

Request for tender

Specifications

- 1 **Project:** Coast Care BOP Delivery – Matakana Island to Otamarakau
- 2 **Contract number:** 2011 0027
- 1.1 **3Tenders close:** 4:00pm Tuesday 29 March 2011
- 1.2 **4Contract term:** 18 April 2011 to 31 October 2012
- 1.3 **5Purpose:** Delivery of the Coast Care BOP Programme in Tauranga City and the Western Bay of Plenty District (excluding Waihi Beach) as agreed with the Coast Care Coordinator.
- 1.4 **6Site:** Sandy beaches within Tauranga City and Western Bay of Plenty District, including Matakana Island, Mount Maunganui, Papamoa, Te Tumu, Maketu, Pukehina and Otamarakau.
- 1.5 **7Background information**

1. Coast Care is a partnership between communities and local government to protect, enhance and restore the natural coastal environment with a focus on dune systems.

2. In practice this means planting native dune species, managing dune access, controlling weeds and pest animals, raising awareness and education. Since 1994 about 43% of the 156km of sandy coastline has been worked on by Coast Care staff and volunteers with considerable success. The programme is funded by the following six agencies: The Department of Conservation, Opotiki, Whakatane and Western Bay of Plenty District Councils, Tauranga City Council and Bay of Plenty Regional Council.

3. Coast Care Bay of Plenty was formally created in 1994 in response to continuing degradation of natural dune systems. Dune degradation reduces their ecological value, which is significant because natural dune vegetation and animal communities are nationally threatened. Dune degradation also increases the risk to property and infrastructure from coastal processes and hazards. Finally, dune degradation can reduce the amenity value of beaches.

4. The programme is community led and joint agency funded to reflect the numerous interests in the coastal environment, and the value placed on beaches by the Bay of Plenty (BOP) community. In 2011 there are 29 Coast Care groups with varying levels of activity in the region, and about 900 associated Coast Care members registered with the programme.

5. A copy of the “Long term plan for partner agencies of Coast Care Bay of Plenty” is available upon request.
6. The goals of Coast Care are:
 1. To educate those who manage, benefit from or use beaches on natural dune ecosystems
 2. To increase community involvement in the management of BOP beaches
 3. To protect and enhance the natural character and biodiversity of BOP beaches
 4. To improve the capacity of dune systems to withstand coastal hazards and relevant climate change effects.

9 Scope of works

1. The scope of works are defined in Schedule 1 of the attached contract document. The successful tenderer will be the public face of Coast Care in the sub-region allocated, and will carry out almost all of the operational tasks associated with the Coast Care programme.

1.6 10 Required attributes

1. Resident in either Western Bay of Plenty District or Tauranga City
2. Demonstrated ability to get along with residents in coastal communities from Matakana Island to Otamarakau, including a respectful knowledge of tikanga Maori
3. Demonstrated ability to work with groups in an outdoor environment including the management of risks
4. Trustworthy, enthusiastic, knowledgeable, helpful, accurate, reliable and respectful
5. Demonstrated interest in coastal issues in the Bay of Plenty, especially dune protection
6. Demonstrated competence in the identification of dune plants, weeds and dune issues
7. A full driver licence
8. A current First Aid certificate which must be kept current throughout the term of the agreement
9. Ready access to a four wheel drive vehicle capable of travelling along the beach and with sufficient storage capacity for at least 1,000 plants in root trainers plus fertiliser, chemicals, spades and fencing equipment for Coast Care events
10. A certificate in the safe use and handling of All Terrain Vehicles (quad bikes) is highly desirable. The tenderer must show how and when this will be obtained if they do not have it and their tender is successful
11. An Approved Handler's certificate covering herbicides, a GrowSafe or similar qualification and/or an Approved Applicator's certificate or similar qualification. This is essential.
12. Demonstrated competence in the control of plant pests using herbicides and other methods.
13. An Approved Handler's certificate and a Controlled Substance Licence for the Vertebrate Toxic Agent Pindone is highly desirable. The tenderer must show

how and when these will be obtained if they do not have them and their tender is successful.

14. Demonstrated competence in the control of rabbits using Pindone and other methods
15. Ability to work on weekends as necessary, especially between May and October
16. The flexibility to work full time between May and October and part time at other times of year

1.7 **11 Basis of payment**

7. The tenderer shall submit a proposed hourly rate for all works, including details for each staff member or sub-contractor named. If the tendered price varies according to the task or personnel this should be stated explicitly. The hourly rate tendered shall be exclusive of GST. The hourly rate shall be paid to the successful tenderer by Bay of Plenty Regional Council on the 20th of the month following receipt of invoice. Invoices must be submitted to Bay of Plenty Regional Council by the 7th day of each month for the works carried out in the previous month. The tenderer shall also submit a proposed disbursement rate for kilometres driven in his/her private vehicle if this differs from the published IRD rate. Any other disbursements and/or disbursement rates shall be specified by the tenderer, or passed on at cost to Bay of Plenty Regional Council if agreed to by the Coast Care Coordinator.

1.8 **12 Equipment**

8. The successful tenderer shall be supplied on loan from Bay of Plenty Regional Council the following items to carry out the works: spades, secateurs, rakes, thermos flasks, cups, agrichemicals, signage, fencing, fertiliser, buckets, sunscreen, gloves, promotional and educational material and plants to carry out the works. The tenderer is expected to provide their own vehicle as outlined in the required attributes, a mobile phone which will be linked to the Regional Council free phone number with an extension, a GPS unit, digital camera, computer, first aid kit and any other items required to carry out the services. Items provided by the client to the consultant are on loan for the term of the contract only. Losses or damage to such items are the responsibility of the Consultant with the exception of normal wear and tear.

