indicative Works should be funded through the Tāmaki Infrastructure Investment Fund.

- 6.3 **Approval:** If the Council and AT's respective and appropriate decision makers approve funding the specified Indicative Works through the Tāmaki Infrastructure Investment Fund, those Indicative Works shall become Approved Works and the Tāmaki Infrastructure Investment Fund shall be applied to the Approved Works to the extent approved and subject to the parties entering into the Infrastructure Funding Agreements pursuant to clause 6.5 of this agreement.
- 6.4 The parties acknowledge that nothing in this agreement alleviates the need of Council and AT to consider each recommendation seeking Indicative Works to become Approved Works on its merits, following their usual decision making processes (which may include the Council's Governing Body or Committee approvals and/or AT Board of Directors approvals, as the case may be).
- 6.5 **Infrastructure Funding Agreements:** Subject to the Indicative Works becoming Approved Works pursuant to clause 6.3 of this agreement, the Council and AT agree to enter into an infrastructure funding agreement, based on the Council's standard template, at the time being (the current copy of which is included as Schedule 4 to this agreement), for the delivery of any of the Approved Works, with TRC, or a company associated with TRC. However, neither the Council nor AT, as the case may be, shall be compelled to enter into such an agreement unless they are satisfied that entity with which it will enter into the agreement:
- (a) has the necessary financial resources to successfully deliver the Approved Works to completion;
 - (b) has the necessary experience and expertise to either deliver the Approved Works, or project manage the delivery of the Approved Works by other parties approved by the Council or AT (as the case may be); and
 - (c) is not suspected by the Council, or AT, (acting reasonably) of having committed a breach of any enactment, regulation or bylaw on any previous project delivered or project managed by that entity which could cause reputational harm to Council or AT.
- 6.6 **TRC Reporting:** TRC will provide a quarterly report (or such other reporting frequency set by the Project Steering Group) to the Project Steering Group by the last day of each quarter of the calendar year. This report shall outline how TRC and its developer partners are progressing with each of the Approved Works against the Project Timelines together with any reports required by any executed infrastructure funding agreement.



7. PARKS AND OPEN SPACE (POS) LAND EXCHANGES

- 7.1 **POS Land and Land Exchanges:** Subject to compliance with statutory processes, TRC and the Council record their respective intentions to enter into an agreement with each other that achieves the efficient reconfiguration and upgrade of public open space land within the Tāmaki Precinct.
- 7.2 The parties intend that that agreement would include an open space network plan prepared by the Project Steering Group in consultation with the Council's Parks and Recreation Policy unit and recognise that the open space network plan would need to be approved by the Maungakiekie Tāmaki Local Board and the relevant Council committee.

8. GENERAL MATTERS

- 8.1 **Escalation of Issues:** If any dispute arises between TRC, the Council and/or AT in relation to this agreement, the dispute shall be escalated to the Project Steering Group for determination at its next meeting.
- 8.2 **Chief Executives:** If agreement cannot be reached in relation to a dispute between the parties described in clause 8.1, or where the dispute needs urgent resolution and cannot wait until the next Project Steering Group meeting, the issue shall be escalated to the Chief Executive Officer of TRC, the Chief Executive Officer of the Council and the Chief Executive Officer of AT (as applicable).
- 8.3 **Further Escalation:** If any dispute arises relating to the interpretation of the agreement, or a breach of the agreement, the parties may refer the dispute to arbitration as set out in clause 8.4 of this agreement. However, no dispute relating to the consideration of any Indicative Works or levels of funding to be applied to an Approved Work shall be referred to arbitration or be the subject of any litigation whatsoever.
- 8.4 **Arbitration:** If any dispute cannot be resolved between the parties in good faith within 10 working days of the dispute being escalated under clause 8.2 of this agreement, the parties agree not to resort to litigation. Any dispute must be referred to arbitration in accordance with the Arbitration Act 1996 and the Second Schedule to the Arbitration Act 1996 will apply. The arbitrator will be nominated by the President of the Auckland Branch of the New Zealand Law Society and his or her decision will be final and binding on the parties.
- 8.5 The arbitration under clause 8.4 will proceed in the following manner:
- (a) written briefs of evidence will be completed by the parties and exchanged within 10 Working Days of the appointment of the arbitrator;
 - (b) submissions and any written rebuttal evidence will be exchanged between the parties with copies provided to the arbitrator within 5 Working Days following the exchange of evidence;



- (c) a formal hearing will not be required unless requested by the arbitrator;
 - (d) the arbitrator will use his or her reasonable endeavours to publish his written decision within 10 Working Days of receiving the rebuttal evidence;
 - (e) the place of arbitration will be Auckland, New Zealand;
 - (f) the arbitrator's costs will borne equally between the parties;
 - (g) the arbitrator's decision will be final.
- 8.6 **Costs:** TRC agrees to pay the Council's Development Programme Office, on a time and attendance basis, for its internal staff costs for coordinating with internal stakeholders, and preparing and negotiating this agreement; and each infrastructure funding agreement required under clause 6.5 of this agreement.
- 8.7 **Further Assurance:** Each party will at the request of the other party sign any documents and plans and do anything else which may reasonably be required for the purpose of giving effect to the matters referred to in this agreement.
- 8.8 **Regulatory Authorities and Statutory Powers:** This agreement does not bind the Council or AT, in their regulatory capacities in any way, and any consent or agreement the Council, and AT, give under this agreement is not an agreement or consent in their regulatory capacities, and vice versa. Specifically, TRC acknowledges that when the Council or AT are undertaking a Regulatory Process or a Statutory Process, the Council and AT are entitled to consider all applications and processes without regard to this agreement.
- 8.9 **Signing Of Agreement:** This agreement will not be binding on the parties until it has been signed by the parties. Any variation of this agreement must be in writing and signed by the parties to this agreement.
- 8.10 **Confidentiality:** The terms of this agreement will be confidential to the parties and their legal advisers and will not be disclosed, copied or transmitted to any other person except with the prior written consent of the other party (which is not to be unreasonably withheld), unless the parties are required to disclose the contents of this agreement by law.
- 8.11 **Entire Agreement:** This agreement contains everything the parties have agreed in relation to the matters it deals with. No party may rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this agreement was executed, except as permitted by law.
- 8.12 **Waiver:** The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing and is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other obligation.

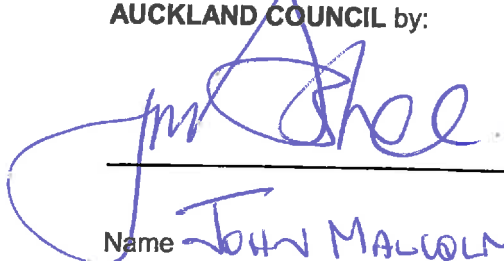


- 8.13 **Equitable Relief:** Nothing in this agreement shall preclude any party from taking immediate steps to seek urgent equitable relief before a New Zealand Court.

