Turitea Wind Farm Development Agreement

Mighty River Power Limited (Mighty River)

Palmerston North City Council (Council)
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Date: 28 September 2005

PARTIES

Mighty River Power Limited (Mighty River)

Palmerston North City Council (Council)

BACKGROUND

A The Council is the registered proprietor of the Land, which is held under the Reserves Act 1977

B The Council has requested proposals for the establishment of a Wind Farm on the Land, and Mighty River has submitted a proposal to Council.

C As a consequence of those submissions, Mighty River and the Council have agreed the terms on which Mighty River may have access to the Land to investigate the viability of locating a Wind Farm on the Land, and subject to the satisfaction of certain conditions, the terms on which the Council will grant and Mighty River will accept a Lease and associated Easements over parts of the Land for the purpose of construction and operation of a Wind Farm.

D The rights granted to Mighty River by Council under this Agreement and under the Lease (when granted following satisfaction of the Conditions) are:

   (a) An exclusive right to conduct Investigations and feasibility studies on the Land;

   (b) A construction licence for the construction of the Wind Farm;

   (c) A Lease of the Leased Area for the construction, maintenance and operation of the Wind Farm;

   (d) Easements over the Land for access, telecommunications, services and electricity transmission.

E Mighty River and the Council now wish to enter into this Agreement for the purpose of setting out their respective rights, interests and obligations.
THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement unless the context otherwise requires:

Adjacent Owners means the owners for the time being of those properties adjacent to or in the vicinity of the Land which Mighty River wishes to use in conjunction with any part of the Wind Farm Project;

Adverse Effect means an adverse effect on water quality that cannot reasonably be mitigated and which will reduce water quality to below the applicable Ministry of Health guidelines for human consumption, and Adversely Affecting has a corresponding meaning;

Authority means any Government authority whether national or territorial or any other statutory authority in New Zealand having jurisdiction over or in respect of the Land or any structures erected on the Land;

Capacity means the total generating capacity of the Wind Farm (calculated in Megawatts) installed and commissioned on the Leased Land;

Commencement Date means the date on which the last of the Conditions to be satisfied or waived is so satisfied or waived;

Condition(s) means the conditions subsequent set out in clause 6.2, or any one of them;

Consent includes any consent, approval, authorisation, exemption, filing, licence, order, permit, from an Authority and includes the Resource Consents;

Construction Area means that part of the Permitted Lease Area nominated by Mighty River, in the plan submitted to Council by Mighty River under clause 6.4(a), for occupation and use by Mighty River for the construction of a Wind Farm, and for storage of vehicles, machinery and any other equipment necessary for that construction;

Control Station means building(s) and associated hard standing(s) that may include, but may not be limited to, the Wind Farm control room, substation including switchgear and transformers, workshop and compound, offices, meeting rooms, ablution and other staff facilities, signage and access and egress arrangements;

Default Date means the default date specified in the Project Timeline for each milestone set out in the Project Timeline;
Development Fee means the fee calculated in accordance with clause 1 of Schedule 4;

Easements means the right of way, electricity and services easements to be granted to Mighty River pursuant to the terms of the Lease;

Easement Area means that part of the Land for the Easements as identified by Mighty River in the plan submitted to Council by Mighty River under clause 6.4(a), such area to fall outside of the Excluded Land;

Eco-Park means the proposed Ecological Park which the Council intends to establish on the Land, and adjoining land in the event the Wind Farm Project proceeds;

Excluded Land means:

(a) The land known as Hardings Park;

(b) Those parts of the Land shaded in blue on the plan of the Land attached as Schedule 1;

which may not form part of the Permitted Lease Area, Easement Area or Construction Area;

Existing Structures means any buildings, fences, irrigations systems, utility services or other improvements including plantation and crops located on the Land at the time of entry into this Agreement;

Hardings Park means that part of the land contained in certificate of title 373/131 (Wellington Registry) shown with the letter "C" on Survey Office Plan 310933;

Investigations means any investigations, surveys, tests and collection of data carried out by Mighty River on the Land from time to time to determine the technical and economic viability of the Wind Farm Project;

Investigation Rights means the investigation rights granted to Mighty River pursuant to clause 4;

Investigation Rights Term means the term of the Investigation Rights as described in clause 4.4;

Land means the Land described in Schedule 1;

Lease means a lease entered into pursuant to clause 6, the form of which is attached as Schedule 3;
Leased Land means those parts of the Permitted Lease Area which Mighty River elects to take on Lease, as identified in the plan submitted to Council by Mighty River under clause 6.4(a);

National Grid means the system of transmission lines, substations and other works (including the HVDC link between the North Island and the South Island) owned by Transpower New Zealand Limited and used to convey electricity throughout New Zealand;

Permitted Lease Area means that part of the Land outlined in red on the plan of the Land attached as Schedule 1, which cannot include any part of the Excluded Land;

Project Timeline means the project timeline set out in Schedule 5;

Resource Consents means the resource consents required under the Resource Management Act 1991 for the Wind Farm Project and the deemed subdivision arising under the Lease;

Target Date means the target date for a milestone set out in the Project Timeline;

Wind Farm means a wind farm power generation scheme including, without limitation:

(a) a number of Wind Turbines located in proximity to each other and electrically interconnected;

(b) Wind Monitoring Towers;

(c) all other works associated in any way with wind power generation, including a Control Station;

(d) works associated with the construction and operation of a Wind Farm, including construction of access roads; and

(e) electricity transmission lines connecting each component of the Wind Farm to the other components and to the National Grid, to support the transmission of electricity generated by the Wind Farm;

Wind Farm Project means the construction, operation and maintenance of a Wind Farm on the Leased Land in accordance with the Lease;

Wind Monitoring Equipment means Wind Monitoring Towers and any other works, equipment or improvements erected or placed on the Land by Mighty River for the purpose of carrying out the Investigations;
Wind Monitoring Tower includes a tower, anemometers, wind vanes, temperature sensors, data loggers and other associated and ancillary equipment;

Wind Turbine describes all the components that collectively make up a single "stand-alone" wind generating unit. The components include, but are not limited to, blades, hub, all the turbine and generator rotating and stationary equipment, gearbox, generator transformer, all ancillary equipment such as governor, excitation, voltage regulation, control, protection, monitoring, cooling and lubrication equipment and the turbine tower, tower foundation ring and access in to these components and equipment;

Working Day means any day of the week other than Saturday, Sunday and statutory holidays in the district in which the Land is located.

