



18 November 2011

Tony Phipps
Acting Chief Executive Officer
Northland Regional Council
36 Water Street
Whāngārei

Dear Mr Phipps

As you will be aware the Crown has agreed to make grants to the Northland Regional Council and the Far North District Council to assist implement the Kaeo Flood Risk Reduction Strategy.

Following discussions with Bruce Howse, we have completed a Funding Deed. Please find enclosed two copies of the Funding Deed, signed by John Hamilton, Director of Civil Defence Emergency Management.

I would be grateful, therefore, if you would sign both copies where indicated and return one completed copy to me. Please also write on page 2 of each copy, next to the heading "Date of Agreement", the date on which you sign the Deed.

If you have any questions or require any further information, please contact me on 04 494 0644 or at anthony.richards@dia.govt.nz.

Yours sincerely

Anthony Richards
Manager, Fire & Emergency Policy

Copies signed - one
returned to DIA 22/11/11.



INTERNAL AFFAIRS

Te Tari Taiwhenua

FUNDING DEED

BETWEEN

**HER MAJESTY THE QUEEN acting by and through the
SECRETARY OF INTERNAL AFFAIRS AND THE DIRECTOR OF
CIVIL DEFENCE EMERGENCY MANAGEMENT (the “Crown”)**

AND

Northland Regional Council (the “Council”)

Part 1: Details of the Grant

“Date of Agreement”

21 November 2011

“Recipient”

Northland Regional Council (the “Council”)

The work for which the grants are being made is part of the Kaeo Flood Risk Reduction Strategy that is being managed jointly by Northland Regional Council and Far North District Council. In entering this agreement the Northland Regional Council is accepting the grants from the Crown on behalf of both itself and Far North District Council.

“Grant”

\$500,000 (exclusive of GST)

“Grant Purpose”

The Crown has agreed to make grants to Northland Regional Council and the Far North District Council to implement the Kaeo Flood Risk Reduction Strategy.

This one-off grant will provide financial assistance to the Northland Region following two major flooding events in 2007, by way of a government contribution to work undertaken to reduce the risk of flood damage to houses in Kaeo, Northland.

“Commencement Date”

25 November 2011

“Grant Payment Schedule”

The Grant will be divided into 2 payments –

- \$0.257 million as the Government’s one quarter share of the cost of works for 14 vulnerable properties; and
- \$0.243 million as a contribution towards the cost of implementing the Kaeo Flood Risk Reduction Strategy, such as constructing stop banks and spillways to protect the Kaeo community.

The payment will be provided for within existing appropriations in Vote Emergency Management.

“Progress Reports”

The Council must provide to the Director of Civil Defence Emergency Management a written report on progress with the project by 30 June each year and when unexpected circumstances arise that would affect the timing of the project.

“Expiry Date”

25 November 2016

Execution

Signed by: Director of Civil Defence Emergency Management

I have authority to sign for the Crown

[Handwritten signature]

18 November 2011

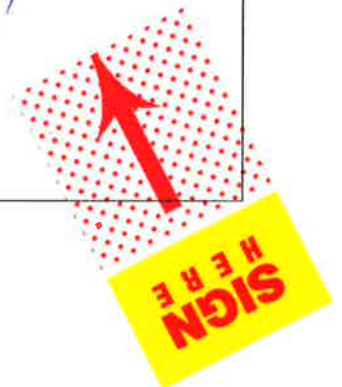
Date

Signed by: Northland Regional Council

I have authority to sign for the Recipient.

[Handwritten signature]

21/11/11



Part 2: Terms and Conditions

1 Parties and Agreement

This Funding Deed is between the Crown and the Recipient for the provision of the Grant for the Grant Purpose ("**Agreement**").

2 Term

This Agreement is deemed to have commenced on the earlier of the Date of Agreement or the Commencement Date, and expires on the Expiry Date unless terminated earlier in accordance with this Agreement ("**Term**").