- 8.14 **Assignment:** A party must not assign any of its rights or obligations under this agreement without the prior written consent of the other party (which is not to be unreasonably withheld).

EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of
AUCKLAND COUNCIL by:



Authorised Signatory

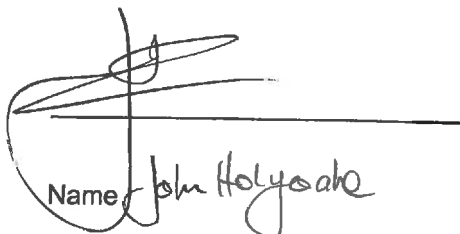
Name

John Malcolm Ainsworth

Position

GENERAL MANAGER DEVELOPMENT PROGRAMS OFFICE.
20/09/16

SIGNED for and on behalf of
**TĀMAKI REDEVELOPMENT
COMPANY LIMITED** by:



Authorised Signatory

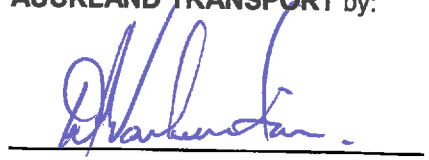
Name

John Holyoake

Position

CEO

SIGNED for and on behalf of
AUCKLAND TRANSPORT by:



Authorised Signatory

Name

David Warburton

Position

Chief Executive.

SCHEDULE 1 – DESCRIPTION OF DEVELOPMENT – Composite Plan

TAMAKI REGENERATION AREA: REFERENCE PLAN COMPOSITE



SCHEDULE 2 – INDICATIVE WORKS AND PROJECT TIMELINES

A handwritten signature in blue ink, consisting of a large circular flourish followed by several vertical and diagonal strokes.

TAMAKI REGENERATION

Infrastructure Funding Framework Agreement Indicative Project List



| Division | Item | Estimate | Est Start | Est Finish | TRC / AC / AT | Developer Specified | Developer Discretionary or Not Related to Residential Development |
|---------------------------------------|---|---------------------|-----------|------------|---------------------|---------------------|---|
| Reserve Acquisition | Nil | | | | | | |
| Reserve Development | | | | | | | |
| | Open Space Network Plan 'Lite' | \$100,000 | Aug-16 | Nov-16 | \$100,000 | \$0 | \$0 |
| | Maybury Reserve | \$9,000,000 | Oct-17 | Jan-19 | \$9,000,000 | \$0 | \$0 |
| | Apirana Reserve | \$2,000,000 | Oct-18 | Mar-19 | \$2,000,000 | \$0 | \$0 |
| | East View Reserve | \$3,000,000 | Oct-18 | Mar-19 | \$3,000,000 | \$0 | \$0 |
| | Tanwha Reserve | \$700,000 | Oct-18 | Mar-19 | \$700,000 | \$0 | \$0 |
| | Point England Reserve | \$1,700,000 | Oct-20 | Mar-22 | \$0 | \$0 | \$1,700,000 |
| | Taurina Reserve | \$180,000 | Oct-20 | Mar-21 | \$100,000 | \$0 | \$0 |
| | Paddington Reserve | \$1,400,000 | Oct-20 | Mar-21 | \$1,400,000 | \$0 | \$0 |
| | Wimbledon North Reserve | \$800,000 | Oct-19 | Mar-20 | \$800,000 | \$0 | \$0 |
| | Wimbledon South Reserve | \$2,500,000 | Oct-19 | Mar-20 | \$2,500,000 | \$0 | \$0 |
| | Leybourne Circle Reserve | \$1,000,000 | Oct-22 | Mar-23 | \$1,000,000 | \$0 | \$0 |
| | Elstree North Reserve | \$600,000 | Oct-22 | Mar-23 | \$600,000 | \$0 | \$0 |
| | Boundary Reserve | \$6,000,000 | Oct-23 | May-24 | \$6,000,000 | \$0 | \$0 |
| | Court Crescent Reserve | \$1,400,000 | Oct-23 | May-24 | \$1,400,000 | \$0 | \$0 |
| | Mt Wellington War Memorial Reserve | \$3,400,000 | Oct-18 | May-19 | \$0 | \$0 | \$3,400,000 |
| | Johnston Reserve | \$1,100,000 | Oct-21 | May-22 | \$1,100,000 | \$0 | \$0 |
| | Mauhinia Reserve | \$800,000 | Oct-22 | May-23 | \$800,000 | \$0 | \$0 |
| | Mauhinia Reserve West | \$2,000,000 | Oct-24 | May-25 | \$2,000,000 | \$0 | \$0 |
| | Greenways - Tamaki Estuary | \$1,390,000 | Oct-16 | May-17 | \$0 | \$0 | \$1,390,000 |
| | GI Play (location unspecified) | \$250,000 | Oct-17 | May-18 | \$0 | \$0 | \$250,000 |
| | New green link through the former Tamaki TOD area, linking to Collin Maiden | \$4,000,000 | Oct-25 | May-26 | \$0 | \$0 | \$4,000,000 |
| Total Reserve Development | | \$41,940,000 | | | \$41,940,000 | \$0 | \$11,840,000 |
| Stormwater | | | | | | | |
| | Flood Mitigation Area 4 Line Road | \$1,450,000 | Oct-17 | May-18 | \$1,450,000 | \$0 | \$0 |
| | Flood Mitigation Area 6 Maybury Street Daylighting | \$1,500,000 | May-17 | Dec-17 | \$1,500,000 | \$0 | \$0 |
| | Flood Mitigation Area 1c Howard Hunter Ave | \$2,900,000 | Oct-18 | May-19 | \$0 | \$0 | \$2,900,000 |
| | Flood Mitigation Area 1d Pipe Under Felton Mathew Ngati Whaitua | \$600,000 | Oct-18 | May-19 | \$0 | \$0 | \$600,000 |
| | Detention Device 1 | \$162,000 | Oct-18 | May-19 | \$0 | \$0 | \$162,000 |
| | Detention Device 3 AMETI | \$1,480,000 | Oct-19 | May-20 | \$0 | \$0 | \$1,480,000 |
| | Detention Device 4 (AMETI) | \$1,390,000 | Oct-19 | May-20 | \$0 | \$0 | \$1,390,000 |
| | Detention Device 5 | \$311,500 | Oct-18 | May-19 | \$310,500 | \$0 | \$0 |
| | Detention Device 7 | \$526,500 | Oct-18 | May-19 | \$526,500 | \$0 | \$0 |
| | Detention Device 8 | \$975,000 | Oct-19 | May-20 | \$0 | \$0 | \$975,000 |
| | Detention Pond 9 | \$355,000 | Oct-19 | May-20 | \$0 | \$0 | \$355,000 |
| | Detention Device 11 | \$1,120,000 | Oct-20 | May-21 | \$1,120,000 | \$0 | \$0 |
| | Detention Device 12 | \$250,000 | Oct-20 | May-21 | \$250,000 | \$0 | \$0 |
| | Water Quality Wetland 1 Maybury Street | \$569,229 | Oct-18 | May-19 | \$569,229 | \$0 | \$0 |
| | Water Quality Wetland 2 Felton Matthew Ave (NZTA Corridor in AMETI Land) | \$2,434,605 | Oct-20 | May-20 | \$0 | \$0 | \$2,434,605 |
| | Water Quality Wetland Elia Knowin AMETI Land | \$1,209,141 | Oct-19 | May-20 | \$0 | \$0 | \$1,209,141 |
| | Water Quality Device 1 Eastview Reserve (Pak'N Save) | \$348,000 | Oct-18 | Mar-19 | \$348,000 | \$0 | \$0 |
| | Water Quality Device 2 Eastview Reserve (Pak'N Save) | \$945,000 | Oct-18 | Mar-19 | \$945,000 | \$0 | \$0 |
| | Water Quality Device 3 Line Road | \$348,000 | Oct-18 | Mar-19 | \$348,000 | \$0 | \$0 |
| | Water Quality Device 4 Apirana Ave | \$378,000 | Oct-18 | Mar-19 | \$378,000 | \$0 | \$0 |
| | Yasoo Stream Table 11 | \$645,000 | Oct-17 | May-18 | \$645,000 | \$0 | \$0 |
| | Outfalls and Culvert Upgrades | \$2,500,000 | Jan-00 | Jan-00 | \$2,500,000 | \$0 | \$0 |
| | Pt England Pond Renewal (no growth aspect) AC delivered | \$2,200,000 | Oct-16 | May-17 | \$0 | \$0 | \$2,200,000 |
| | Tamaki Daylighting (full growth) AC delivered, inc. land | \$4,500,000 | Oct-16 | May-17 | \$0 | \$0 | \$4,500,000 |
| | Maybury Reserve Erosion Control | \$631,041 | Oct-17 | May-18 | \$631,041 | \$0 | \$0 |
| | Boundary Reserve Daylighting | \$3,500,000 | Oct-20 | May-21 | \$3,500,000 | \$0 | \$0 |
| | Boundary Reserve/Paddington Rd Treatment Wetland | \$1,500,000 | Oct-20 | May-21 | \$1,500,000 | \$0 | \$0 |
| | Network and Corridor Upgrades. Mix of AC, TRC and others delivery | \$10,000,000 | Oct-16 | May-31 | \$10,000,000 | \$0 | \$0 |
| Total Stormwater | | \$44,452,016 | | | \$26,656,310 | \$0 | \$17,805,746 |
| Transport | | | | | | | |
| | GI Town Centre Improvements | \$7,000,000 | Jun-18 | Jun-19 | \$7,000,000 | \$0 | \$0 |
| | GI Public Transport Linkages | \$15,000,000 | Jun-19 | Jun-20 | \$15,000,000 | \$0 | \$0 |
| | Local Road Upgrades | \$14,000,000 | Oct-16 | Oct-31 | \$14,000,000 | \$0 | \$0 |
| Total Transport | | \$36,000,000 | | | \$36,000,000 | \$0 | \$0 |
| Community Infrastructure | | | | | | | |
| | Multi Purpose Community Facility | \$6,552,000 | Jan-17 | Jun-18 | \$6,552,000 | \$0 | \$0 |
| | Skate Park Coast | \$1,478,287 | Oct-19 | Mar-20 | \$0 | \$1,478,287 | \$0 |
| | Asset upgrade to cope with growth | \$3,000,000 | Jun-16 | Jun-31 | \$0 | \$0 | \$3,000,000 |
| Total Community Infrastructure | | \$11,030,287 | | | \$6,552,000 | \$1,478,287 | \$3,000,000 |

