

CONTRACT FOR SERVICES

BULLER DISTRICT COUNCIL

and

ÇEDILLA LIMITED

For

CHAIR, RESILIENT WESTPORT STEERING GROUP

BULLER DISTRICT VALUES

The following principles guide us in decision and action -

Community Driven

We are committed to making a difference in the community we call home

One Team

Shared direction, shared effort

Future Focused

We seek solutions that are fit for the future

Integrity

Open and honest in decisions and action

We Care

About people and place

Contract for Services

CONTRACT dated the 15th August 2023

PARTIES

1. Buller District Council (the “Client”)
2. Çedilla Limited (the “Contractor”).

AGREED

1. Term of Contract

This Contract for Services shall commence on 15th July 2023 and run until 30 June 2024, or until terminated in accordance with this Contract for Services or by the written agreement of the parties, whichever occurs first. For clarity, the contract is expected to only be of short duration, not exceeding 1 year.

2. Purpose

The Client and the Contractor agree that the Contractor shall provide the services specified in the Schedule to this Contract for Services (“the Services”) to the Client. The Client shall pay the contractor for the Services at the price or rate agreed and specified in the Schedule.

This Contract for Services sets out the terms and conditions that apply between the Contractor and the Client when the Contractor provides the Services to the Client.

3. Independent Contractor

The Contractor’s relationship with the Client is that of an independent contractor.

Nothing in this Contract for Services is to create an employer-employee relationship between the Client and the Contractor.

Accordingly:

3.1 Taxes:

The Contractor will be responsible for the payment of all taxes and other payments applicable under existing law including, but not limited to, GST, income taxes and accident compensation contributions. Except as provided in clause 6.4, the Contractor indemnifies the Client from these liabilities. The Contractor confirms that all necessary payments due to the appropriate government agencies to comply with the above will be paid by the Contractor. The Contractor undertakes that it has valid GST registration.

3.2 No Allowances:

The Contractor will not be entitled to any payments, fees, allowances or reimbursements other than those specified in the Schedule. Without limitation, the Contractor will not be entitled to any payments or benefits relating to sickness, superannuation, holidays, redundancy or the working of overtime or penal hours.

3.3 Invalidity:

Should any part or portion of this Contract for Services be held to be invalid, the remainder of the Contract for Services shall continue in force and effect as if the invalid provision had been deleted. The parties to this Contract for Services may negotiate a valid and enforceable provision to replace the invalid provision.

3.4 Training:

Not applicable.

3.5 Professional Skills:

Notwithstanding clause 3.4, the Contractor is responsible for ensuring that the Contractor's professional skills are maintained at professionally acceptable levels.

3.6 Assignment, Subcontracting etc:

The Contractor may not assign this Contract and may not subcontract any of its rights or obligations under this Contract for Services or engage or employ any person to provide the Services without the prior written consent of the Client. The Contractor will be responsible for the acts or omissions of its subcontractors, agents, advisers and employees providing any of the Services and will be liable to the Client to perform all its obligations under this Contract for Services notwithstanding that it has employed any person to perform any of the Services or subcontracted any of the Services.

3.7 Business Reputation:

The Contractor will undertake the Services in a professional manner at all times ensuring that the Client's business reputation is maintained. In performing the Services under this Contract for Services, the Contractor will co-operate with the Client's representatives, suppliers and any other agencies and contractors retained by the Client.

3.8 Warranties:

The Contractor warrants that:

- the Contractor has the necessary skills and qualifications to provide the Services to the Client; and
- no material provided to the Client by the Contractor in the course of providing the Services infringes any patent, trademark or other intellectual property rights of a third party.

3.9 Expenses:

Except as otherwise provided in the Schedule, the Contractor shall provide all facilities, equipment and material required for performance of the Services at its own cost.

3.10 Insurance:

The Client will procure that the Contractor will be covered by the Client's Directors and Officers Liability Insurance policy in the same manner as if he were an employee of the Client.

3.11 Health & Safety:

The Client must comply with the Client's Health & Safety policies and procedures at all times and must ensure that safe working environment is maintained.

4. Liabilities and Indemnities

The Client will procure, indemnify and protect the Contractor from and against any actions, losses, damages, costs, claims or expenses, or consequential damage that arise directly or indirectly in the same manner as if they were an employee of the Client.