3 Interpretation

For the purposes of interpretation and construction of this Agreement:

- 3.1 The singular includes the plural and vice versa;
- 3.2 Headings are to be ignored in construing this Agreement;
- 3.3 Both Parts of this Agreement are to read, together with any schedules incorporated into the Agreement, as one Agreement;

4 Recipient's responsibilities

The Recipient must:

- 4.1 use the Grant solely for the Grant Purpose;
- 4.2 spend the Grant within the Term;
- 4.3 provide Progress Reports to the Crown as set out in Part 1: Details of the Grant;
- 4.4 inform the Crown as soon as practicable, and at least within 10 days, of any relevant matters that arise that might affect the Recipient's ability to meet its obligations under this Agreement;
- 4.5 immediately upon receipt of the grant, all grant monies must be deposited into a special interest bearing bank account. Any surplus or unspent funds and any interest earned on such funds are to be returned to the Crown.
- 4.6 if, after five years from the date of this contract, the project has not been completed, the parties will review the contract with a view to either extending it for an agreed term or returning to the Crown any surplus funds plus interest.
- 4.7 following a review after five years from the date of this Agreement, the Council may be required to refund to the Crown any part of the grant or of the interest that it has not or will not be used for the purpose of the grant.
- 4.8 inform the police immediately if the Grant or any parts thereof can not be accounted for and appear to have been misappropriated. The Recipient acknowledges that referral to the Police does not release the Recipient from its obligation to repay any part of the Grant to the Crown;
- 4.9 act at all times in accordance with all applicable laws, regulations and professional codes of conduct; and
- 4.10 not at any time:
 - (a) infringe any rights (including intellectual property rights) of any other person or entity; or
 - (b) be in a position of actual, potential or perceived conflict of interest with any other party or entity that might affect the Grant Purpose or the Recipient's relationship with the Crown.

5 The Crown's responsibilities

- 5.1 Subject to the terms of this Agreement being met by the Recipient, make payments in accordance with the Grants Payment Schedule contained in Part 1: Details of the Grant within 15 days of receipt of a tax invoice, by electronic transfer into the Recipient's nominated account.

6 Media Engagement and Public Notices

- 6.1 The Crown and the Recipient agree:
 - (a) The Crown reserves the right to issue statements to the media in relation to the Grant;
 - (b) that, where practicable, the Recipient will acknowledge the contribution of the Crown in providing the Grant in any media statements or project announcements;
 - (c) that, where practicable, they will provide each other with prior notice of any media statement or other project announcement that relates to the use of the Grant; and

- (d) in respect of the requirements in paragraphs (a) to (c) above and for dealing with the media or project announcements generally, to work together to develop mutually beneficial protocols.

7 Information relating to the Grant

- 7.1 **Use of information by Crown:** The Recipient agrees that the Crown may publish the Recipient's name, the Grant and Grant Purpose in any public statement, including the outcome of the Grant and whether the Grant Purpose has been achieved.
- 7.2 **Audit and Information held by the Recipient:** From Commencement Date for a period until 5 years after the expiry of this agreement:
 - (a) the Recipient must keep all receipts, invoices and any documents or information which relate, directly and indirectly, to the expenditure of the Grant under the Agreement;
 - (b) the Recipient must supply any such information as may be requested by the Crown from time to time to enable the Crown or the Department to comply with its reporting obligations;
 - (c) the Crown or the Department may inspect and audit all records kept by the Recipient which are relevant to the Agreement, and will provide to the Recipient in writing the outcome of any inspection or audit; and
 - (d) the Recipient must provide access to all necessary facilities and assistance to enable the Crown or its auditors to conduct the inspection or audit.

8 Confidentiality

- 8.1 Either party will be entitled to advise third parties of the existence of this Agreement, but neither party will without the prior written consent of the other party disclose any of the terms of this Agreement except:
 - (a) as provided in clause 7.1;
 - (b) to the extent required by law;
 - (c) to its professional advisors;
 - (d) information already in the public domain other than by breach of any duty of confidentiality; or
 - (e) to the extent that may be necessary or desirable to enable either party to fulfil its functions or perform its obligations under this Agreement.

9 Indemnity

- 9.1 The Recipient will indemnify the Crown in respect of all costs, damages, losses and expenses suffered by the Crown as a result of the Grant, unless such costs, damages, losses or expenses arise from the Crown's own misconduct or negligence.

10 Dispute Resolution

- 10.1 *Notice and Good Faith.* The party claiming that a dispute exists must give written notice to the other party specifying the nature of the dispute. When a notice is received both parties must use their best endeavours to cooperate to resolve the dispute in good faith.
- 10.2 *Negotiation:* If any dispute or difference arises between the parties concerning the construction or performance of this Agreement or the rights and liabilities of the parties, the parties will actively, openly and in good faith discuss that dispute or difference with a view to resolving it by mutual agreement. Neither party shall commence any litigation in relation to this Agreement unless it has provided an opportunity for the representatives of both parties to meet for the purpose of endeavouring to resolve the dispute or difference by mutual agreement.
- 10.3 *Mediation:* Any dispute or difference which cannot be settled by active, open and good faith discussion between the parties will be submitted to mediation before either party commences any litigation. Either party may initiate mediation by giving written notice to the other. If the parties cannot agree a mediator within two working days of the notice, then a mediator will be appointed by the President for the time being of LEADR New Zealand Inc. or its successor.
- 10.4 *Continuation of Agreement.* Both parties must continue to comply with their obligations in this Agreement until the dispute is resolved, except that payments may be withheld to the extent that they are disputed.