TOTAL IFFA **\$135,332,303** **\$101,808,273** **\$1,478,287** **\$32,045,746**



Printed 29/07/2018

**SCHEDULE 3 - INDICATIVE GOVERNANCE STRUCTURE AND TERMS OF
REFERENCE FOR PROJECT STEERING GROUP**

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TAMAKI IFFA - Project Steering Group

1. Purpose of the Terms of Reference

The purpose of the Terms of Reference is to define the structure and role of the Project Steering Group (PSG) and to set the PSG's scope of involvement in assisting with the implementation of the Tāmaki Infrastructure Funding Framework Agreement (IFFA). For the purposes of these terms of reference, the terms below are as defined in the IFFA.

2. Establishing the PSG

Auckland Council (Council) and Tamaki Redevelopment Company (TRC) shall each appoint two representatives to be members of the PSG. Auckland Transport (AT) shall appoint one representative to be a member of the PSG. Appointments are made as follows:

- The Council members of the PSG will be **appointed by** the Chief Operating Officer of the Council at the relevant time;
- The TRC members of the PSG will be **appointed by** the General Manager, Assets and Development at TRC at the relevant time;
- The AT member of the PSG will be **appointed by** the Chief Infrastructure Officer of AT at the relevant time.

3. PSG Role

The PSG must establish and maintain appropriate management practices at all times in order to achieve its role, as broadly set out in the IFFA and the 2016 Tāmaki Transformation Programme Shareholders' Agreement. The particular role of the PSG is as follows:

- to consider Indicative Works for funding, in whole or part, from the Tamaki Infrastructure Fund and make timely and effective recommendations to the decision makers when required in order to achieve the parties' respective objectives under the IFFA;
- to monitor and actively manage the implementation of the IFFA and infrastructure funding agreements (IFA) and the respective parties' compliance with the same;
- to monitor and actively manage compliance with the Project Timelines and any other timelines under the IFFA and/or IFA's;
- to facilitate and resolve any issues under the IFFA and/or IFA's that will result in any party not being able to meet commitments or timeframes under these arrangements and/or undertake the Approved Works; and
- to ensure the IFFA is successfully implemented according to objectives, scope, time, quality and costs.

For the avoidance of doubt, the PSG is not a consulting group. Consultation and engagement will take place at a working group level and separately from the PSG meetings.

4. Governing Structure

The PSG will be governed by an independent Chairperson appointed by TRC with the Council's and AT's approval. The Chairperson's role will be limited to working with the PSG to help make recommendations and facilitate resolution of any issues between the PSG members. For the avoidance of doubt, the

Chairperson does not have a voting right and costs associated with the Chairperson's role are borne solely by TRC.