5. Work Specifications

5.1 Standards:

The Contractor will perform the Services in a professional and diligent manner and in accordance with the performance standards in the Schedule. In providing the Services the Contractor will exercise the degree of skill, care and diligence normally exercised by competent contractors in similar circumstances.

5.2 Remedy Errors:

The Contractor will, at no cost to the Client, remedy any error made in the course of providing the Services.

5.3 Time of Essence:

Where the schedule of Services provides a time limit within which any of the Services shall be completed, or any product of the Services shall be delivered by the Contractor, the time limit shall be of the essence of this Contract.

6. Payment

Subject to the Contractor providing the Services in accordance with this Contract for Services, the Client shall pay the Contractor as follows:

6.1 Invoice:

At the end of each month the Contractor will produce a GST invoice specifying the Services performed for that month and the payment due, calculated in accordance with the rate agreed and specified in the attached Schedule. All invoices should be emailed to invoices@bdc.govt.nz.

6.2 Payment:

Subject to the Contractor complying with clause 6.1, the Client shall make payment to the Contractor on the 20th of the month following the invoice.

6.3 Fees:

The fees negotiated between the Contractor and the Client shall remain confidential in all circumstances.

6.4 GST:

In addition to the payment of the fees under clause 6.2, the Client agrees to pay the Contractor goods and services tax under the Goods and Services Tax Act 1985 ("GST")(if any) on those fees provided that:

- the Client shall not be liable to pay the GST unless the Contractor has provided the Client with the relevant GST invoice when requesting payment; and
- the Client shall not be liable to pay any GST penalties except for late payment penalties accruing where the Client has failed to make payment of the relevant GST to the Contractor when due under this Contract for Services.

7. Confidentiality

7.1 Confidentiality:

The Contractor will not during the term of this Contract for Services or after its termination or expiry, directly or indirectly, use or disclose any confidential information relating to any of the business or affairs of the Client which may come to the Contractor's knowledge except strictly as required in order to perform the Services and then, in the case of disclosure to a third party, only after advising the third party of the confidential nature of the information. The Contractor is responsible for any unauthorised use or disclosure of confidential information by any of its employees, agents, subcontractors or advisers.

7.2 Agreement:

If requested by the Client, the Contractor will promptly execute a confidentiality agreement in a form required by the Client and will procure the execution of such an agreement by any of its employees, subcontractors, agents or advisers performing any part of the Services.

8. Termination

8.1 Termination on Notice:

This Contract for Services may be terminated by either party without cause on not less than four weeks' notice in writing, or less by the mutual agreement of both parties.

8.2 Immediate Termination:

The Client may terminate this Contract for Services immediately on written notice to the Contractor if:

- the Contractor is, in the reasonable opinion of the Client, failing in a material respect to perform or comply with the Contractor's obligations under this Contract for Services and,
- the failure is not capable of remedy; or
- (where the failure is capable of remedy) the Contractor has not remedied the failure within 14 days after receiving notice from the Client requiring it to do so; or

- A named employee of or subcontractor to the Contractor, approved by the client under clause 3.6, becomes unavailable to continue to provide the Services; or
- The Contractor enters receivership or liquidation.

8.3 Effect of Termination:

Termination or expiry of this Contract for Services will not prejudice any rights or obligations of the parties which exist prior to termination or expiry or affect the rights and obligations of the Client and the Contractor which expressly survive termination, including without limitation the rights and obligations created in clauses 4, 5.2, 7, 9, 10, 11 and 15. No fee shall be payable to the Contractor in respect of a period beyond the date termination or expiry takes effect. On termination the Contractor will immediately deliver to the Client all property in its possession or control that belongs to the Client, and all records containing any of the Client's confidential information held by the Contractor and all data, work notes, reports and other work product, produced during the course of the Contractor's engagement by the Client.

9. Entire Agreement

This Contract for Services and attached Schedule(s) contain the entire understanding of the parties relating to the subject matter herein contained and no amendment to this Contract for Services will be effective unless it is in writing and signed by each party. This Contract for Services and all matters or issues collateral thereto will be governed by the laws of New Zealand.

10. No Waiver

No delay, neglect or forbearance by either party in enforcing against the other any provision of this Contract for Services will be a waiver, or in any way prejudice any right of that party.