11 No Assignment or Sub-Contracting

- 11.1 The Recipient may not assign, transfer or sub-contract any of its rights or obligations under this Agreement without the written consent of the Crown.

12 Termination

12.1 The Crown may terminate this Agreement on written notice if the Recipient:

- (a) commits a material breach of this Agreement which is not capable of being remedied;
- (b) breaches clause 8 (Confidentiality) whether intentionally or accidentally;
- (c) breaches this Agreement and fails to remedy the breach within 30 days of receiving written notice of the breach;
- (d) has repeatedly breached this Agreement and irrespective of whether or not the breaches are remedied, the Crown determines that the Recipient is unable or unwilling to consistently meet the terms of the Agreement to the Crown's satisfaction; or
- (e) ceases to conduct any substantial part of its business in a normal manner or threatens to do so; is the subject of a bankruptcy order; is or is deemed to be unable to pay its debts as they fall due; becomes insolvent for the benefit of its creditors; has any of its assets subject to any form of seizure; goes into voluntary or compulsory liquidation; has a receiver, administrator or any similar officer appointed; is wound-up; or suffers any analogous event.

13 Effects of Termination

The expiry or termination of this Agreement will:

- 14.1 be without prejudice to the rights of the parties accrued up to the date of such expiry or termination; and
- 14.2 not affect any clauses that were intended to have a continuing effect, including clause 7 (Information relating to the Grant), clause 8 (Confidentiality), clause 9 (Indemnity) and clause 14 (Repayment).

14 Repayment

14.1 The Recipient agrees:

- (a) that, following any audit or inspection under clause 7.2, the Crown may issue a notice to the Recipient ("**Notice of Repayment**") requiring repayment of any portion of the Grant (including the whole Grant) in relation to which the Recipient is unable to provide evidence (to the satisfaction of the Crown in its sole discretion) that the Grant was fully spent on the Grant Purpose;
- (b) if the Recipient refuses to co-operate with an audit or inspection, that the Crown may at its sole discretion set an amount to be repaid up to the total amount of the Grant and issue a Notice of Repayment in respect of the amount;
- (c) in accordance with any Notice of Repayment, to repay the Grant to the Crown within 14 days (or longer period specified by the Crown) of receipt of the Notice of Repayment; and
- (d) that the exercise of the Crown's powers under this clause or clause 7.2 will not prejudice its ability to subsequently undertake any audit or inspection or to issue a Notice of Repayment in respect of any amount of the Grant or to exercise any other remedies that may be available to it in relation to the Agreement.

14.2 In addition to any repayment required following the issue of a Notice of Repayment under clause 14.1, if this Agreement is terminated, the Recipient must repay the Grant to the Crown in full.

14.3 The Recipient acknowledges that any obligation to repay the Grant or part thereof is inclusive of any GST component and accumulated interest (if any).

15 Waiver

No waiver of any breach of this Agreement will be deemed to be a waiver of any other or any subsequent breach. The failure of either party to enforce any provision of the Agreement at any time will not be a waiver of such provision.

16 Notice

Any notice to be given by one party to the other for the purposes of this Agreement (including notice of change of address for service) may be given by personal delivery, mail, fax, or email. If the date of arrival cannot be proved notice by mail will be treated as having been delivered on the third working day after it is posted, provided that the letter was properly addressed. A fax or email that arrives on a non-working day or after 5pm on a working day will be treated as having been delivered on the next working day.

The initial address for service of the Crown is:
Director of Civil Defence Emergency Management
C/- Department of Internal Affairs
46 Waring Taylor Street,
PO Box 805, Wellington

17 Variation

No variation to this Agreement will be effective unless it is in writing and signed by an authorised representative of both parties.

18 Counterparts

This Agreement may be signed in any number of counterparts which, when taken together, will constitute one instrument.

19 Governing law

This Agreement will be governed by the laws of New Zealand.