● Instructions to Tenderers



1 Submission of Tenders

- 1.1 Tenders will close in the Tender Box, Bay of Plenty Regional Council, 5 Quay St, Whakatane at 4.00 p.m. on Tuesday, 29 March 2011. Tenders that have not been delivered to the above address by closing time will not be accepted irrespective of the method of delivery. Tenders transmitted by facsimile (FAX) will not be accepted.
- 1.2 Tenders shall be submitted in two sealed envelopes contained within a single large envelope, also sealed. The second envelope shall contain the price offered. No disclosure of price shall be made in the first envelope. The envelopes shall be clearly labelled "Envelope No. 1 (Proposal, excluding Price)" and "Envelope No. 2 (Price)" respectively.
- 1.3 Tenders shall be addressed to the Chief Executive, Bay of Plenty Regional Council, PO Box 364, Whakatane and marked on the outside top left hand corner "Tender for Contract No. 2011 0027". Tenders shall be deposited in the Tender Box in the reception area of Bay of Plenty Regional Council, Whakatane Office, 5 Quay Street, Whakatane.
- 1.4 Four copies of the tender shall be provided.
- 1.5 Should Tenderers have any questions in relation to the tender documents and/or to arrange a site inspection, they are to convey these in writing to the:

Chief Executive
Bay of Plenty Regional Council
P O Box 364
Whakatane 3158
Attention: Pim de Monchy, Senior Land Management Officer

Fax: 0800 884 882
Email: coastcare@boprc.govt.nz

By 4.00 p.m. on Tuesday, 22 March 2011.

The answers to all questions will be made in writing to all who have uplifted contract documents.

- 1.6 All costs incurred by the Tenderer in the preparation and submission of tender will be to the Tenderer's account.
- 1.7 Tags that may be of long term benefit to the tendering authority will be evaluated, solely at the discretion of the Principal, as to their acceptability and cost implication. The Tenderer will be requested to remove all unacceptable tags and shall not be allowed to amend the tender price. Refusal to remove tags may result in the tender being rejected. If a Tenderer refuses to remove the tags and the tender is not rejected, the cost and benefits of the tags shall be evaluated, including a conservative allowance for risk and an "alternative tender adjusted price" determined by the Principal. The alternative tender adjusted price will be used for assessment of tenders, but should the tender be successful the contract will be awarded in the amount of the tendered sum. If the consequence of the tag to the Principal is unacceptable, the tender will be considered to be non-conforming and will be rejected.

- 1.8 If the tendered schedule contains any errors in extension of unit rates or in summation such as to vary the tendered sum, then the unit rates shall be adjusted by the Principal after consultation with the consultant to agree with the tendered sum. The adjusted rates shall then become the contract rates for payment. If agreement cannot be reached as to the adjustments then the tender may be rejected.

2 Document Deposit

~~1.9 The document deposit required is \$200.00.~~

~~1.10 The deposit charged on the Tender Documents will be refunded as soon as practicable:~~

- ~~(a) To the successful Tenderer without requiring return of the documents; and~~
- ~~(b) To other Tenderers, providing the documents are returned in reasonable condition not later than 10 working days after the date on which advice is notified that another tender has been accepted or that no tender is being accepted; and~~
- ~~(c) To others, providing the documents are returned in reasonable condition not later than the time of closing of tenders.~~

3 Tender Evaluation Criteria

1.11 Tenders will be evaluated by the Weighted Attribute method. The attributes to be evaluated, and their weighting in the total evaluation are as follows:

- Relevant Experience (20%)
- Track Record (20%)
- Technical Skills (Personnel) (20%)
- Management & Quality Assurance Skills (5%)
- Methodology (5%)
- Price (30%)

1.12 The non price attributes are defined in further detail in 4.2 below.

The tender evaluation will be conducted in three stages, as follows:

- (d) The first stage shall involve opening only Envelope 1 and assessing tenders against the five non price attributes. Each attribute shall be scored on a points basis, from 0 (completely inadequate) to 100 (excellent). Any tender that scores 35 or less on any attribute shall be excluded from further consideration.
- (e) The second stage shall consist of opening Envelope 2 and converting the tender price to a grade using the following formula.

Note: Remove any amount that has been fixed by the Principal from the tender price before calculating the price e.g. Provisional Sums.

$$\text{Grade} = 150 - 100 \times \frac{\text{Tender Price}}{\text{Estimate}}$$

Note: Price Grade may be negative but shall not be greater than 100).

- (f) The third stage shall consist of multiplying the weight of each attribute by the grade of that same attribute to give an index for each attribute. The indices for each tender shall then be summed and rounded to the nearest whole number to give an overall index out of 100.

4 **Information to be supplied by the Tenderer**

1.13 The information required under Clause 4.2 below shall be brief and concise and shall not exceed 20 pages, although additional pages may be included as follows:

- Title, 1 page
- Index, 1 page
- CVs, 2 pages for any person offered in the proposal
- Schedules as required by these documents.

Notes:

Title, index and CV pages shall not contain information other than that required for the stated purpose. Any other information will not be included in the assessment of the tender.