1.2. Interpretation
In the interpretation of this Agreement, unless the context requires otherwise:

Clauses and Schedules: a reference to a clause or a schedule is to a clause or schedule of this Agreement and a reference in a schedule to a clause is a reference to a clause in that schedule;

Currency: a reference to any monetary amount is to New Zealand currency;

Defined Terms: words or phrases appearing in this Agreement with capitalised initial letters are defined terms and have the meanings given to them in this Agreement;

Documents: a reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time;

Headings: headings appear as a matter of convenience and do not affect the construction of this Agreement;

Joint and Several Liability: any provision of this Agreement to be performed or observed by two or more persons binds those persons jointly and severally;

Negative Obligations: a reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done;

No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule does not apply to this Agreement;

Parties: a reference to a party to this Agreement or any other document includes that party’s personal representatives/successors, contractors, employees (if acting on behalf of a party) and permitted assigns;
Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Related Terms: where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Schedules: the schedules form part of this Agreement;

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

Time: a reference to time is to New Zealand time;

Working Days: anything required by this Agreement to be done on a day which is not a Working Day may be done effectually on the next Working Day;

Writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

2 PAYMENTS

2.1 Development Fee
Mighty River agrees to pay the Council a non-refundable Development Fee in accordance with clause 1 of Schedule 4.

2.2 Lease Rent
If the parties enter into the Lease in accordance with clause 6, Mighty River will pay a rent as set out in clause 2 of Schedule 4.

3 RECONCILING MIGHTY RIVER’S AND COUNCIL’S RESPECTIVE INTERESTS AND RIGHTS

3.1 Mighty River acknowledges that:

(a) the Land is held for the local purpose of water supply;

(b) the Land is a strategic asset of the Council and residents of Palmerston North City;

(c) the Land will form part of the Eco-Park;
(d) the maintenance of the Land’s capacity and the capacity of the infrastructure on the Land to continue to provide high quality water is of the utmost importance; and

(e) it is also of the utmost importance that the capacity of the catchment is capable of being enhanced to meet the needs of population growth.

3.2 Council acknowledges Mighty River’s rights under this Agreement (subject to satisfaction of the Conditions) to construct, operate and maintain the Wind Farm Project.

3.3 Council and Mighty River each agree and acknowledge that, provided appropriate construction protocols and mitigation measures are in place:

(a) There is no inherent conflict between the matters addressed in clause 3.1 and the exercise by Mighty River of its rights under clause 3.2;

(b) If any conflict between the matters in clause 3.1 and Mighty River’s rights under clause 3.2 arises, Council and Mighty River will work together to reach a reasonable resolution of those conflicts.

3.4 In exercising any rights conferred on Mighty River under this Agreement the following obligations apply to Mighty River:

(a) Mighty River must not carry out any activities on the Land that have the consequence of Adversely Affecting the effective functioning of Council’s water catchment on the Land and Council’s infrastructure related to water catchment;

(b) Mighty River must not carry out any activities on the Land that have the consequence of Adversely Affecting the quality of water collected on the Land by the Council and in particular, Adversely Affecting Council’s ability to maintain the water status; and

(c) Mighty River must consent to the Council carrying out activities and works on the Land that it deems on reasonable grounds are necessary to maintain or enhance the catchment’s capacity to provide high quality water to the residents of Palmerston North, provided that such activities and works are effected so as to cause minimum disruption and inconvenience to Mighty River and the exercise of its rights under this Agreement.

3.5 Nothing in this Agreement shall be construed as placing an obligation on the Council to do any act or to consent to or permit any act or omission that will have the consequence of Adversely Affecting the effective functioning of the Council’s water catchment or the quality of the water collected from the catchment.
3.6 In relation to water quality, Council and Mighty River each agree that:

(a) Council will be responsible, at its own cost, for monitoring water quality levels on the Land;

(b) If an issue arises regarding water quality levels, then as a matter of urgency (recognising the importance of the water supply):

(i) Council will notify Mighty River of that issue;

(ii) Council and Mighty River will jointly investigate the issue and its possible cause(s);

(iii) Council and Mighty River will agree on a mitigation plan to resolve that issue, with any disputes being resolved in accordance with clause 14;

(iv) Council will be responsible for implementing the agreed mitigation plan;

(v) Council and Mighty River will meet to discuss the results of implementing the agreed mitigation plan and resolution of the issue; and

(vi) Mighty River will meet Council's reasonable costs in implementing the agreed mitigation plan, to the extent that Mighty River's activities were the cause of the issue.

3.7 The parties will meet to negotiate and agree on access and security procedures in relation to the Land, prior to commencement of the Lease.

4 AGREEMENT AND GRANT OF INVESTIGATION RIGHTS

4.1 Term of this Agreement
For the avoidance of doubt, this Agreement will not terminate upon the grant of the Lease or the termination of the Investigation Rights, and will remain in full force and effect until the expiry or sooner termination of the Lease.