5. PSG Member:

Each PSG member must:

- understand the role and responsibility associated with being a PSG member and be prepared to make recommendations in order to achieve the PSG's objectives and the overarching objectives of the IFFA;
- be able to provide constructive input and advice;
- be aware of the project management approach and subsequent procurement approach;
- be able to actively assist with issue resolution and risk management;
- be committed to the Tāmaki regeneration project and understands the importance of their personal contribution to its success and is a champion for the delivery of the overarching objectives of the IFFA;
- be available, and will prepare for, the PSG meetings for the duration of the IFFA term; and
- formally accept these terms of reference acknowledging, by signing their name, that they have read, and agree to act in accordance with the the IFFA, and these Terms of Reference. A copy of these acknowledgements will be kept by the PSG Co-Ordinator.

6. PSG Co-Ordinator

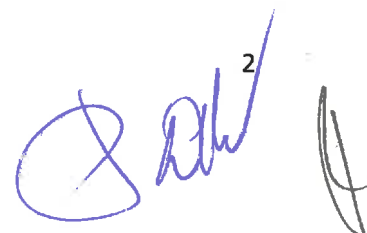
In order to maintain the smooth running of the PSG meetings, the Council at its sole cost will appoint a PSG Co-Ordinator who will be responsible for:

- compiling and distributing a PSG Meeting Pack (containing an agenda and any other relevant information/documents) a minimum of two Working Days before each PSG meeting;
- formally recording PSG meeting minutes and sending minutes of the PSG meetings to the PSG members within three Working Days after each PSG meeting;
- formally recording any other discussions and decisions made by the PSG;
- co-ordination and management of diary invites and meeting room bookings;
- monitoring actions; and
- providing reports to decision makers when required.

7. PSG Meetings

With respect to the PSG Meetings:

- items not on the Agenda will only be discussed at the PSG Meetings with approval of the Chairperson;
- PSG members must submit apologies at least one day prior to the day of a PSG meeting;
- a person formally acting in a PSG member's role can attend PSG meetings and must be fully briefed by that PSG member;
- the quorum for any PSG meeting is four members of the PSG (excluding the Chairperson) provided that where the agenda does not include any item related to AT's infrastructure, the quorum for the PSG meeting is three members of the PSG (excluding the Chairperson and the AT representative). Notwithstanding the matters above in relation to the calculation of the quorum, the Chairperson and the AT representative shall have the right to attend all PSG meetings.





Members of PSG

| Name | Substantive Position | Date |
|------------------|----------------------------|------|
| Bill Loutit | Chair | |
| Tracey Wadsworth | Member, TRC | |
| Bernie Chote | Member, TRC | |
| Barry Potter | Member, Auckland Council | |
| Allan Young | Member, Auckland Council | |
| Greg Edmonds | Member, Auckland Transport | |

Meeting dates / times / venues

Initial PSG meetings have been scheduled for the following days and times.

| Date | Time | Venue |
|------|------|-------|
| | TBC | |
| | TBC | |

 3 

Schedule 1

Decision Matrix

Key future decisions relating to the implementation of the IFFA are outlined below. The PSG will be responsible for instigating business case preparation for each Indicative Work to be approved, reviewing the business cases and making recommendations for approving an Indicative Work and entering into IFA's for each Approved Work. Decisions with policy implications or significant financial implications will be escalated to the Decision Makers and/or TRC's shareholders as appropriate.

| Decision Point | PSG | Decision Makers | Shareholders |
|---------------------------------------|-----------|-----------------|--------------|
| IFFA | | | |
| Variations to IFFA | Recommend | Approve | Inform |
| Review of IFFA Agreement (clause 2.2) | Recommend | Approve | Inform |

| Decision Point | PSG | Decision Makers | Shareholders |
|--|----------------|-----------------|--------------|
| 1. Business Case | | | |
| Business cases for IFFA Schedule projects | Recommend | Approve | |
| 2. Scope and Tender | | | |
| Develop scope for Indicative Works projects to be priced | Inform/Consult | Approve | |
| Procurement process for Indicative Works projects | Inform/Consult | Approve | |
| Evaluation of tenders | Inform/Consult | Approve | |
| Contractual negotiation | Inform/Consult | Approve | |
| Contractual close | Inform/Consult | Approve | |
| 3. IFAs | | | |
| Establish IFA for Approved Works | Inform/Consult | Approve | |

Note: In practice, the project approval and prioritisation process is based on procurement assumptions.

SCHEDULE 4 – INFRASTRUCTURE FUNDING AGREEMENT

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INFRASTRUCTURE FUNDING AGREEMENT

[type of infrastructure]

[name of development]



SIGNING PAGE

Dated:

*Date once both Parties have signed (Developer to sign first)

LEX REFERENCE [<enter number>]

| Auckland Council ("Council") | |
|------------------------------|--|
| Street address | 135 Albert Street, Auckland CBD |
| Postal address | Private Bag 92300, Victoria Street West, Auckland 1142 |

| [The Developer] ("Developer") | |
|-------------------------------|-----|
| Street address | [] |
| Postal address | [] |

Agreement

The Parties agree to enter into a relationship based on the terms and conditions set out in this agreement, which includes this Signing Page, the Specific Terms, the General Terms and any Schedules.

Executed as an agreement.

Signed under delegated authority for and on behalf of **Auckland Council** by:

Authorised signatory

Name: []

Position: []

Date: _____

Signed for and on behalf of [The Developer] by:

Authorised signatory

Name: []

Position: []

Date: _____

For Council Use Only:

SAP Contract Number:

PO Number:

Application Number:

PART A: SPECIFIC TERMS

Clause references are to the General Terms.

| Council Representative | |
|------------------------|-----|
| Name | [] |
| Phone | [] |
| Mobile | [] |
| Fax | [] |
| Email | [] |

| Developer Representative | |
|--------------------------|-----|
| Name | [] |
| Phone | [] |
| Mobile | [] |
| Fax | [] |
| Email | [] |

| BACKGROUND |
|------------|
| |

| | | |
|------------------------------------|--|-------------------------|
| DOCUMENTS | The documents forming part of this agreement are: <ul style="list-style-type: none"> • The Signing Page • The Part A: Specific Terms • The Part B: General Terms • Schedule 1 - Plans showing the Property, Land, and Site and location of Works (including staging) • Schedule 2 - Description of Works, Stages of Works, and Budgeted Works Cost • Schedule 3 - Unconditional, On Demand Bank Guarantee Bond • Schedule 4 - Encumbrance • [Others as required by Specific Terms] | |
| ADDITIONAL DEFINITIONS | [text to be determined] | |
| TERM | Commencement Date: | [text to be determined] |
| | Expiry Date: | [text to be determined] |
| [HEADINGS TO BE DETERMINED] | [text to be determined] | |