Should the allowable number of pages be exceeded in any category above, the information on the excess pages will not be included in the assessment of the tender.

For schedules required by these documents, only the information required may be entered on the sheets provided. Should additional information be entered this will not be included in the assessment of the tender.

CV's should quote dates on the relevant experience.

1.14 **Tenderers shall provide the following specific information:**

1.14.1 **Relevant experience**

The Tenderer shall provide a statement of recent relevant experience in carrying out works of a similar nature to that required for this Project and which would indicate their suitability for this Project. Where a Tenderer's experience has not been directly relevant it is necessary to establish how previous work will bear on this contract. Where sub consultants are proposed to be engaged, a statement of their relevant experience shall also be supplied.

In addition, for newly formed consultancy firms, state the name of the company in which the experience is claimed, the person concerned, and his/her responsibility in the project. Where staff named in this tender were not involved in similar projects, provide detailed comment on the extent to which relevant experience will benefit this project.

1.14.2 **Track Record**

The Track Record shall include the last five completed projects relevant and covering as far as possible, the range of activities included in this contract. The following items shall be described in tabular form.

- Client (including contact name and phone numbers)
- Name and type of project
- Value and duration of project

- Compliance with quality standards Yes/No*
- Completed by due date or authorised extension Yes/No*
- Completed to target performance levels Yes/No*
- Record of client satisfaction with regard to quality and timetable.

Note* Qualifying comments may be included as warranted when the answers are not simply a yes or no.

1.14.3 **Technical Skills (Personnel)**

All key personnel and any others whose skills the Tenderer wishes to have recognised under this attribute heading (including secondary consultant's personnel) are to be covered in the Tenderer's submission.

All key personnel shall be described as follows:

- Name
- Position in the project team
- Technical skills to be recognised; and length of experience (full time equivalent years) gained in the practice of each skill.
- Supporting amplification/description and comments

In addition the CVs of named personnel are to be provided in an appendix to the submission. The content of the CVs shall be pertinent to the skills claimed.

1.14.4 **Management and Quality Assurance Skills**

The Tenderer's submission shall cover all key personnel and any others whose management skills require recognition. This may also include the attributes of any secondary consultants' personnel. Details to be supplied include:

- Name
- Position in the project team
- Management skills to be recognised; and length of experience (full time equivalent years) gained in the practice of each skill
- Supporting amplification/description and comments.

In addition the CVs of name personnel are to be provided in an appendix to the submission. The content of the CVs shall be pertinent to the skills claimed.

Tenderers shall provide details of client liaison arrangements proposed, the locations of offices providing the services, and the availability of project management on hand (and on call) to cater for emergencies relevant to the project. The Tenderer shall include details of the proposed reporting systems and the frequency of reporting to the client and discuss company systems and backup relevant to the project. A statement of commitment to QA is also required as well as an organisational chart showing the structure and inter-relationship of the personnel nominated.

1.14.5 **Methodology**

A statement of the Tenderer's proposed methodology is required. The statement shall describe all the important steps of including supervision and observation levels, which in the opinion of the Tenderer, are necessary to ensure that this project meets all of the client's requirements, is completed on time, is within budget and obtains consents, approvals and support from all interested parties.

This methodology statement will indicate to the Client the Tenderer's understanding of the client's requirements, how these will be achieved and the outcomes the client can expect.

1.15 **Other information to be supplied by the Tenderer is as follows:**

- (g) Tender Form
- (h) Personnel Schedule
- (i) Public Liability and Professional Indemnity Form
- (j) Health and Safety Management Plan Form

5 **Form of tender**

1.16 The contents and arrangement of the Tender shall be as follows with pre formatted sheets completed:

Envelope No. 1 (Proposal, excluding price): **(Four Copies)**

- Non price Attribute Information
- Personnel Schedule

Envelope No. 2 (Price)

- Tender Form
- Schedule of Prices

6 **Acceptance of tender**

1.17 The highest rating or any tender will not necessarily be accepted.

1.18 No legal or other obligations shall arise between the Tenderer and the Principal in relation to the conduct or outcome of the tender process unless and until that Tenderer has received written notification of the acceptance of the Tender.

1.19 The successful Tenderer shall be notified in writing by the Client or Client's agent, that the tender has been accepted.

7 **Notification of acceptance**

1.20 If no tender has been accepted within one month after the closing of tenders, each Tenderer shall be notified in writing by the client or client's agent whether his/her tender is or is not still under consideration.

1.21 Unsuccessful Tenderers who have submitted bona fide tenders complying with the tender documents shall be notified by the client or client's agent of the name and tender price of the successful Tenderer and the other tender prices within 14 days of acceptance of the successful tender.

8 **Signing of professional services documents**

1.22 Procedural requirements for the signing of the contract documents are as follows:

- (k) Three sets of documents will be bound and forwarded to the consultant for signing.
- (l) Documents returned by consultant to Bay of Plenty Regional Council for signing.
- (m) Two signed sets of documents will be retained by Bay of Plenty Regional Council. Copy No. 1 will be the original document and will be held in secure storage. The third copy will be returned to the consultant.
- (n) The Contract Agreement will reference all sections and pages that form the contract documents.
- (o) The contract agreement must be executed (signed) correctly. Companies must sign in accordance with the Companies Act 1993 and their constitution.