4.2 Termination of Agreement
In the event of termination of this Agreement, the Investigation Rights will terminate, and neither party will have any right or claim against the other (subject to clause 17.13), except that the Council may require Mighty River to promptly:

(a) remove all above ground Wind Monitoring Equipment brought on to the Land by Mighty River;
(b) restore the surface of the relevant parts of the Land (including, in relation to any Wind Monitoring Equipment on or under the surface of the Land, covering that equipment with sufficient clean fill to ensure that any such equipment does not unreasonably interfere with the use in the future of the Land for a local purpose reserve) to a suitable condition having regard to its condition and use prior to installation of Wind Monitoring Equipment;

(c) make good any damage caused by Mighty River to the Land or any Existing Structures.

4.3 **Grant of Investigation Rights**

In consideration for payment of the first instalment of the Development Fee and Mighty River's agreement to provide support to the Eco-Park under clause 7.1(a), the Council grants Mighty River the exclusive Investigation Rights to:

(a) have access to and use the Land (other than the Excluded Land); and

(b) have access to the Excluded Land only with the consent of Council, with such consent to be at the sole discretion of Council;

for the purpose of investigating the feasibility of establishing a Wind Farm on the Land (other than the Excluded Land), and on the terms and conditions set out in Schedule 2.

4.4 **Term of Investigation Rights**

The Investigation Rights will commence on the date of this Agreement and continue, unless this Agreement is sooner terminated, until the sooner of the following dates:

(a) the last to occur of:

   (i) the date of satisfaction or waiver (as the case may be) of all of the Conditions;

   (ii) the date on which that the parties agree (with such agreement not to be unreasonably withheld) that the Conditions or any one of them cannot be satisfied, with any dispute to be resolved in accordance with clause 14; and

(b) the date that is 5 years after the date of this Agreement, provided that this timeframe will not be interpreted as affecting Mighty River's obligations under clause 5.3(a).

4.5 **Investigation Rights exclusive**

The Council agrees that the Investigation Rights to investigate the Land to determine the viability of the Wind Farm Project are exclusive rights. The Council
will not grant any rights to third parties in respect of the Land during the term of the Investigation Rights which are inconsistent with these rights.

4.6 Restrictions on Land use during term of Investigation Rights
During the Investigation Rights Term the Council will not construct any buildings, irrigation systems or other major improvements including plantations on the Land (excluding the Excluded Land) without the prior written consent of Mighty River (such consent not to be unreasonably withheld).

5 CONSULTATIVE ACTIONS DURING INVESTIGATION RIGHTS PERIOD

The parties record that, in consultation with each other and consistent with a spirit of partnership and as set out in clause 5.4:

5.1 Initial Consultation
(a) Mighty River acknowledges that, in order to undertake Council’s obligations under this clause 5.2, Council requires more information than it currently holds regarding the type of Wind Farm Project that Mighty River proposes to operate, and the possible effect that a Wind Farm may have on the Land and surrounding environment.

(b) To assist Council with its obligations, Mighty River will therefore, by the relevant Target Date, provide to Council in writing:

(i) Indicative material regarding the type of Wind Farm that Mighty River proposes to operate on the Land, including information regarding Wind Turbines, the approximate location of structures on the Land, and approximate locations of the Leased Area, Construction Area and Easement Area;

(ii) A report from an appropriately qualified ecologist identifying any potential adverse ecological effects associated with the construction of a Wind Farm on the Land. The ecologist shall also report following consultation with the Council, on practical measures (based on reasonable cost/benefit) to materially improve the ecological health of flora and fauna on the Land (and Hardings Park) including the enhancement of Indigenous biological diversity using funds received by the Council from the revenue streams created by electricity generation under this Agreement and the Lease;

(iii) A report from an appropriately qualified landscape architect or person with an equivalent skill set on the potential adverse effects on the landscape and scenic values of the Land (and the Turitea Reserve generally) of the construction of a Wind Farm on the Land.
(c) If the Council elects to proceed with a Wind Farm, the Council may use the results under clause 5.1(b) when carrying out any consultative procedure under the Local Government Act or Reserves Act, or otherwise and it shall be a term of the engagement of the experts that the experts are available to the Council for that purpose.

(d) The information provided by Mighty River under clause 5.1(b) is indicative only, to assist Council in meeting its obligations under clause 5.2, and nothing in this clause will oblige Mighty River to complete the Wind Farm Project in accordance with that information. However, if the adverse landscape, visual amenity or other environmental impacts of the Wind Farm Project will substantially increase beyond those identified in the information provided by Mighty River under clause 5.1(b), due to an alteration to the number, location or type of Wind Turbines or structures, any such alteration will require the consent of the Council, such consent not to be unreasonably withheld.

(e) The Council shall consult with Mighty River following receipt from Mighty River of the Information in clause 5.1(b) as to Council’s requirements for information, the adequacy of the information provided by Mighty River and Council’s view of the indicative Wind Farm information.

(f) Upon receipt of the information from Mighty River under clause 5.1(b) the Council shall at its entire discretion by the relevant Target Date:

(i) decide to proceed with a Wind Farm on the Land;

(ii) decide that it does not wish to proceed with a Wind Farm on the Land, in which case the Council will refund to Mighty River the Development Fee paid by Mighty River under clause 1(a) of Schedule 4, and this Agreement shall be at an end; or

(iii) require changes to the indicative number, type and/or location of turbines and structures and/or changes to the approximate locations of the Leased Area, Construction Area and Easement Area (including any changes as a result of any requirement on Council to replant its harvestable forest adjoining South Range Road, provided that Council will, prior to receipt of notice from Mighty River under clause 5.1(b), use its best endeavours to be released from the obligation to replant).

