

FUNDING AGREEMENT

BETWEEN

DEPARTMENT OF INTERNAL AFFAIRS

AND

[NAME OF RECIPIENT]

AND

**CROWN INFRASTRUCTURE PARTNERS
LIMITED (AS MONITOR)**

FOR

**THREE WATERS REFORM – BETTER OFF
PACKAGE (TRANCHE 1 FUNDING)**

AGREEMENT

The parties (identified below in Part 1) agree to be bound by the terms and conditions of this Agreement, as set out below in Part 1 (Key Details), Part 2 (General Terms), Part 3 (Definitions and Construction), Schedule 1 (Permitted Funding Activities) and Schedule 2 (Transition Support Arrangements).

PART 1: KEY DETAILS

1 Parties

The Sovereign in right of New Zealand, acting by and through the [Deputy Chief Executive] of the Department of Internal Affairs (**DIA**)

[NAME OF RECIPIENT] (**Recipient**)

Crown Infrastructure Partners Limited (**Monitor**)

2 Background

The New Zealand Government is undertaking a reform programme for “Three Waters” (drinking water, wastewater and stormwater) service delivery for communities (**Three Waters Reform Programme**).

The Crown entered into a Heads of Agreement with New Zealand Local Government Association Incorporated Te Kahui Kaunihera ō Aotearoa (**LGNZ**) under which, amongst other things, the Crown proposed that a Three Waters Reform financial support package be provided to local authorities, comprising:

1. a “no worse off” package which will seek to ensure that financially, no local authority is in a materially worse off position to provide services to its community directly because of the Three Waters Reform Programme and associated transfer of responsibility for the provision of water services (including the transfer of assets and liabilities) to the Water Services Entities; and
2. a “better off” package of \$2 billion which supports the goals of the Three Waters Reform Programme by supporting local government to invest in the wellbeing of their communities in a manner that meets the priorities of both the central and local government, and is consistent with the agreed criteria for such investment set out in the Heads of Agreement,

to be given effect in agreements between each local authority and the Crown (through DIA).

The better off package will comprise:

1. \$1 billion of Crown funding, \$500 million of which is intended to be provided to local authorities from 1 July 2022 to enable early investment (“**Tranche 1 Funding**”); and
2. the remaining \$1 billion to be funded by the new Water Services Entities.

This Agreement relates to the provision of funding to the Recipient from the Tranche 1 Funding of \$500 million.

The Crown’s objectives with the better off package are, acknowledging the Reform Objectives, to demonstrate central government confidence in the future for local government by providing the sector with additional funds to support local wellbeing outcomes in a way that aligns with the priorities of central and local government, including through meeting some or all of the following criteria:

1. supporting communities to transition to a sustainable and low-emissions economy, including by building resilience to climate change and natural hazards;

2. delivery of infrastructure and/or services that:
 - a. enable housing development and growth, with a focus on brownfield and infill development opportunities where those are available;
 - b. support local place-making and improvements in community well-being.

The Recipient is a [territorial authority with statutory responsibility for delivering Three Waters services within its own district or city]. The Recipient will work collaboratively with the New Zealand Government in connection with the Three Waters Reform Programme.

Crown Infrastructure Partners Limited is party to this Agreement to undertake a review and monitoring role on behalf of the DIA, as further described in this Agreement.

DIA has agreed to contribute funding to the Recipient on the terms and conditions of this Agreement (**Agreement**). This funding is being provided to enable the Recipient to undertake the activities described in Schedule 1.

Key details of this Agreement are set out in this **Part 1**. The full terms and conditions are set out in **Part 2**. Defined terms and rules of interpretation are set out in **Part 3**.

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|---|-------------------------------------|---|
| 3 | Conditions Precedent | <p>No Funding is payable under this Agreement until DIA has confirmed to the Recipient in writing that it has received, and found, in its sole discretion, to be satisfactory to it in form and substance, the following documents and evidence:</p> <ol style="list-style-type: none"> 1. This Agreement, duly executed by the Recipient. 2. The final Funding Proposal prepared by the Recipient, in a form approved by DIA. <p>The Recipient is responsible for the content of the Funding Proposal and approval by DIA for the purposes of this Agreement shall not impose any obligations on DIA in respect of the Funding Proposal other than as expressly set out in this Agreement.</p> <p>These conditions precedent must either be satisfied (in the opinion of DIA) or waived by DIA (at its sole discretion) by 30 September 2022. In the event that they are not satisfied or waived within that time, DIA may notify the Recipient that this Agreement has not come into effect and is null and void.</p> |
| 4 | Permitted Funding Activities | <p>The Recipient may only use the Funding:</p> <ol style="list-style-type: none"> 1. for the purposes set out in Schedule 1; and 2. for any other purpose with DIA or the Monitor's prior written approval, <p>(each a Permitted Funding Activity).</p> |
| 5 | Funding Proposal | <p>The Recipient is to undertake the Permitted Funding Activities in accordance with the Funding Proposal approved by the DIA (or otherwise with DIA or the Monitor's prior written approval).</p> |
| 6 | End Date | <p>The End Date is [1 July 2027], or such later date determined by DIA in its discretion. [Note: Recipients may propose an End Date having regard to the funding activities covered by this agreement, no later than 30 June 2027. DIA intend that the End Date is to be confirmed for each agreement]</p> |
| 7 | Funding | <p>The total Funding available under this Agreement is up to NZ\$[INSERT HERE] plus GST (if any). This is the Total Maximum Amount Payable.</p> |

The first instalment of Funding under this Agreement is (NZ\$[insert] plus GST (if any)) subject to satisfaction of the Conditions Precedent set out in Item 3 above and receipt of a duly completed Payment Request in accordance with clause 1 of Part 2.