11. Mediation and Arbitration

If a party considers a dispute has arisen under this Contract for Services, then that party is to notify the other party in writing of the details of that dispute. The parties are to seek in good faith to resolve any dispute under this Contract for Services by mediation in accordance with the standard mediation agreement of LEADR NZ (Leading Edge Alternative Dispute Resolvers New Zealand). The Chair of LEADR NZ (or the Chair's nominee) is to select the mediator on the application of either party and determine the mediator's fee.

If the dispute is not resolved promptly in mediation, then that dispute is to be referred to arbitration in accordance with the Arbitration Act 1996 or any replacement legislation. The arbitration is to be conducted by a single arbitrator agreed to by the parties or, if the parties do not agree on an arbitrator within [specify period] days after mediation is abandoned, then by an arbitrator nominated at the request of either party by the President of the New Zealand Law Society (or the President's nominee). The arbitrator is to have the power to award and assess damages and costs and the arbitrator's decision is to be final and binding on the parties.

A party may not commence court proceedings relating to a dispute under this Contract for Services (other than proceedings for urgent interlocutory relief) unless that party has first complied with the provisions of this clause.

12. Future Work

There is no commitment or understanding by either party on the termination or expiry of this Contract for Services to enter into any subsequent contract.

13. No Exclusivity

Nothing in this Contract for Services shall require either party to contract exclusively with the other provided that the Contractor shall not enter into an agreement with a third party which would represent a conflict of interest or adversely affect the performance of this Contract for Services.

14. Completeness

The parties agree that this Contract for Services supersedes all prior agreements between the parties.

15. Notices

Except as otherwise provided by this Contract for Services, every notice shall be in writing and sent by hand delivery, by prepaid registered mail or by facsimile to the address or facsimile number from time to time designated by that party in writing. Until any other designation, the address and facsimile of each party is as follows:

Client:	Buller District Council	Contractor:	Mike Mendonça
Address:	6-8 Brougham Street Westport	Address:	43a Calcutta St Khandallah Wellington
Contact:	Sean Judd	Contact:	Mike Mendonça
Phone:	027 298 7594	Phone:	021 843929
Email:	Sean.Judd@bdc.govt.nz	Email:	mike@cedilla.co.nz

A communication sent within New Zealand is deemed to be received:

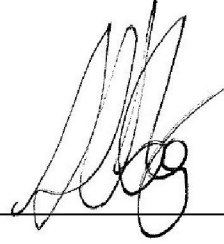
- if sent by hand delivery, on delivery;
- if sent by registered mail with postage prepaid, on the third day after posting; or
- if sent by facsimile, on successful transmission or, if despatched after 5 pm, on the next working day following the day of despatch.

Execution

Dated this 1st day of September 2023

Signed on behalf of Buller District Council by:

Steve Gibling



1 September 2023

(Name)

Chief Executive Officer

[Date]

(Designation)

in the presence of :



(Signature of Witness)

Kirstin McKee

(Name of Witness)

Executive Assistant

(Occupation of Witness)

Westport

(Address of Witness)

Signed on behalf of Çedilla Limited by:



MIKE MENDONÇA
Director

15th August 2023

in the presence of :



STACEY MENDONÇA
Quantity Surveyor
43a Calcutta Street
WELLINGTON 6035

15th August 2023

SCHEDULE 1

Resilient Westport Steering Group - Chair

In February 2022 the Minister for Local Government wrote to the West Coast Regional Council and the Buller District Council inviting a set of solutions to enhance the flood resilience of the Buller District where the Government might consider co-investment. The co-investment would need to be described in an integrated package focussed on longer term flood resilience.

The Councils and Ngāti Waewae submitted a proposal in June 2022. The proposal was structured around the PARA framework:



The proposal offered to showcase Westport as a model for how small communities might rise to these challenges.

The proposal requested financial support from the Government of \$45.5m in 16 key initiatives. In May 2023 the Government agreed to provide \$22.9m to cover:

- Structural protection for Westport (the ring -bank)
- Organs Island reforestation
- Restore emergency fund
- Manage contingency
- CDEM capability (with BDC)
- Sea level monitor/tide gauge
- With TTPP strengthen rule limiting development and intensification in high risk areas
- Plan for include future land use, open spaces and infrastructure in low risk areas
- Manage adaptation relief for initiatives such as raised floor heights, moveable flood barriers