If Council selects option (iii) the parties will, in good faith, negotiate the changes (including changes to the rent structure to fully compensate Mighty River if such changes result in the Capacity being less than 150 megawatts) but failing agreement within a further 14 days the Council will
refund to Mighty River the Development Fee paid by Mighty River under clause 1(a) of Schedule 4, and this Agreement shall be at an end.

5.2 Council’s Obligations
If the Council elects to proceed with a Wind Farm, Council will at its own cost:

(a) take all actions necessary to change the purpose for which the Land is held as a local purpose reserve under the Reserves Act 1977 to a purpose which will accommodate the Wind Farm Project, or if required, revoke the local purpose reserve classification of the Leased Land with the approval of the Minister of Conservation;

(b) change, in accordance with s 41 of the Reserves Act 1977, the management plan for the local purposes reserve over the Land so as to authorise the use of the Land for a Wind Farm;

(c) complete any special consultative procedures required by the Local Government Act 2002 to enable the wind farm project to proceed and any other statutory procedures required; and

(d) take all actions necessary under the Reserves Act (s.48) to provide easements to Mighty River over the easement area.

5.3 Mighty River’s Obligations
If the Council elects to proceed with a Wind Farm, Mighty River will at its own cost:

(a) carry out the Investigations and inquiries as to the procurement of Wind Farm components, to determine the technical and economic feasibility of the Wind Farm Project;

(b) identify the optimal location within the Permitted Lease Area for the components of the Wind Farm and any other infrastructure necessary for construction and operation of a Wind Farm;

(c) depict on a plan of the Land the:

   (i) Leased Land;

   (ii) Construction Area; and

   (iii) Easement Area;

(d) negotiate with Adjacent Owners for the rights to establish Wind Turbines, associated cables, and any necessary easements for access for the construction and operation of the Wind Farm Project, or for the
transmission of power, which in Mighty River’s sole opinion are required for the viability of the Wind Farm Project;

(e) undertake all necessary preliminary consultation regarding the Wind Farm Project with all affected persons, including community groups, organisations and IWI;

(f) prepare all supporting reports (including an assessment of environmental effects) for the Resource Consents; and

(g) lodge, and diligently proceed with, the applications for Resource Consents.

5.4 Completion of Parties’ Obligations
The parties will each use their reasonable endeavours to complete their respective obligations under this clause 5:

(a) in accordance with the Project Timeline and, where possible, in advance of the Target Dates for completion of each milestone in that Project Timeline; and

(b) in such a way that assists the other party to complete that other party’s obligations.

5.5 Review of Project Timeline
The parties will regularly review and amend as appropriate the Target Dates for completion of each milestone in the Project Timeline. If, prior to the relevant Default Date, a party has undertaken reasonable endeavours but has been unable to achieve a milestone by the Target Date for that milestone and can demonstrate a reasonable likelihood of achieving that milestone, that party will be entitled to have the Target Date and corresponding Default Date extended until the estimated date on which that milestone will be completed. Any disputes under this clause will be resolved under clause 14.

5.6 Default Notice
If a milestone specified in the Project Timeline is not achieved by the Default Date for that milestone, the party who is not responsible for achieving that milestone may give notice (Default Notice) to the party responsible for achieving that milestone, specifying the default and requiring that default to be remedied within 90 Working Days of receipt of the Default Notice.

5.7 Termination
If a default specified in a Default Notice is not remedied within 90 Working Days of receipt of that Default Notice, the party who gave the Default Notice may, on the expiry of that period, give written notice to the other party terminating this Agreement, in which event this Agreement will terminate on receipt of that termination notice.
5.8 **Project Information Following Termination**
If this Agreement is terminated pursuant to clause 5.7 following a failure by Mighty River to comply with a Default Notice or for non-satisfaction of the Conditions in clause 6.2(a) or (d), Mighty River will offer to the Council on reasonable commercial terms, all experts’ reports, wind data, Resource Consents or applications prepared, obtained or acquired by Mighty River specifically in relation to the Wind Farm Project. Any dispute as to the terms of this offer to Council will be resolved in accordance with clause 14.

6 **GRANT OF LEASE**

6.1 **Grant of Lease**
Mighty River and Council agree that, subject to the satisfaction of the Conditions, Council will grant to Mighty River, and Mighty River will accept from Council, the Lease, which includes:

(a) a licence for the Construction Area;

(b) a lease of the Leased Land; and

(c) the Easements;

for the purposes of construction, operation and maintenance of the Wind Farm Project and on the terms and conditions set out in Schedule 3.

6.2 **Conditions**
The grant of the Lease in clause 6 is conditional upon:

(a) the grant of the Resource Consent on conditions acceptable to Mighty River, provided that Mighty River will not unreasonably object to any conditions which are consistent with those normally imposed on wind farms in the Manawatu region;

(b) revocation of the reserve classification of the Leased Land or alternatively the change by Council, on terms acceptable to Council and Mighty River, of the purpose for which the Land is held as a local purpose reserve under the Reserves Act 1977 to a purpose which will accommodate the Wind Farm Project;

(c) the change by Council on terms acceptable to Council and Mighty River of the management plan for the local purposes reserve over the Land so as to authorise the use of the Land for a Wind Farm;

(d) Mighty River being satisfied in its sole discretion as to the:

(i) technical and economic feasibility of the Wind Farm Project; and
(ii) arrangements concluded with the Adjacent Owners for any necessary easements for access and transmission of power;

(e) Council completing and complying with all other legal or statutory processes necessary to allow the operation of the Wind Farm Project; and

(f) Council and Mighty River agreeing on an erosion and sediment control plan to protect soil and water values so as to minimise and mitigate Adverse Effects, and to avoid the discharge of contaminants into the water supply catchment, where this may have an Adverse Effect;

by the expiry of the Investigation Rights Term.