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1.28 **Chief Executive**

15. **Intellectual Property** means all statutory, proprietary and common law rights in patents, designs, layout designs, formulae, technical data, hardware, software, processes, methods, copyright, trade marks, confidential information, unpatented know-how, inventions and databases, whether registered or unregistered, and any applications to register any of the same, whether any of which are currently existing or arising in the future, anywhere in the world.

16. **Reimbursable Expenses** means those expenses detailed in Schedule 1 (if any) payable by the Council to the Contractor in relation to provision of the Services.

17. **Relationship Manager** means a relationship manager appointed under clause 8.

18. **Services** means the services to be provided by the Contractor under this Agreement, as set out in Schedule 1.

19. **Site(s)** means the site or sites specified in Schedule 1 and/or the attached map at which the Services will be performed under this Agreement, and such other site or sites as the Council may notify to the Contractor in writing from time to time.

20. **Term** means the term of this Agreement specified in Schedule 1.

21. **Termination Notice Period** means the notice period referred to in clause 15.2

1.2 *In this Agreement, unless the context otherwise requires:*

- (a) The singular includes the plural and vice versa.
- (b) Headings are for ease of reference only and will be ignored in interpreting this Agreement.
- (c) A reference to a clause or to a schedule.
- (d) References to currency are to New Zealand currency; and
- (e) References to any document include all modifications and replacement documents from time to time.

2 Term for Provision and Purchase of Services

2.1 *This Agreement commences on the Commencement Date and continues until 31 October 2012, and then expires.*

3 Services

3.1 *The Contractor will provide the Services to the Council in accordance with the terms and conditions set out in this Agreement.*

3.2 *The Contractor will notify the Council as soon as practicable of any circumstance(s) that may have a material effect on the Contractor's ability to supply the Services in accordance with the terms of this Agreement.*

4 Fee and Payment

4.1 *Unless otherwise stated in this Agreement, the Fee payable for the Services is set out in Schedule 1 and:*

- (a) Is fixed for the Term;

- (b) Is exclusive of GST (if any); and
- (c) Includes all other costs (including the supply of materials used in or incidental to the provision of the Services), taxes, duties, levied on the Services and arising in New Zealand or elsewhere.

4.2 *All charges shall be paid in receipt of an itemised invoice from the Contractor. To ensure payment of the 20th of the month, invoices must be received no later than the 7th working day of the month. Any invoice received after this date will not be paid until the 20th of the next month.*

4.3 *If the Council disputes any amount claimed in an invoice, then the Council will advise the Contractor in writing of the nature of the Dispute and pay any undisputed portion of the invoice in accordance with the terms of this Agreement. The Contractor will use reasonable endeavours to provide to the Council all information the Council requires to verify the amount claimed in a disputed invoice. The Council will then pay to the Contractor the amount of the invoice as resolved or determined.*

5 Insurance

5.1 *The Contractor shall take out and maintain with a reputable insurer for the Term of this Agreement, public liability insurance for an amount of \$1,000,000 for any one occurrence, together with such other insurance adequate to cover any potential liability, loss or damage in respect of claims for property damage, personal injury, and professional indemnity relevant to the performance of the Contractor's obligations under this Agreement. This includes cover for an amount of \$500,000 for any liability arising under Forest and Rural Fires Act 1997. The Contractor will provide the Council with evidence of such insurance policies. .*

6 Obligations of Contractor

6.1 *The Contractor warrants that:*

- (a) It will be primarily responsible for providing the Services at the Site during the Term;
- (b) It will use its best endeavours to maintain and enhance the reputation of the Council and shall do nothing, which diminishes the reputation or goodwill of the Council or brings the Council's name into disrepute;
- (c) It has the necessary skills and qualifications and will maintain an appropriate level of staffing to perform the Services and all Services will be supplied in accordance with best practice, using the highest standards of skill, care and quality;
- (d) In providing the Services it will comply with industry best practice and all relevant codes of practice;
- (e) It will comply with all applicable laws or regulations in performing its obligations under this Agreement and, at its cost, hold and maintain all necessary licences, registrations, permits, authorisations, consents and approvals required by or from any governmental, provincial or local department or agency in relation to the provision of the Services; and
- (f) The Contractor and its employees, representatives, agents or other parties under its control entering onto any of the Sites controlled by the Council, for purposes connected with or contemplated by this Agreement will:
 - (i) Not interfere with the day to day operation of the Council's business;

- (ii) Comply with all reasonable directions of the Council and its staff in relation to all health and safety, environmental, security or other requirements of entry (whether arising under statute or otherwise) including ensuring that all such persons comply with all applicable site rules; and
 - (iii) Where the Site is not one controlled by the Council, the Contractor will ensure that it and all of its employees, representatives, agents, or other parties under its control entering onto any such site comply with all health and safety requirements under the Health and Safety in Employment Act 1992; and
 - (iv) It is or will be registered for the purposes of GST, at the time of providing the Services
- (g) It will at its own cost immediately make good any errors, omissions, defects or faults in the Services.

6.2 *Without prejudice to any other remedies available to the Council, the Contractor will immediately re-supply at its cost any Services that are defective or fail to comply with the terms of the Agreement as the case may be.*

6.3 *If the Contractor is aware that any Service (whether completed or not) does not meet the requirements of this Agreement, the Contractor will notify the Council immediately in writing. The Council may elect, at its absolute discretion, to accept all or part of the Services that do not meet the requirements of this Agreement, at a price and on such other terms and conditions as are mutually agreed by the parties in writing.*

7 Obligations of the Council

7.1 *The Council will throughout the Term;*

- (a) Provide the Contractor with such information, direction and assistance as reasonably required to enable the Contractor to provide the Services; and
- (b) Pay the fee and reimbursable expenses (if any) as provided by this Agreement.