PART B: GENERAL TERMS

The Parties Agree:

Interpretation

1. In this agreement unless the context indicates otherwise;
2. Definitions:

Act means the Construction Contracts Act 2002;

Appointed Representatives means the Council Representative and the Developer Representative;

Authority means every territorial authority, regional authority, government or other authority (including any Network Utility Operator) having jurisdiction over the land and/or the Works referred to in this agreement;

Budgeted Works Cost means the Council's estimated reasonable and proper cost of delivering the Works, including but not limited to consultants' costs, project management costs and all other reasonable costs to be incurred by the Developer in delivering the works as identified in Schedule 2. The Budgeted Works Cost does not include the Construction Contingency which is in addition to the Budgeted Works Cost;

Consent means any resource consent, building consent, engineering approval, or other authorisation required from any Authority for the construction and operation of the Works, including any landowner approval required to undertake the Works (unless otherwise excluded by the Specific Terms of this agreement);

Construction Contingency means the construction contingency of 10% for any budgeted item in the Contract;

Contract means one or more construction contracts (including any subcontracts), as defined in section 5 of the Construction Contracts Act 2002, which the Developer enters with a person or persons other than the Council, for 'construction work', as defined in section 6 of the Construction Contracts Act 2002, for the Works;

Council Approved Variations means those variations under the Contract approved under clause 31 of this agreement;

Council Representative means the person identified as the Council Representative in Part A: Specific Terms;

Default Event means:

- (a) Either Party is in material breach of its obligations under this agreement and such breach has not been remedied within 60 Working Days from the date the other Party has served written notice on it of the breach and the manner in which the breach is to be remedied;
- (b) Either Party fails to pay any sum of money payable under this agreement on the due date for payment, and the money has not been paid within 10 working days of written notice being given by the other Party;
- (c) Any of the Developer's secured creditors takes possession of any of its businesses or undertakings (either by itself or by agent) or a receiver is appointed over any of its businesses or undertakings;

- (d) The Developer has an application for liquidation made or a resolution passed by its creditors or members resolving or requiring that it be put into liquidation;
- (e) The Developer enters any composition, assignment or other arrangement with, or for the benefit of, its creditors or becomes unable to pay debts as they fall due; or
- (f) A breach of any of the Developer's health and safety obligations clauses 58 to 60 of this agreement whether committed by the Developer or its agents, contractors, subcontractors, or workers.

Defects Notification Period means that period of time commencing with the Practical Completion Certificate for the Works under the Contract. The Defects Notification Period shall be for a period not less than three months;

Engineer means the engineer employed by the Developer to supervise the carrying out of the Works under the Contract, but does not include the Developer's Geotechnical Engineer;

Developer Representative means the person identified as the Developer Representative in Part A: Specific Terms;

Engineering Approvals means the certification of the Council Representative or delegated officers that the plans and specifications for the Works comply with the Council's infrastructure specifications for Council-owned infrastructure;

Excluded Costs means:

- (a) Costs which relate exclusively to the Development to be undertaken by the Developer;
- (b) The Developer's internal overhead costs and project management costs;
- (c) Any costs arising out of any delays or Variations to the Developer's works;
- (d) Any Variations or extensions of time not approved by the Council under clauses 31 or 32;
- (e) Costs which are not justified by the contractors to the Contract or the Council's records or not reasonably or actually incurred in carrying out the Works;
- (f) Costs incurred or to the extent incurred due to a default of the or its agents, contractors or consultants; or
- (g) Costs incurred because of the Developer not complying with its requirements under the Contract or this agreement.

Final Completion Certificate takes the meaning set out in clause 1.2 of NZS3910:2013 and pertains to the Works under the Contract;

Handover Date means the date on which the Works or a Stage of the Works are signed off as being complete by the Council Representative under clause 43 of this agreement;

Maintenance Period means the maintenance period required by the Consents or Engineering Approvals whichever is the greater; or if no such period is provided

for in the Consents or Engineering Approvals, the maintenance period will be 24 months commencing on the Handover Date;

Network Utility Operator takes the meaning set out in section 166 of the Resource Management Act 1991

Practical Completion Certificate takes the meaning set out in clause 1.2 of NZS3910:2013 and pertains to the Works under the Contract;

PWA means the Public Works Act 1981;

Retention Amount means 10% of the Works Cost;

Site means the Land and other places on or over or under which the Works are to be carried out, with any other places made available to the Developer by the Council to carry out the Works. The location of the Site is identified in the plans attached in Schedule 1;

Works means the works as described in Schedule 2 (and includes any Stages of Works identified in that Schedule);

Work Cost means the sum calculated by reference to clause 30 and includes the matters falling within the definition of Budgeted Works Cost;

Working Day has the meaning given to the term in the Act.

3. **Defined Expressions:** Expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the background;
4. **Headings:** Section, clause and other headings are for ease of reference only and will not affect this agreement's interpretation;
5. **Negative Obligations:** Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
6. **Parties:** References to Parties are references to Parties to this agreement and include their successors in title;
7. **Persons:** References to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
8. **Plural and Singular:** Words importing the singular number include the plural and vice versa;
9. **Schedules:** The schedules to this agreement and the provisions and conditions in these schedules have the same effect as if set out in the body of this agreement;
10. **Sections, Clauses and Schedules:** References to sections, clauses and schedules are references to this agreement's sections, clauses and schedules; and
11. **Statutes and Regulations:** References to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

Long Stop Dates and Termination

12. **Long Stop Date:** Unless otherwise agreed, if the Developer does not commence construction activities for the Works on the Land (including preparatory earthworks) within two years after signing this agreement, the Council may terminate this agreement and claim its costs and expenses in anticipation of the Works proceeding; and the Developer will have not claim against the Council whatsoever.

13. **Handover Long Stop Date:** If the Developer does not obtain the Practical Completion Certificate for all of the Works within five years after signing this agreement, the Council may suspend or terminate this agreement.
14. **Default Event:** Where a Default Event occurs, the innocent Party may suspend or terminate this agreement in its sole discretion.
15. **Frustration:** If one Party considers this agreement has become impossible of performance or has otherwise been frustrated, that Party may notify the other that it considers the agreement to be terminated. If the other Party agrees, or where the disputes resolution process determines it so, the agreement is terminated.
16. **Suspension and Termination:** If this agreement is suspended or terminated under clauses 13 to 15 above, the Council may, in its sole discretion:
 - (a) pay the Developer for that part of the Works Cost properly incurred at the suspension or termination date less any costs reasonably anticipated by the Council to make good the uncompleted works or to restore the Land to its pre-works condition; or
 - (b) take possession of the Land, complete the Works under the Contract (or other resources) and pay the Developer for the Works completed on a 'cost to complete' basis considering, amongst other things, all reasonable costs and expenses incurred in completing the Works;
 - (c) the Developer will give possession and ownership of all reports, investigations, plans, specifications, documents and Consents it holds in relation to the Works (including any landscape design) to the Council, provided that the Developer will continue to have full and free use of those documents; and
 - (d) neither Party will have to perform this agreement further, but will remain responsible for any obligation which arose prior to termination.
17. **Effect of Suspension and Termination:** Notwithstanding clause 16, the Council is not liable to the Developer for any costs whatsoever arising directly or indirectly from the suspension or termination of this agreement; and such costs shall not form part of the Works Cost.