6.3 Operation of Conditions
The following shall apply in respect of the Conditions:

(a) each Condition shall be a condition subsequent;

(b) the Conditions in clauses 6.2(a) and (d) are each inserted solely for the benefit of Mighty River and may each be waived by Mighty River;

(c) The Conditions in clauses 6.2(b), (c), (e) and (f) are each inserted for the mutual benefit of Mighty River and Council, and may only be waived by both parties acting together;

(d) the party or parties for whose benefit each Condition has been inserted must do all things which may reasonably be necessary to enable the Condition to be fulfilled as quickly as possible;

(e) each Condition shall be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other party;

(f) if the parties agree (with such agreement not to be unreasonably withheld) that any Conditions which have not been waived or satisfied cannot be satisfied, with any dispute to be resolved in accordance with clause 14, then either party may terminate this Agreement by giving notice of such termination to the other party.

6.4 Action on Satisfaction of Conditions
As soon as possible after the Commencement Date, Mighty River will:

(a) confirm to Council in writing (including an appropriate plan) details of the:

   (i) Leased Land;

   (ii) Construction Area; and
(iii) Easement Area; and

(b) prepare the Lease at its own cost, sign it, and submit it to the Council for signing.

6.5 Signing of Lease by Council
The Council must sign the Lease and return it to Mighty River within 20 Working Days of receiving it from Mighty River.

6.6 Lease Effective
The Lease will be deemed to be effective and binding on both parties from the Commencement Date.

7 ADDITIONAL SUPPORT TO COUNCIL

7.1 Eco-Park Support
(a) In partial consideration for the grant of the Investigation Rights, Mighty River agrees, in consultation with Council, to extend at Mighty River’s own cost the scope of the technical and other studies (including the studies referred to in clause 5.1(b)) required in support of Mighty River’s applications for Resource Consents, to include Hardings Park and other areas of land owned by Council in the vicinity of the Land as requested by Council, to assist Council in developing the Eco-Park.

(b) Mighty River will not be required to pay more than $200,000 plus GST for the studies referred to in clause 7.1(a).

7.2 Conservation Support
(a) During the term of the Lease Mighty River will financially support conservation, ecological and management initiatives relating to the Turitea Reserve, Hardings Park and other associated facilities owned by Council, by paying to Council up to $30,000 plus GST on average per annum, on the basis of a dollar-for-dollar matching of similar expenditure by Council. Mighty River will be entitled to public recognition of this support commensurate with the value of Mighty River’s support.

(b) Mighty River and Council will agree on and record the basis on which the payments in clause 7.2(a) will be made and administered, and how Council will recognise Mighty River’s support such as by granting naming rights, signage rights or other non-financial ways.

(c) The amount specified in clause 7.2(a) will be increased on each anniversary of the date of the first payment by Mighty River, on the same basis as set out in clause 2.2 of Schedule 4, with all necessary modifications, provided that the amount payable shall never reduce as the result of a review.
7.3 Roading Infrastructure

(a) Subject to the Conditions being satisfied and in partial consideration for the grant of the Lease, Mighty River and Council acknowledge that Mighty River will need (at Mighty River’s cost) to upgrade Pahiatua Track, South Range Road, Kahuterawa Road and Greens Road to a sufficient standard to allow Mighty River to exercise its rights under this Agreement and the Lease.

(b) Mighty River and Council acknowledge that the upgrading work referred to in clause 7.3(a) may cost up to $400,000 plus GST;

(c) Mighty River and Council will consult to determine a basis for the upgrading work to be carried out to Mighty River’s specifications, and will endeavour to facilitate an application by Council to Land Transport New Zealand or another Government agency for funding with Council’s roading expenditure;

(d) During the term of the Lease (other than the Construction Period) Council will (at its own cost) maintain roading within the Turitea Reserve, Browns Flat and the links to the Pahiatua Track and Greens Road, to the standard set out in Schedule 6.

(e) Mighty River will, at the end of the Construction Period, leave the roading infrastructure referred to in clause 7.3(e) in good order, repair and condition;

(f) Council’s obligation in clause 7.3(d) is entirely on the basis that, after the Construction Period, Mighty River’s use of those roads is consistent with maintenance and operation of the Wind Farm Project, and if Council considers that other or unreasonable use (taking into account matters including weather conditions) of those roads by Mighty River will increase the maintenance required beyond the level referred to in clause 7.3(f), Mighty River and Council will agree on a shared maintenance programme, so that Mighty River meets those additional maintenance costs; and

(g) Mighty River acknowledges that Council anticipates that Council’s obligation in clause 7.3(d) may cost on average up to $20,000 plus GST per annum.

7.4 Eco-Park Infrastructure

(a) Subject to the Conditions being satisfied and in partial consideration for the grant of the Lease, Mighty River will fund the construction by Council of the following Eco-Park infrastructure:

(i) public toilet blocks;
(ii) shelters;

(iii) public viewing platforms;

(iv) other similar structures as determined by Council;

up to a maximum cost of $240,000 plus GST.

(b) The parties will meet to agree reasonable locations, specifications and construction timetable of the Eco-Park infrastructure in clause 7.4(a) however it is the expectation of the parties that construction shall take place during the construction of the Wind Farm.

(c) In addition to the payment in clause 7.4(a), Mighty River will construct (at its own cost) one turning circle, and up to 5 hard-standing areas, each suitable for parking by up to 3 mini buses on the Land nominated by Council, all to be constructed in conjunction with the roading upgrades referred to in clause 7.3(a).

8 ONGOING RELATIONSHIP FOR ELECTRICITY SUPPLY & GENERATION

8.1 The Council acknowledges that Mighty River is the Council’s preferred supplier of electricity and gas, and preferred partner for electricity generation projects.