8 Intellectual Property

8.1 *The Contractor shall promptly disclose to the Council any idea or invention created in the course of providing the Services and where requested will sign all documents and do all things necessary to vest ownership of such ideas or inventions in the Council as the sole beneficial owner.*

8.2 *The Contractor agrees that it shall have no licence to use the Council's Intellectual Property, except as set out in this Agreement or as strictly necessary to give effect to this Agreement.*

8.3 *The Contractor will not do anything which may prejudice or infringe the Council's Intellectual Property.*

9 Relationship Management

- 9.1 *Where the Contractor is not an individual person, then the Contractor and the Council will each appoint a Relationship Manager to manage this Agreement and to be responsible for the operational delivery of this Agreement. Where the Contractor is an individual then the Contractor will be the Relationship Manager. The initial Relationship Managers are those persons named in Schedule 1. Each party must notify the other party promptly in writing of any change to its Relationship Manager.*
- 9.2 *The Relationship Managers will from time to time meet on a regular basis to discuss and review the provision of the Services. These meetings will be held monthly or at such other frequency as agreed between the parties.*

10 Confidentiality

- 10.1 *The Contractor must:*
- (a) Keep all Confidential Information relating to the Council and/or its project confidential and secure;
 - (b) Use the Confidential Information solely for the purpose of performing its obligations under this Agreement;
 - (c) Not to disclose the Confidential Information, or permit the disclosure to any person other than such who need to know for the purpose of this Agreement, unless it is required by law and/or written consent from the Council has been obtained;
 - (d) Immediately inform the Council if it becomes aware of the possession, use or knowledge of the Confidential Information by any unauthorised person; and
 - (e) Will return all Confidential Information in the Contractor's possession or control at any time on request from the Council.
 - (f) The Council shall be entitled to interlocutory injunctive relief to prevent a breach of, and to compel specific performance of, these confidentiality undertakings.

11 Indemnity

- 11.1 *Subject to clause 11.2, the Contractor will indemnify and keep indemnified the Council, its employees, agents and contractors (each an "Indemnified Party") against all claims, expenses, losses, damages and costs (hereafter "Liabilities") (including all Liabilities arising as a result of damage to a third party's property or injury to or death of any person, and all legal costs in relation to any Liabilities) sustained or incurred by any such Indemnified Party arising from:*
- (a) Any breach of this Agreement by the Contractor.
 - (b) Any negligent or wrongful act or any error or omission of the Contractor or any of its employees, agents or contractors in the course of or related to the performance of, or failure to perform, any obligations of the Contractor under this Agreement.
 - (c) Any fraud, dishonesty, misrepresentation or wilful default of the Contractor.
- 11.2 *Except for the Contractor's liability under clauses 11.1(b) and (c) above, neither party will have any liability to the other for any indirect or consequential loss, loss of profits, business, income or savings.*

12 Health and Safety

- 12.1 *The Contractor shall take all practicable steps to ensure the safety of all persons under the Contractor's control and third parties in connection with the performance of the work subject to this contract.*
- 12.2 *The Contractor shall have in place a Health and Safety Management Plan that is appropriate for the service and complies with any health and safety plan operated by the Principal in control of the site. Bay of Plenty Regional Council's Contractor Health and Safety Declaration form must be completed.*
- 12.3 *The Contractor shall comply with the following requirements with respect to health and safety:*
- (i) Relevant legislation, regulations and codes of practice.
 - (ii) Requirements specified by the Principal in the form of its own health and safety policy.
22. The Contractor agrees that it is aware of and is familiar with the requirements listed above and their application or implication in respect to the performance of the works subject this contract.
- 12.4 *Should the Contractor fail to meet the requirements detailed above, its failure shall constitute a breach of this contract and its provisions which may lead to suspension or termination of the contract.*

13 Force Majeure

- 13.1 *No party shall be liable for any failure or delay in complying, wholly or in part, with any obligation imposed on such party under this Agreement if:*
- (a) The failure or delay arises from a cause beyond that party's reasonable control and without that party's fault and such party could not take reasonable measures to prevent or mitigate the effects of such cause ("Force Majeure Event");
 - (b) That party promptly gives the other party written notice providing details of the nature, expected duration and effect of the Force Majeure Event and keeps the other party informed of any changes in the nature of the Force Majeure Event and of the cessation of the Force Majeure Event; and
 - (c) That party uses reasonable endeavours to mitigate the effects of the Force Majeure Event on that party's obligations under this Agreement.
- 13.2 *Nothing in clause 13.1 shall excuse a party from any obligation to make a payment when due under this Agreement.*
- 13.3 *Subject to clause 13.4, no Force Majeure Event will operate to extend or to terminate this Agreement. Performance under this Agreement will resume as soon as possible to the greatest extent possible following the end or amelioration of the Force Majeure Event.*

- 13.4 *If a party is unable to comply with any obligation imposed on it under this Agreement as a result of a Force Majeure Event for 20 consecutive business days or for an aggregate of 45 business days in any six (6) month period, the other party may cancel this Agreement by giving written notice to the other party. Cancellation of this Agreement under this clause shall not prejudice the rights of any party against the other party in respect of any matter or thing occurring under this Agreement prior to cancellation.*