Works

18. **Works:** The Developer will procure and project-manage the investigation, design, consenting, construction and delivery of the Works under this agreement.
19. **Design and Engineering Approvals:** The Developer will procure the design of the Works to comply with the infrastructure specifications provided to the Developer by the Council Representative for the Works and shall obtain approval of such design and the Engineering Approval from the Council Representative prior to lodging Consents for the Works.
20. **Consents:** The Developer will be responsible for obtaining all Consents of whatever nature required to carry out, complete and maintain the Works.
21. **Procurement of Works:** Subject to this agreement, the Developer will procure the design, construction and handover of the Works;



- (a) at its own cost and at its sole risk;
 - (b) in a proper and workmanlike manner; and
 - (c) in accordance with the design and Engineering Approvals approved under clause 19, the Consents, and the proper requirements of all Authorities.
22. **Contracts:** Any Contract entered regarding the Works will be the Council's NZS 3910:2013 template.
23. **Progress Reports:** The Developer will, by the fifth working day of each month, provide a monthly progress report to the Council on the Works including a works programme showing forecast and actual progress, and an estimated Handover Date for the Works.
24. **Stages of Work:** Where Schedule 2 identifies that the Works will be undertaken in Stages, references to Works in this agreement will be deemed to be a reference to a 'stage of works' if the stage is clearly identified in the appropriate documentation submitted for approval under clause 19.
25. **Confidentiality:** The Developer agrees that the Budgeted Works Cost is confidential and shall not be released to any contractor or sub-contractor.

Procurement Process

26. **Procurement Process:** The Developer will conduct this procurement process for the Works, or each Stage of Works if separate contracts are let:
- (a) There will be a transparent and contestable procurement process for the Works, either by tender or written quotations using at least three contractors, or by written proposals for professional services using at least three consultants.
 - (b) Any tags or exclusions to the tenders or quotes must be itemised and an estimated cost provided for each.
 - (c) Contingencies shall be clearly itemised on the schedules.
 - (d) No consideration shall be given to any tenders, or written quotations, submitted by contractors which the Council Representative has advised the Developer, in writing, as being ineligible to perform the Works or any part of the Works.
27. **Contract:** The Developer must not award the Contract until it has received written confirmation from the Council Representative that the Contract may be executed. In seeking such approval, the Developer must submit the draft Contract to the Council Representative with this information:
- (a) a certificate confirming that the Developer has complied with the procurement process described above;
 - (b) a certificate confirming that the Developer has obtained all necessary design approvals, Engineering Approvals, and Consents for the Works; and
 - (c) an approved summary evaluation sheet, including a fully priced schedule of quantities and rates from each contractor.
28. **Review of Pre-Contract Information.** A Council engineer, or Quantity Surveyor, will compare the information provided by the Developer under clause 27 against Council's standard schedule of rates to ensure

fair market rates are used for the Works; that the Developer has complied with its obligations under this agreement, and that it is appropriate, to provide the confirmation that the Contract may be executed.

29. **Contract Procurement Process:** The Developer agrees that the Contract, and any subcontracts, will include these provisions:
- (a) Where the Contract includes other works which are not the subject of this agreement, then the Works will be scheduled as separable portions of the Developer's total contract works;
 - (b) A Defects Notification Period of not less than three months from the Practical Completion Certificate for the Works;
 - (c) The provision of maintenance for the Works for the duration of the Maintenance Period;
 - (d) An acknowledgment that the benefit of any warranties will pass to and be assigned to the Council and/or its nominee on the Handover Date;
 - (e) An obligation on the Contractor to execute a continuity deed whereby the contractor agrees that, if the Council so elects, on termination of the Contract with the Developer, the contractor will contract with the Council on the same terms as its Contract with the Developer for completing the Works;
 - (f) A statement under the Contracts (Privity) Act 1982 :

The obligations of the Contractor under this Contract (whether stated in the Contract or not) shall for the Contracts (Privity) Act 1982 be deemed inserted in the Contract for the benefit of the Auckland Council (including, its successors and assigns) and shall be enforceable by the Auckland Council against the Contractor but not to impose any greater liability on the Contractor towards the Auckland Council than the Contractor owes or owed to [name of Developer];
 - (g) A statement that the Contract shall be observed by an engineer with the necessary professional qualifications and experience; and
 - (h) A term that allows the Developer to immediately suspend or terminate the Contract should the contractor, or any of its workers or subcontractors, commit any breach of its health and safety obligations, as set out in clauses 58 to 60 of this agreement.
 - (i) A term that requires that any subcontract let by the contractor contains the provisions set out in this clause 29.
30. **Works Cost:** The Works Cost will initially be the Budgeted Works Cost, provided that:
- (a) Where the accepted tender price in the Contract for the Works is equal to, or lesser than the Budgeted Works Cost, the Works Cost will be the accepted tender price;
 - (b) Where the accepted tender price in the Contract for the Works is greater than the Budgeted Works

Cost, the Works Cost will be the Budgeted Works Cost (unless otherwise first agreed in writing by the Council Representative);

- (c) Subject to clauses 31 to 33 below, the Works Cost may be adjusted during the Contract for the certified cost of Council Approved Variations (if any) or Works Cost and Construction Contingency: The Works Cost will not otherwise be adjusted unless first approved in writing by the Council Representative. The Council Representative will only consider such an adjustment or utilisation if the Developer provides the Council with satisfactory evidence there has been a material change in circumstances, or unforeseen circumstances, giving rise to the request for an adjustment or utilisation.

Council Approved Variations

31. Any Party may request, in writing, a variation to the Contract by serving notice on the other Party.
- (a) Within ten working days of receiving notice of the request (if Council initiated) or upon giving notice to the Council (if Developer initiated), the Engineer must advise both Parties, in writing, the estimated cost of the variation.
- (b) However, no variation shall be made to the Contract unless approved in writing by both the Council Representative, and the Developer's Representative, such approvals not to be unreasonably withheld.
- (c) Where an approved variation increases the cost of the Works such cost increase shall form part of the Works Costs, with any fees reasonably incurred by the Developer in considering any such variation.
32. **Construction Contingency:** The Council authorises an increase in the budgeted amount for any item in the Contract by the Construction Contingency of that budgeted amount for that item as depicted in the Contract. Where such an increase is required, such increase shall form part of the Works Costs.
33. **Works Cost Escalations:** Except as otherwise provided for in this agreement, the Council expressly disclaims liability for any increase of the Works Costs.