8.2 The Council agrees with Mighty River that:

(a) The Council will invite Mighty River to submit to the Council a proposal for the supply by Mighty River of electricity and gas to the Council as from the expiry of the Council’s existing supply arrangements;

(b) If, at any time within 5 years from the date of this Agreement, the Council is considering becoming involved in an electricity generation project with an electricity operator, it will give Mighty River the first opportunity to submit a proposal to be involved with the Council in that project;

(c) If, at any time within 5 years from the date of termination of this Agreement under clause 5.1(f), the Council is considering allowing a Wind Farm to be constructed and operated on the Land, it will give Mighty River a right of first refusal to construct and operate a Wind Farm on the Land, provided that Mighty River still meets the criteria in clause 16.1(a). The parties agree that they will each act in good faith at all times in complying with their obligations under this clause.

8.3 Mighty River agrees with the Council that, if the Conditions are satisfied, any contract for the supply of electricity by Mighty River to the Council within 5 years of the date of this Agreement will include provision for Council to net-off
electricity supply and purchase, at a maximum administration fee payable to Mighty River of 0.5 cents per kWh for the Council’s electricity generation (subject to review on the same basis as set out in clause 2.2 of Schedule 4, with all necessary modifications).

8.4 The Council agrees with Mighty River that if, at any time within 5 years from the date of this Agreement, the Council is considering contracting for electricity supply, it will give Mighty River the first right to negotiate to provide that supply. For the avoidance of doubt, if a third party makes an offer to Council that is more favourable to Council than Mighty River’s offer, Council will not be obliged to accept Mighty River’s offer.

8.5 Nothing in this clause 8 shall give Mighty River rights against the Council to any cost exposure claims or damages whatsoever or howsoever caused.

9 SURVEY EASEMENTS AND REGISTRATION

9.1 Surveys and Registration
Mighty River will be responsible at its own cost and expense in all things for carrying out and arranging all necessary survey work required for the completion and registration of the Lease and easements as required to give full and proper effect to the rights granted to Mighty River under this Agreement.

9.2 Consents
Mighty River will ensure that the Council receive appropriate copies of plans and or Consent applications made to any Authority prior to lodging with any Authority. Mighty River will provide the Council with any proposed Consent conditions as soon as they are available and keep the Council informed on any proposed conditions which in Mighty River’s view (acting reasonably) may have an effect on the Land.

9.3 Further Assurances
The Council agrees as an essential term of this Agreement (but subject to clause 17.2) promptly upon request by Mighty River to:

(a) enter into all necessary Consents, approvals and registrable easements and/or encumbrances or other instruments required to carry out the Council’s obligations as landowner under this Agreement;

(b) to use its best endeavours (excluding the issue of legal proceedings) to procure any consent (other than consents required from an Authority) necessary from any third party who may have an interest in the Land, where such consent is lawfully required by Land Information New Zealand.
10 COUNCIL WARRANTIES

10.1 Council to support
The Council agrees in its capacity as landowner (and subject to clause 17.2) to:

(a) support any application by Mighty River for the grant, renewal, variation or continuation of any Consent necessary to give effect to Mighty River’s rights under this Agreement including a subdivision consent for the Lease;

(b) support Mighty River’s negotiations with Adjacent Owners, as requested by Mighty River; and

(c) provide such written evidence of this support (and any consent or approval) as Mighty River may reasonably require.

10.2 Council not to oppose
The Council agrees in its capacity as landowner (and subject to clause 17.2) that it will not, either directly or indirectly:

(a) object to, oppose or impede:

(i) any application by Mighty River for the grant, renewal, variation or continuation of any Consent necessary to give effect to Mighty River’s rights under this Agreement, including without limitation a subdivision consent for the Lease;

(ii) any action taken by Mighty River to give effect to Mighty River’s rights under this Agreement; or

(iii) the granting to Mighty River of any lease, restrictive covenant or easement necessary for the Wind Farm Project or the Investigations; or

(b) fund, facilitate, assist or promote any other person, entity or group to take any action that would be in breach of this clause 10 if done by the Council.

10.3 Nothing in this clause 10 prevents Council in its statutory capacity imposing reasonable conditions in any Resource Consent to protect Indigenous flora and fauna and to mitigate any other adverse effects of the Wind Farm Project.

11 RIGHT TO CAVEAT

Mighty River may register a caveat, covenant or other encumbrance against the Land in order to protect any of its rights under this Agreement and, if necessary, the Council agrees to execute any such document and do everything else (including procuring consents) necessary to enable the registration by Mighty
River of such documents against the title to the Land. Mighty River shall consent to any dealing affecting the title to the Land which does not interfere with Mighty River’s rights under this Agreement.

12 INDEMNITY AND LIMITATIONS OF LIABILITY

12.1 Mighty River to indemnify
Mighty River will indemnify the Council against all direct losses, expenses, claims or liability that result from any deliberate or negligent action or inaction by Mighty River in respect of the exercise of its rights under this Agreement, or in connection with the Wind Farm Project, up to a maximum aggregate amount of $20,000,000 during the term of this Agreement (inclusive of any maximum aggregate amount under any other indemnities provided pursuant to this Agreement and the Lease), provided however that this indemnity will not apply to the extent that:

(a) the Council is indemnified by any policy of insurance in respect of the same; or

(b) the liability, loss, costs, charges or expenses arise as a result of the negligence, default, action or inaction or fraud of the Council, or any of its employees, officers, agents or contractors.

12.2 Limitation of Council’s Liability
(a) Council in its statutory capacity shall not have any liability to Mighty River for any direct losses, expenses, claims or liability whatsoever and irrespective of the cause including negligence, if the Wind Farm Project is delayed or prevented as a result of an adverse outcome of a statutory process which Council is required to complete in its statutory capacity or any failure of the Council to comply with any statutory process, Council having acted in good faith.