14 Settlement of Disputes

- 14.1 *A party must, as soon as reasonably practicable, give the other party notice of any dispute arising in respect of, or in connection with, this Agreement (including the validity, breach or termination of it) ("Dispute").*
- 14.2 *The Relationship Managers will endeavour to resolve the Dispute within 10 business days of receipt of notice of the Dispute.*
- 14.3 *If the Relationship Managers are unable to resolve the Dispute within 10 business days, the parties will attempt to resolve the Dispute in good faith using mediation or some other agreed form of alternative dispute resolution.*
- 14.4 *If the parties do not agree within 10 business days on the Dispute resolution procedure, its timetable, the mediator and his or her remuneration, the parties must:*
- (a) Attempt to resolve the Dispute by mediation; and
 - (b) Request the Chair of LEADR New Zealand Inc. to appoint a mediator within five working days and determine his or her remuneration.
- 14.5 *Either party may seek other remedies if the Dispute is not resolved by mediation within 20 business days.*
- 14.6 *Each party must pay its own costs for resolving a Dispute, but the remuneration of a mediator must be shared equally.*
- 14.7 *Despite this clause 14, a party may commence court proceedings in relation to any Dispute at any time where that party seeks urgent interlocutory relief.*

15 Termination

- 15.1 *A party may (in addition to any other provisions permitting termination) terminate this Agreement with immediate effect by giving written notice of termination to the other party ("Other Party"):*
- (a) If the Other Party breaches any provision of this Agreement and fails to remedy the breach within five business days after receiving written notice requiring it to do so;
 - (b) If the Other Party breaches a provision of this Agreement where that breach is not capable of remedy;
 - (c) On the occurrence of any of the following:
 - (i) The Other Party ceases to carry on business;
 - (ii) The Other Party ceases to be able to pay its debts as they become due;
 - (iii) Any step is taken by a mortgagee to take possession or dispose of the whole or part of the Other Party's assets, operations or business;

- (iv) Any step is taken to enter into any arrangement between the Other Party and its creditors; or
- (v) Any step is taken to appoint a receiver, a trustee and manager (or either of them) (including a statutory manager), a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of the Other Party's assets, operations or business.

15.2 *The Contractor may terminate this agreement by giving at least two months written notice to the Council.*

15.3 *In the event that the Contractor terminates this agreement by ceasing to provide services with less than two months written notice, the Contractor shall be held liable to pay the Council a penalty fee of \$5,000.00 exclusive of GST.*

16 After Termination

16.1 *Upon termination, the Council will only be liable to pay any outstanding invoices and to reimburse the Contractor for its actual authorised reimbursable expenses.*

16.2 *Termination of this Agreement will not affect any rights or remedies each party may have accrued before the date of termination, and for the purposes of this clause, "accrued" will include matters arising prior to termination but not discovered until after termination. The obligations relating to intellectual property rights (clause 8) and confidentiality (clause 10) will continue to apply to the parties after termination of this Agreement.*

17 Notices

17.1 *Every notice to be given under, or in connection with, this Agreement will be given in writing by:*

- (a) A personal delivery;
- (b) Mailing by post will be deemed to be given five (5) business days (if both parties address for service is in New Zealand) or fifteen (15) business days (if one or both parties address for service is outside of New Zealand) after (exclusive of) the date of mailing; or
- (c) Facsimile transmission, and will be deemed to be given at the time specified in the facsimile transmission report of the facsimile from which the transmission was made which evidences full transmission, free of errors, to the facsimile number of the party given notice;

23. To the addresses set out in Schedule 1 of this Agreement. Notwithstanding any other provision contained in this clause any notice given on a day which is not a business day, or if given after 5 pm in the place in which it is given will be deemed to be given at 9am on the next business day.

18 Miscellaneous

24. **Waiver:** *No delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement will operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Agreement will not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed.*

25. **No Assignment:** *The Contractor shall not assign, transfer or subcontract any right or obligation arising out of this Agreement without obtaining the prior written consent of the Council. Any change in the direct or indirect beneficial ownership or control of the Contractor or the disposal by the Contractor of the whole or part of its assets, operations or business other than in the ordinary course of business will be deemed to be an assignment requiring the consent of the Council.*

26. **Relationship between the parties:** *Nothing expressed or implied in this Agreement will create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties. The Contractor is an independent contractor and is not an employee of the Council.*

27. **Governing law:** *This Agreement will be governed by and construed in accordance with the laws of New Zealand.*

28. **Entire Agreement:** *Except as otherwise expressly provided in this Agreement, this Agreement constitutes the entire agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral.*

29. **Severable Agreement:** *If any provision of this Agreement is or becomes unenforceable, illegal or invalid for any reason it will be deemed to be severed from this Agreement without affecting the validity of the remainder of this Agreement and will not affect the enforceability, legality, validity or application of any other provision of this Agreement.*

30. **Variations:** *Any variation to this Agreement will be in writing, signed by each party.*

SIGNED as an agreement

BAY OF PLENTY REGIONAL COUNCIL by:

Name:
Title:

Date:

[]
as **Contractor** by:

Title:

Date:

Schedule 1

1 Services

- 1.1 Maintain effective working relationships with existing Coast Care volunteers and recruit new volunteers to the programme. This will include making contact with each volunteer in the contract area at least twice per year. A key component of this service shall be putting volunteers in touch with each other where their interests or areas overlap to try and create and maintain care groups.
- 1.2 Maintain effective working relationship with the Coast Care Coordinator and Coast Care partner agency operational staff from the Western Bay of Plenty District Council, Tauranga City Council and Department of Conservation. This will involve maintaining weekly contact through much of the year.
- 1.3 Assist Coast Care Coordinator and Coast Care volunteers with planning dune restoration projects and activities.
- 1.4 Identify opportunities to promote Coast Care in the media and at events and pass these on to the Coast care Coordinator.
- 1.5 Promote planned events as directed by Coast Care Coordinator. No other contact with media shall be made in respect of Coast Care activities except as directed by the Coast Care Coordinator.
- 1.6 Provide coastal dune restoration advice to Coast Care volunteers.
- 1.7 Deliver plants, fertiliser and other materials as directed to each agreed planting location or property.
- 1.8 Efficiently, effectively and safely organise and supervise planned Coast Care events, including:
 - a) Weeding of areas required for planting if the work can be achieved with volunteers
 - b) Planting of indigenous dune plants according to the booklet "Backyard Buffers" and, Coast Care BOP best practice guidelines
 - c) Temporary fencing and signage to protect plants from pedestrian or vehicular traffic
 - d) Fertiliser application to fragile or newly planted dune areas
 - e) Planning, organising and supervising work carried out by offenders from the Department of Corrections
- 1.9 Provide Coast Care educational talks to school groups as directed by Coast Care Coordinator, involving hands-on dune restoration activities wherever possible.
- 1.10 Control dune weeds as directed by Coast Care Coordinator. The Contractor shall take responsibility for meeting all legislative or local authority requirements including notification.
- 1.11 Control rabbits as directed by Coast Care Coordinator. The Contractor shall take responsibility for meeting all legislative or local authority requirements including notification.

- 1.12 Maintain Coast Care signs, beach accesses and temporary fencing which are not assets held and maintained by another agency.
- 1.13 Accurately record all orders, deliveries, plantings, weeding work, rabbit control work and fertiliser application as agreed with Coast Care Coordinator, and provide this information by the 20th day of the following month to the Coast Care Coordinator. This shall include photographic and GPS records of all work on prescribed forms, and entry onto a database.
- 1.14 Maintain a database of all customer contacts, planned works and completed works
- 1.15 Inform the Coast Care Coordinator of any newly observed dune degradation, or opportunities to restore dune form and function
- 1.16 At all times promote and uphold the reputation of the Coast Care Programme and its funding agencies Bay of Plenty Regional Council, Tauranga City, Western Bay of Plenty District, Whakatane District, Opotiki District and the Department of Conservation.
- 1.17 Use the Coast Care logo on Coast Care email communication as directed by Coast Care Coordinator.
- 1.18 Display the supplied Coast Care magnetic signage on both sides of any vehicle used to carry out the services.
- 1.19 The Consultant shall not attempt to represent Coast Care or its partner agencies other than as specified in this schedule.

2 Fee for Services:

[enter the Fee for Services] per hour excluding GST up to a maximum of \$18,000 for any three month period between April and October, and a maximum of \$15,000 for any three month period between November and March, excluding disbursements. To meet audit requirements invoices must show documentation of receipts for disbursements itemised separately.

3 Reimbursable Expenses

As agreed in writing between the parties from time to time prior to the expenses being incurred.

4 Commencement Date

[on signing of this agreement by both parties or a particular start date]

5 Term (Clause 2.1)

From Commencement Date until End Date: 31 October 2012

6 Sites: (clause 6.1)

31. Sandy beaches within Western Bay of Plenty District and Tauranga City, including Otamarakau, Pukehina, Maketu, Te Tumu, Papamoa, Mount Maunganui and Matakana Island.

7 The Council's contact details

32. 5 Quay Street
33. PO Box 364
34. Whakatane 3158
35. New Zealand
36.
37. Phone 0800 884 880
Fax: 0800 884 882

38. Attention: Pim de Monchy

8 Contractor's contact details

39. Address: []

40. Phone:[.....]

41. Fax: [.....]

42. Attention: [.....]

Relationship Managers (clause 8)

43. The Relationship Managers are:

- For the Council: Pim de Monchy, Senior Land Management Officer.
- For the Contractor: [insert name and position of relationship manager or Contractor if an individual].

9 Auditing of the services

44. The Council will undertake regular audits of the Contractor's performance. These will occur on a monthly basis for the first six months and then at least once every six month period. The audits will involve one or more of the following:

- contacting randomly selected Coast Care volunteers and asking for feedback on the Contractor's performance
- contacting Tauranga City and Western Bay of Plenty District Council Park staff for feedback on the Contractor's performance
- good performance shall involve returning phone calls within one business day and returning emails within two business days (except during notified and agreed periods of absence).
- inspecting sites where the Contractor has been directed to work to ensure that work has been carried out to agreed standards, and that all legislative and local authority requirements have been met.
- inspecting the Contractor's Health and Safety Management Plan, and how it is implemented during Coast Care events to take all practicable steps to eliminate, isolate or minimise hazards and thus the probability of serious harm to any Coast Care participants or members of the public.



- **Consultant's Key Personnel Schedule**

2 Consultants Representative

Name:

Phone (Day):.....

Phone (Night).....

Phone (Mobile)

Fax:.....

Postal Address:.....

.....