Records and Probity

34. **Records:** The Developer must keep full records (including financial records) and documentation in relation to the Works and this agreement (**Records**) and will allow the Records to be inspected and will provide copies of records to Council on reasonable request by Council and its agents.
35. **Right to Audit:** The Council, or its appointed agent, shall may audit any Records, including financial records of the Developer and its contractors and consultants engaged for the Works to review and confirm the Works Cost.
36. **Reporting:** The Developer will provide a monthly report to Council within five Working Days of the start of each month regarding the Works against the project timetable and the Contractor's programme to construct the Works, current costs and estimated cost to complete, health and safety, and any other information relevant information reasonably required by Council. The Developer will provide such other reports and

information for this agreement as Council may reasonably require occasionally.

37. **Inspection of the Works:** The Council the right to inspect the Works at any time including to, examine, test materials and workmanship and performance of the Works. The Council may require the Developer to set several hold points with the Contractor to allow the quality and performance of the Works to be tested. Any inspection, testing and approval by the Council will not relieve the Developer or the Contractor of their responsibility for the Works and any obligations under this agreement or the Contract.

Insurance

38. The Developer shall, prior to commencement of the Works, effect and maintain during the Term public liability and professional indemnity insurance for the Insurance Sum. This insurance shall include cover for any loss suffered by any third Party because of the Works undertaken by the Developer (including its contractors and subcontractors, employees and agents) and shall indemnify the Council against any costs or claims the Developer may incur or suffer because of the Works.
39. The insurance required under this clause 38 shall be on terms and conditions and with a reputable insurer of which the Council reasonably approves. The Developer will advise its insurer of the Council's interest.
40. Whenever the Council requests it, the Developer will provide the Council with a copy of the insurance policy for the insurance it must maintain, plus evidence that the Developer has paid all required premiums.

Handover

41. **Engineer under Contract:** Prior to obtaining the Practical Completion Certificate for the Works, the Developer shall provide to the Council, a deed of impartiality in favour of the Council, executed by the Engineer.
42. **Obligations following Practical Completion:** Following the Practical Completion Certificate for the Works under the Contract, the Developer must provide the Council with:
- (a) evidence that the Works have been carried out in accordance with this agreement, the Consents and the Engineering Approvals;
- (b) a copy of the Practical Completion Certificate for the Works;
- (c) a complete set of the as-built plans and records for the Works;
- (d) operation and maintenance manuals to the Council's relevant infrastructure standards;
- (e) a warranty that, at the Handover Date, the Council will hold all necessary copyright and intellectual property rights for the Works and the plans and documents for the Works; and
- (f) the Maintenance Bond (if required by the Specific Terms).
43. **Handover:** Subject to the Council Representative being satisfied on the information provided under clause 42, the Council Representative shall sign off the Works as being complete. In this context 'complete' includes the completion of any reinstatement works, completion of CCTV inspections, delivery of the as-built plans and the operation and maintenance manual, issue of a geotechnical completion certificate and completion of all

landscaping required under the Consents.

44. **Control of Works:** On the Handover Date the ownership, control and operation of the Works (or the Works Stage) transfers without further formality from the Developer to the Council.
45. **Effect of Handover:** The handover of Works under this agreement does not derogate from any outstanding obligation or liability the Developer has under this agreement or under the Contract (including, but not limited to, defect obligations arising during the Defects Notification Period, and any maintenance obligations arising from the Engineering Approvals, Consents, or this agreement).
46. **Access to Land:** The Council authorises the Developer access to the Land (provided that the Land is in the Council's ownership) at reasonable times, on reasonable notice, to perform any obligations identified in paragraph 45 above. Approvals are to be requested through the Council Representative.

Council Payments

47. **Payments:** Subject to being satisfied under clause 49, the Council agrees to pay the Works Cost to the Developer in consideration of it procuring the Works. The Developer may invoice the Council for the Works Cost after the Handover Date, provided however that progress payments may be made if the Parties so agree. The Council must pay the Works Cost, less the Retention Amount, by the 20th of the month following receipt of the invoice.
48. **Retentions:** The Council will deduct and retain the Retention Amount until the Final Completion Certificate. Upon the Final Completion Certificate, the Council will pay the Retention Amount if all outstanding defect liability matters have been resolved to the satisfaction of the Council Representative.
49. **Evidence of Payment:** The Council, at its discretion, may require the Developer to provide evidence it has paid its contractors or subcontractors prior to making payment under clause 47. The Council reserves the right to withhold payment of any amount it reasonably believes may be owed to the Developer's contractors or subcontractors until the Developer provides evidence of payment under this clause.

Development contributions

50. The Developer agrees and acknowledges that nothing in this agreement entitles it to a credit or offset for any development contributions, or any infrastructure growth charges, lawfully required by the Council or Watercare Services Limited respectively, for the Development.

Dispute Resolution

51. **Dispute notice:** If any issue arises between the Developer and the Council under this agreement, either Party may give written notice of a dispute to the other Party (**Dispute Notice**), within 20 working days of the dispute arising and this dispute resolution process set out below shall apply.
52. **Representatives meet:** The Appointed Representatives shall meet to endeavour to resolve the issue in dispute within ten Working Days of the Dispute Notice.
53. **Escalation:** If the issue cannot be resolved between the Appointed Representatives, either Party may give written notice to the other requiring the matter to be escalated to senior executives of each Party with the aim that urgent resolution is reached at that level (**Escalation Notice**).