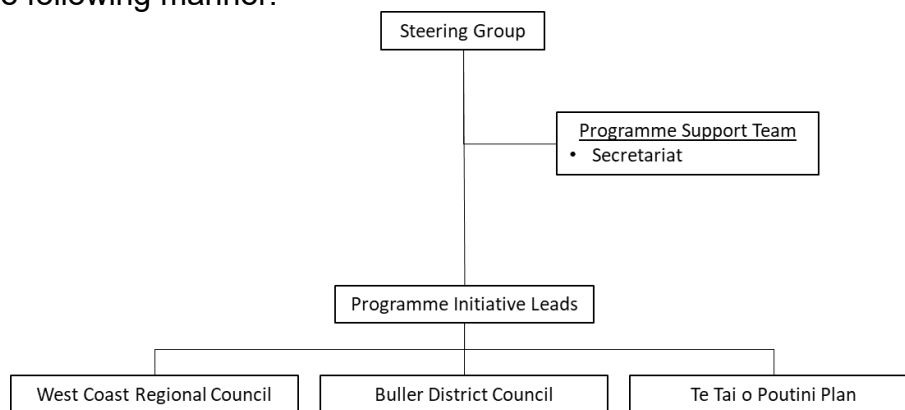
A Steering Group was established in June 2023 comprising Buller District Council, the West Coast Regional Council, iwi, the Department of Internal Affairs (DIA) and the National Emergency Management Agency (NEMA). The Steering Group aims to:

- Reduce the extent, frequency and consequences of flooding from severe weather events on the Westport community, recognising and providing for the likely impacts of climate change.
- Minimise increasing or transferring flood risk to other areas or properties within the catchment or wider region.
- Ensure the community voice is heard throughout the programme, and at key junctures where significant decisions are to be taken.
- Improve the ability of the Westport community to prepare for, continue functioning during and after, and recover quickly from flooding events, recognising that ‘absolute protection’ is not possible and that there will be some level of residual risk of flooding.
- Reduce undue long-term financial burden on the community of flood mitigation and protection.
- A framework is in place that is a model for other resilience projects.
- Te Ao Māori is embedded in project thinking and design.
- Project management practices and culture are considered best in class.

The Steering Group is independently chaired with a detailed terms of reference aimed at delivering the above objectives.

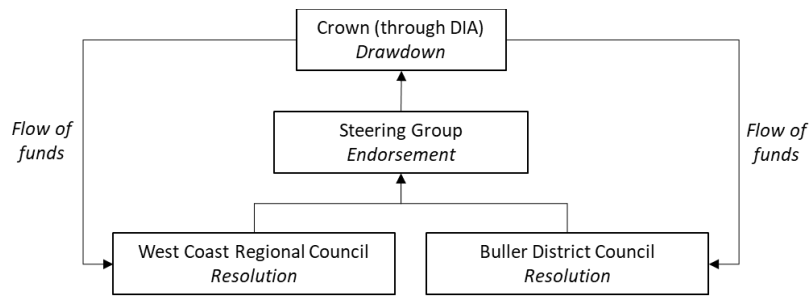
Scope and Hours of Work

The purpose of the Chair is to successfully convene and administer the Steering Group and its business as described in the terms of reference. The Steering Group is expected to operate in the following manner:



The Chair is responsible for tasking the Programme Support Team. The Programme Support Team is not covered by this contract.

The Chair must ensure that the Steering Group provides endorsement of drawdowns of Government funding using this model:



The Chair is independent of the Councils and has the following detailed tasks:

- Convenes and oversees administration of the Steering Group.
- Co-ordinates parties to ensure efficiency and integration of effort.
- Spokesperson for Steering Group matters (but not individual project matters).
- Oversees mechanisms for escalation of risk and removal of obstacles.
- Ensures endorsement of requests for funding drawdowns to DIA.
- Oversees smooth running of secretariat function.

The Chair is not a fulltime role and, while there may be variations from time to time, it is expected that this role will require no more than 1-2 days (maximum) per week, and within the cost ceiling agreed by the Steering Group on 21st July 2023.

SCHEDULE 2

Fees and Expenses

- Contract rate – \$1100 per diem (GST exclusive)

Travel

- Travel expenses include the cost of flights, taxis, rental cars and accommodation where overnight stay is unavoidable.
- Travel expenses must be approved by the Client prior to being incurred.
- The Contractor will make every endeavour to use existing or shared travel arrangements whenever possible.
- The Client will reimburse pre-approved travel expenses on production of receipts.
- Meals are excluded from travel expenses.