3 Key Personnel (Consultant to List)

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4 Sub consultants (Consultant to List)

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● **Confirmation of Public Liability and Professional Indemnity Insurance Form**

1.44 To: Chief Executive
 1.45 Bay of Plenty Regional Council
 1.46 PO Box 364
 1.47 Whakatane 3158

1.48
 1.49..... F
 rom:.....(Name of Insurance)
 1.50.....
 1.51.....
 (Branch and Address)

1.52.....
 1.53..... D
 ear Sir

1.54.....
 1.55..... **Contract No.** **For:**
 1.56.....
 1.57..... W

we confirm that we have examined the insurance requirements of this contract.

1.58.....
 1.59.....
 (Name of Consultant)
 1.60.....

1 Has currently **Public Liability Policy No.** _____ in force with this company, and we undertake that this Policy will remain in force and not be amended or cancelled during the period of this contract or any extensions thereto, including the period of maintenance, without prior advice to you, and the Indemnity will be provided for all work carried out in performance thereof within the terms of the Policy.

Expiry date:

1.61..... T
 he following is also confirmed:

- Limit of Indemnity (\$1,000,000 minimum) \$
- The policy stands in joint names of principal and consultant
- The policy indemnifies principal and consultant in respect of all plant used in performance of this contract including Hired Plant
- That no 'special' terms conditions or exceptions have been applied to the Policy in respect of this contract.

2 Has currently **Forest and Rural Fires Act Policy No.**in force with this company to a maximum of \$..... cover and we undertake that this policy will remain in force and not be amended or cancelled during the period of this contract, or any extensions thereto, without prior advice to you.

1.62.....
 1.63..... Y
 ours faithfully
 1.64.....
 1.65.....Signed:
 1.66.....

1.67.....Full Name (Please print)

1.68.....

1.69.....Designation:

.....Date:

• **Confirmation of Consultant’s Health and Safety Management Plan**

1.70

1.71 To: Chief Executive
 1.72 Bay of Plenty Regional Council
 1.73 PO Box 364
 1.74 Whakatane 3158

1.75

1.76 **Contract Number 2011 0027: Coast Care Delivery – Matakana Island to Otamarakau**

1.77

1.78 We confirm that this company has a Health and Safety Management Plan in force, and we undertake that this Plan will remain in force and not be amended or cancelled during the period of this contract.

1.79

1.80 The following is confirmed:

1.81

1.82 Hazards are regularly reviewed and monitored, including consideration at employee team meetings. 1

1.83

1.84 A company system is in place for recording hazards and accidents. 2

1.85

1.86 A company emergency plan is in place for dealing with accidents. 3

1.87

1.88 Our company carries our regular health and safety training for employees. 4

1.89

1.90 Our company regularly inspects the workplace to ensure compliance with current safety procedures. 5

1.91

1.92 Our company has issued to all staff a company Health and Safety Manual. 6

1.93

1.94

1.95

1.96 D
 ated

1.97

1.98Name Signature

1.99
 1.100 D
 esignation.....

1.101

1.102Telephone Fax

1.103

1.104 F
 or and on behalf of

1.105..... (Company Name or Tenderer’s Full Name)

1.106

1.107 A
 ddress

Consultants Health and Safety Declaration Form

The Principal *(the person or organisation engaging the Contractor)*

Bay of Plenty Regional Council (the Bay of Plenty Regional Council)
 PO Box 364
 Whakatane 3158

The Consultant *(the person or organisation being engaged to perform services)*

Description of Service *(to be performed by the Contractor)*

The Consultant hereby acknowledges that:

- 1 They understand their obligations to themselves, their sub-contractors and their employees under the Health and Safety Act 1992, and confirm their intention to comply at all times while working on this contract.
- 2 They recognise that the Principal can be responsible for only advising the nature of and the methods of controlling, hazards specific to the Principal's business or worksite and that the Consultant shall apply best industry practice to ensure the safety of all involved at all times.
- 3 The Principal has advised the Consultant of the emergency procedures, location of emergency equipment, location and use of safety equipment, basic safety rules, hazards and hazard controls, go and no-go areas and access and authorisation requirements relevant to the service being provided.
- 4 The Consultant shall ensure that all their sub-consultants and employees are informed of the same and that no person shall be permitted to work on the contract without being so informed.
- 5 The Consultant has a health and safety management system in place, which ensures their compliance with the Health and Safety in Employment Act 1992 in connection with this contract.
- 6 The Consultant agrees to make available for inspection on demand by the Principal any documentation related to health and safety in connection with this contract.
- 7 The Principal has the right to monitor the Consultant's activities and carry out a safety audit from time to time during the progress of the contract.
- 8 The Principal has the right to suspend work at the Consultant's expense where the Principal is not satisfied that all practicable steps are being taken to ensure the health and safety of employees or others in connection with the contract.
- 9 The Consultant will advise the Principal immediately of any accidents, including those in which serious harm is caused or a significant hazard was involved, and meet the requirements of the Health and Safety in Employment Act 1992 in reporting serious harm accidents to the Department of Labour (OSH).
- 10 The Consultant will advise the Principal immediately of any new hazard created during the contract and will take all practicable steps to avoid harm being caused to any person as a result of such hazards.
- 11 Before beginning work on the contract, the Consultant will carry out a systematic identification of hazards likely to be encountered and will develop controls for all those identified as being significant hazards.

Signed for and on behalf of the Consultant	Signed for and on behalf of Bay of Plenty Regional Council
Full Name	Full Name
Signature	Signature
Position	Position
Date	Date