54. **Mediation:** If the issue in dispute cannot be resolved between the Parties' senior executives in good faith within 10 Working Days of the Escalation Notice, either Party can give notice requiring the dispute be referred to mediation. When a request for mediation is made, the Parties shall endeavour to agree on a mediator and shall submit the matter in dispute to him or her. The mediator shall discuss the matter with the Parties and endeavour to resolve it by their agreement. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. The Parties shall bear their own costs in the mediation, and each Party attending the mediation shall pay an equal share (with the other Parties attending the mediation) towards the costs of the mediator.
55. **Arbitration:** Should any dispute arising under this agreement not be resolved by mediation, the Parties shall refer the dispute to arbitration under the Arbitration Act 1996 and the Second Schedule to the Arbitration Act 1996 will apply. The arbitrator will be nominated by the President of the Auckland Branch of the New Zealand Law Society and his or her decision will be final and binding on the Parties.
56. **Arbitration Process:** The arbitration under clause 55 above will proceed in this manner:
 - (a) written briefs of evidence will be completed by the Parties and exchanged within ten working days of the appointment of the arbitrator;
 - (b) submissions and any written rebuttal evidence will be exchanged between the Parties with copies provided to the arbitrator within five working days following the exchange of evidence above;
 - (c) a formal hearing will not be required unless requested by the arbitrator;
 - (d) the arbitrator will use his or her best endeavours to publish his written decision within ten working days of receiving the rebuttal evidence above;
 - (e) the place of arbitration will be Auckland, New Zealand;
 - (f) the arbitrator's costs will be borne equally between the Parties. The arbitrator will bill his or her fees to the Council for payment and an equal apportionment will be made between the Council and the Developer at the time of the Handover Date;
 - (g) the arbitrator's decision will be final.
57. **Continue to perform:** Pending resolution of any dispute the Parties will continue to perform their respective obligations under this agreement to the extent possible (save for any matters which are the subject of the dispute).

Health and safety

58. The Developer must comply with this clause.
 - (a) **Compliance:** The Developer must
 - (i) comply with all health and safety legislation, regulations, applicable codes of practice and standards, Council's health and safety policies and procedures, and any standard operating procedures;
 - (ii) ensure that it, takes all practicable steps to ensure the health and safety of all personnel of the Developer, and any other Parties associated with the Works, including Council, workers, visitors, subcontractors, service providers, the

- public, and visitors to any area under the control of the Developer;
- (iii) have, and keep current, all relevant Health and Safety qualifications required to perform its obligations under this agreement;
 - (iv) immediately provide the Council with information about any health and safety matters relating to the Works, if requested; and
 - (v) comply with all reasonable directions given by the Council in relation to health and safety for this agreement.
- (b) **Information requests:** The Developer will, upon request, immediately provide the Council with information about any health and safety matters relating to the Works.
- (c) **Cooperation:** The Developer must:
- (i) so far as is reasonably practicable, consult, co-operate with and co-ordinate its activities with the Council in relation to the Works;
 - (ii) facilitate engagement between the Parties (and/or its designees) in relation to work health and safety matters; and
 - (iii) ensure that any feedback, agreed changes or improvements to health and safety processes and procedures are implemented immediately.
- (d) **Council Site:** If the Developer carrying out the Works at Council (or Council-Controlled Organisation) owned or controlled site then the Developer must:
- (i) participate in the Council's emergency procedures, workplace assessments, training or orientation and any other relevant health and safety activities (if requested);
 - (ii) participate in the Council's worker participation practices (if requested); and
 - (iii) identify and address any special needs requirements.
- (e) **Audits:** The Council may carry out an audit of the Developer to ensure compliance with all obligations set out under this clause. The Developer must:
- (i) actively cooperate and participate in any health and safety audits carried out by the Council;
 - (ii) provide all necessary access and information required by the Council in relation to the audit and any other health and safety monitoring; and
 - (iii) take all reasonable steps to immediately rectify any issues raised by the Council.
- (f) **Incidents and investigations:** The Developer must immediately notify the Council of any: (i) "notifiable event" (as defined in the Health and Safety at Work Act 2015); (ii) near miss or exposure the Developer learns of while undertaking its obligations under this agreement or in delivering the Works, (iii) any WorkSafe inspection, investigation or information request with the performance of its obligations under this agreement or in delivering the Works; and/or (iv) breach of this clause; and provide the Council with such assistance and information as the Council requires in relation to any of these matters.
- (g) **Non-compliance (defective services)** Without limitation to the Council's other rights and remedies at law or under this agreement, the Council may immediately withhold a proportion of monthly or lump sum payments as specified in the Specific Terms if the Developer is in breach of any of its obligations under this clause.
- (h) **Health and Safety Plans:** The Developer shall, prior to commencing the Works, undertake a site specific risk assessment and prepare and submit to the Council a site specific safety plan and a general Health and Safety Management plan to the Council's satisfaction.
59. **On-Going Compliance:** The Developer's obligations under clause 58 also apply to the Developer's subcontractors, including the reporting, notification and compliance obligations. The Developer shall ensure that its subcontractors know of and comply with these obligations.
60. **Health and Safety Breach by Contractor:** Upon receiving written notice from the Council that a breach of the health and safety provisions set out in this agreement has occurred, the Developer must immediately suspend or terminate any Contract giving rise to that breach as directed by the Council.

General Provisions

61. **Act Reasonably:** In their dealings with each other, the Parties shall act reasonably, and within reasonable timeframes, in implementing this agreement, and in facilitating the construction of the Works.
62. **Costs:** Except as expressly provided in this agreement, each Party will bear its own costs of and incidental to the matters referred to in this agreement.
63. **Further Assurance:** Each Party will at the request of the other Party sign any documents and plans and do anything else which may reasonably be required to give effect to the matters referred to in this agreement.
64. **Notices:** All notices under this agreement shall be given in writing to the Appointed Representatives.
65. **The Council As Regulatory Authority:** Other than as provided in this agreement, this agreement does not bind the Council as a regulatory authority, and any consent or agreement the Council gives under this agreement is not an agreement or consent in its regulatory capacity, and vice versa. When acting in its regulatory capacity, the Council may consider all applications to it without regard to this agreement.
66. **Signing Of agreement:** This agreement will not be binding on the Parties until it has been signed by all Parties. No variation of this agreement will be of any force or effect unless it is in writing and signed by the Parties to this agreement.
67. **Confidentiality:** this agreement will be confidential to the Parties and their legal advisers and will not be disclosed, copied or transmitted to any other person except with the prior written consent of the other Parties, unless the Parties must disclose the contents of this agreement by law.
68. **Entire agreement:** This agreement contains everything the Parties have agreed in relation to the matters it deals with. No Party may rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this agreement was executed, except as permitted by law.
69. **Waiver:** that a Party fails to do, or delays in doing, something the Party may do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only

effective if it is in writing and is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other obligation.

70. **Equitable Relief:** Nothing in this agreement shall

preclude any either Party from taking immediate steps to seek urgent equitable relief before a New Zealand Court.

71. **Assignment:** A Party must assign none of its rights or obligations under this agreement without the prior written consent of the other Party.

SAMPLE ONLY



SCHEDULE 1

Plans showing the Property, Land, and Site and location of Works (including staging)

SAMPLE ONLY



SCHEDULE 2

Description of Works, Stages of Works, and Budgeted Works Cost

SAMPLE ONLY



SCHEDULE 3

Unconditional, On Demand Bank Guarantee Bond

SAMPLE ONLY

Handwritten signatures in blue ink, including a large circular mark and several smaller scribbles.

SCHEDULE 4

Encumbrance

SAMPLE ONLY