(d) The liability of Council (other than in its statutory capacity) for breach of this contract or for any negligent act or omission shall be limited to $3,000,000 in aggregate during the term of this Agreement. This limitation of liability shall not apply to deliberate acts or omissions of Council that breach this Agreement.

12.3 Exclusion of Liability for Indirect or Consequential Losses
Neither party will have any liability to the other party whatsoever for indirect or consequential losses.

13 FORCE MAJEURE

13.1 In the event that war, civil disorder, fire, flood, explosion, act of Government or other factor beyond the reasonable control of Mighty River whether similar or not
(Specified Event) will, in Mighty River's reasonable opinion, prevent Mighty River from wholly or partially completing or operating the Wind Farm Project, then Mighty River may by notice in writing to the Council advise of the Specified Event and cancel this Agreement and, subject to compliance with clause 3(e) of Schedule 2, neither party will have any right or claim against the other.

13.2 If a Specified Event beyond the reasonable control of the parties temporarily prevents one or both parties from complying with their obligations under this Agreement, then compliance with that obligation will be suspended for the duration of that Specified Event, and an appropriate extension will be made to any date under this Agreement for compliance with that obligation.

14 DISPUTE RESOLUTION

14.1 Dispute resolution for monetary amounts
Any dispute between the parties as to the value of any amount payable under this Agreement will be determined in accordance with the following process.

(a) The parties will endeavour in good faith to agree the amount.

(b) If the parties are unable to agree the amount within 20 Working Days of either party giving notice to the other that the party is invoking this dispute resolution mechanism then the amount will be determined by an appropriately qualified independent expert with experience in making determinations of this type and of the likely magnitude who should determine the dispute as an expert not as an arbitrator.

(c) The expert will be appointed by the parties, if they can agree on the identity of that expert, or, if they cannot agree, will be appointed by the President of the New Zealand Law Society or his or her nominee on the application of either party.

(d) The expert will direct the manner in which he or she will determine the amount, how the costs of such determination and of the parties will be borne or met and how the determination will be given effect to.

(e) The decision of the expert will be final and binding on the parties.

14.2 Dispute as to form of easements or other similar documents
Any dispute as to the terms of any memorandum of easement, encumbrance, lease or other similar document may be referred by either party to, and will be determined by, an expert (who will determine the matter as an expert and not as an arbitrator) who will be a solicitor specialising in conveyancing matters of this type and magnitude and appointed by the President of the New Zealand Law Society or his or her nominee on the application of either party. The solicitor so appointed will determine the basis on which the dispute will be determined and
how the costs of the parties, that solicitor and the determination will be met by the parties. The solicitor so appointed will ensure that any determination gives effect to the intention of this Agreement. The decision of the expert shall be final.

14.3 **Disputes as to other matters**
Subject to clauses 14.1 and 14.2, in the event of any other type of dispute between the parties the parties will endeavour in good faith to resolve the dispute between them. If the parties are unable to resolve the dispute within 20 Working Days of either party giving notice to the other that the party is invoking this dispute resolution mechanism then the dispute will be determined by arbitration in accordance with the Arbitration Act 1996 on the following terms:

(a) The parties will appoint a single arbitrator to conduct the arbitration;

(b) If the parties fail to agree on an arbitrator within 10 days of the decision to refer the dispute to arbitration then the President of the New Zealand Law Society or his or her nominee will appoint the arbitrator;

(c) Clause 1 of the Second Schedule of the Arbitration Act 1996 will not apply to the arbitration;

(d) The arbitrator will proceed with the maximum expedition to deliver an award as soon as is reasonably possible. The parties will cooperate fully in this respect although the parties will be free to settle any issue in dispute by agreement without reference to or approval of the arbitrator;

(e) The parties agree to be bound by every decision and award of the arbitrator.

14.4 **Dispute does not affect Mighty River’s right to Land**
No reference to dispute resolution or decision of any expert will affect or delay Mighty River’s rights to access and investigate the Land under the Investigation Rights.

15 **GST**

All amounts payable under this Agreement are described exclusive of GST (if any) which will be payable in addition. Where GST is payable Mighty River will not be obliged to make the relevant payment until it has received a correct tax invoice for the amount payable.
16  ASSIGNMENT

16.1 Mighty River may not, without the prior consent of the Council not to be unreasonably withheld, assign or novate any or all of Mighty River's rights and obligations in this Agreement, provided that:

(a) the Council will give that consent at any time (including before the expiry of the Construction Period under the Lease) if the assignee or third party taking a novation:

(i) is a State Owned Enterprise, Crown Entity under the Crown Entities Act 2004, wholly owned subsidiary of Mighty River, or other entity controlled by the Crown; and

(ii) enters into a deed of covenant with the Council confirming that it shall observe and perform those rights and obligations;

(b) the Council will give that consent if the assignment or novation occurs after the expiry of the Construction Period under the Lease, and the assignee or third party taking a novation:

(i) is solvent;

(ii) has the capacity to perform those rights and obligations;

(iii) has one or more of the following characteristics:

(A) has an investment-grade credit rating issued by a reputable credit agency; and

(B) is listed on the New Zealand Stock Exchange;

(iv) has a corporate philosophy that is compatible with the Eco-Park concept; and

(v) enters into a deed of covenant with the Council confirming that it shall observe and perform those rights and obligations.

(c) For the purpose of clarification, in the event that the parties do not agree as to whether the provisions of clause 16.1(b)(i)-(iv) are satisfied then this shall be determined in accordance with clause 14 herein.

16.2 In any case where the Council's consent is required under clause 16.1, the Council will not unreasonably or arbitrarily delay that consent.
16.3 On any assignment or novation by Mighty River to an entity other than a wholly owned subsidiary of Mighty River, any future liability of Mighty River as to those rights and obligations will cease and determine.

16.4 The Council may assign or novate this Agreement to any purchaser of the Land, effective from the date on which that party acquires the Land, provided that the purchaser enters into a deed of covenant with Mighty River confirming that it shall observe and perform the Council’s rights and obligations under this Agreement.

16.5 This Agreement cannot be assigned or novated after the Commencement Date of the Lease except contemporaneously with an assignment or novation of the Lease.

17 MISCELLANEOUS

17.1 Parties’ Costs
   Each party will bear its own costs in relation to the negotiation, preparation and completion of this Agreement and the Lease, except for survey and registration work and attendances referred to in clause 9.1.

17.2 Council as Statutory Authority
   Council has certain public or statutory functions as a territorial authority outside this Agreement. Council’s obligations under this Agreement cannot fetter Council undertaking its public or statutory functions, and the proper exercise of those functions will not be a breach of this Agreement. Without limiting this clause it is acknowledged that the Council may undertake consultative procedures under various statutes and shall be under no obligation to make a decision that enables the Wind Farm Project to proceed.

17.3 Agreement Confidential
   The parties will keep the terms of this Agreement, and all information made available by the other party, as strictly private and confidential, except to the extent that any part of it is required to be disclosed:

   (a) to a party’s professional advisors;

   (b) to a party’s charge holders or potential purchasers;

   (c) as required by law (including any New Zealand Stock Exchange listing rules or electricity industry requirements); or

   (d) to give effect to the terms of this Agreement, or in support of a Resource Consent application.
17.4 **Public Statements**
Subject to clause 17.2, no party may issue any press release of, or make any public announcement concerning, information concerning this Agreement or its subject matter to the news media without prior consultation with the other party.

17.5 **Notices**
Any notice or other communication given under this Agreement must be in writing, posted or delivered to the address, or sent to the facsimile number in New Zealand from time to time notified by a party in writing to the other party.

Until any other address or facsimile number of a party is notified, they will be as set out below.

(a)  **MIGHTY RIVER:** if to Mighty River, to:

Mighty River Power Limited  
Level 19, HSBC Building  
1 Queen Street  
PO Box 90-339  
Auckland

Contact Person: General Counsel  
Facsimile: 09 308 8209

(b)  **Council:** If the Council, to:

Palmerston North City Council  
Private Bag  
The Square  
Palmerston North

Contact Person: City Networks Manager  
Facsimile: (06) 358 2372

17.6 **Time of delivery of notices**
A notice delivered by hand will be deemed to have been received at the time of delivery. A notice sent by facsimile will be deemed to have been received at the time of transmission. A notice sent by post will be deemed to have been received on the third Working Day after the date of posting.

17.7 **Entire Agreement**
This Agreement and any Lease or any Easement entered into pursuant to this Agreement sets out the entire agreement between the parties in relation to the matters provided for in this Agreement and replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, relating to those matters.
17.8 **Execution**
This Agreement may be executed in any number of counterparts each of which will be deemed to be an original and all of which will constitute a single instrument. Any party may enter into this Agreement by signing any counterpart. Facsimile copies of executed agreements will be sufficient evidence that an original of the agreement has been executed.

17.9 **Obligation to take further steps**
The parties must each sign, execute, procure, pass and complete all such further documents, acts, matters, resolutions and things as may be necessary or desirable for effecting the transactions contemplated by this Agreement.

17.10 **No Partnership**
Nothing contained in this Agreement will be deemed or construed to constitute any party as the agent or representative of the other or to create any trust or commercial partnership.

17.11 **No Third Party Rights**
Except as expressly provided in this Agreement the parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this Agreement and this Agreement will be for the sole and exclusive benefit of the parties.

17.12 **Severability**
If any of the provisions of this Agreement are invalid or unenforceable the invalidity or unenforceability is not to affect the operation, construction or interpretation or any other provision of this Agreement, with the intent that the invalid or unenforceable provision is to be treated for all purposes as severed from this Agreement.

17.13 **Survival**
If this Agreement is terminated for any reason, clauses 8, 12, 17.3 and 17.4, and the obligation to make the refund in clause 5.15.1(f) of this Agreement shall continue in full force and effect notwithstanding such termination.

17.14 **Amendment**
Except as provided for in this Agreement, no variations or modifications to this Agreement will be effective unless made in writing and signed by or on behalf of each of the parties.

17.15 **Governing law and Jurisdiction**
This Agreement is governed by, and is to be construed in accordance with, the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts.
17.16 **Non waiver**

Failure or delay by any party in exercising any right with respect to any matter arising under, or in connection with, this Agreement does not constitute a waiver of that right. A waiver of any right under this Agreement is only effective if it is in writing and is executed by the party waiving that right.

17.17 **Alternative Outcomes**

(a) The parties acknowledge that there is some uncertainty as to whether the legal outcomes contemplated by the Conditions and the Project Timeline can be achieved in the way or form intended by the parties as set out in this Agreement.

(b) Therefore, if at any time during the term of this Agreement it is not possible to achieve an outcome in the way or form intended by the parties, then the parties will work together in good faith and endeavour to achieve (as far as is possible) substantially the same outcome by alternative means or in an alternative form, with any necessary amendments to this Agreement.
EXECUTION

Executed by the parties:

Signed for and on behalf of The Palmerston North City Council by its Chief Executive

[Signature]

in the presence of:

[Signature]

Name: M.S. Mangai
Occupation: Business Development Executive
Address: Palmerston North

Signed for and on behalf of Mighty River Power Limited by its Chief Executive

[Signature]

in the presence of:

[Signature]

Name: A.P. Waker
Occupation: Solicitor
Address: Auckland
## SCHEDULE 1

### The Land

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See attached plan for the Permitted Lease Area and Excluded Areas