The Recipient may submit progress payment claims for the balance of the Funding under this Agreement, subject to satisfaction of the conditions set out below and the other terms and conditions of this Agreement.

Each instalment of Funding under this Agreement, following payment of the first instalment, is subject to:

- (a) Receipt of a duly completed Payment Request in accordance with clause 1 of Part 2.
- (b) DIA receiving and being satisfied with the six-monthly reports specified in the Key Details, together with the other information required in this Agreement.
- (c) DIA being satisfied that the Recipient is using reasonable endeavours to comply with the Transition Support Arrangements set out in Schedule 2.
- (d) DIA being satisfied that the Recipient is complying with the requirements of any Remedial Plan.
- (e) No Termination Event, or event entitling DIA to suspend funding under this Agreement, subsisting.

The first Payment Request may be submitted upon the Commencement Date occurring. Each subsequent Payment Request may be submitted at any time, but no more than one such Payment Request may be submitted in any month, except (in each case) to the extent agreed by DIA in its sole discretion.

8 Reporting

The Recipient will provide DIA via the DIA's Grant Management System portal with six-monthly reports by the 15th Business Day following the end of each six month period ending on 30 June and 31 December), with effect from the Commencement Date. Each six-monthly report must include the information set out below, in the standard reporting form specified by DIA.

If the frequency of reporting is changed to quarterly, as further described in clause 2.14, then the obligations described in this Agreement in respect of each six-monthly report will equally apply to the required quarterly reports (to be provided by the 15th Business Day following the end of each Quarter).

The Recipient will also provide DIA via the DIA's Grant Management System portal with a final report by the 15th Business Day following the End Date. The final report must include the information set out below, in the standard reporting form specified by DIA.

Each report is to be in form and substance satisfactory to DIA in its sole discretion.

Each six-monthly report must include the following information:

- (a) Description of activities undertaken during the relevant six month period (including progress against relevant milestones);
- (b) A summary of expenditure for the relevant six month period (including any co-funding by the Recipient);
- (c) Plans for the next six month period (including a financial forecast for cashflow purposes);
- (d) Any major risks arising or expected to arise with the Permitted Funding Activities, costs or performance of this Agreement, together with actual or proposed mitigations for those risks (including, where the Permitted Funding Activities) costs are forecast to exceed budgeted

costs, how the shortfall is to be funded);

- (e) A summary of the outcomes achieved as a result of the Permitted Funding Activities; and
- (f) Any other information relevant to this Agreement and/or DIA's involvement in connection with the Permitted Funding Activities that is notified by DIA or the Monitor in writing to the Recipient.

The final report must include the following information:

- (a) Description of activities undertaken during the term of this Agreement;
- (b) A summary of expenditure on the Permitted Funding Activities (including any co-funding by the Recipient);
- (c) A summary of the outcomes achieved as a result of the Permitted Funding Activities;
- (d) Any specific reporting requirements set out in this Agreement; and
- (e) Any other information relevant to this Agreement and/or DIA's involvement in connection with the Permitted Funding Activities that is notified by DIA or the Monitor in writing to the Recipient.

9 Special Terms

During the term of this Agreement the Recipient shall use reasonable endeavours to comply with the Transition Support Arrangements, as set out in Schedule 2.

10 Representative

DIA's Representative:

Name: Michael Lovett

Email: threewaters@dia.govt.nz

Recipient's Representative:

Name: [name]

Email: [email]

Monitor's Representative:

Name: [name]

Email: [email]

11 Address for Notices

To DIA:

Three Waters Reform
Level 7, 45 Pipitea Street
Wellington 6011

Attention: Michael Lovett

Email: threewaters@dia.govt.nz, with a copy to legalnotices@dia.govt.nz

To the Recipient:

[address]

Attention: [name]

Email: [email]

To the Monitor:

[address]

Attention: [name]

Email: [email]

SIGNATURES

SIGNED by the **SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through the [Deputy Chief Executive] of the Department of Internal Affairs or his or her authorised delegate:

Name: Michael Lovett

Position: Deputy Chief Executive, Local Government

Date:

SIGNED for and on behalf of [RECIPIENT NAME] by the person(s) named below, being a person(s) duly authorised to enter into obligations on behalf of the Recipient:

Name:

Position:

Date:

Name:

Position:

Date:

SIGNED for and on behalf of **CROWN
INFRASTRUCTURE PARTNERS LIMITED** by the
person(s) named below, being a person(s) duly
authorised to enter into obligations on behalf of
the Monitor:

Name:

Position:

Date:

Name:

Position:

Date:

END OF PART 1

PART 2: GENERAL TERMS

1 FUNDING

- 1.1 DIA must pay the Funding (up to the "Total Maximum Amount Payable" specified in the Key Details) to the Recipient, subject to the terms of this Agreement. Unless stated otherwise in this Agreement, the Recipient may only claim the Funding to the extent necessary to cover Eligible Costs that have been or will be incurred by the Recipient, and the Recipient must use the Funding solely on Eligible Costs.
- 1.2 The Recipient must submit for DIA's approval a Payment Request via the DIA's Grant Management System portal at the time specified in, and otherwise in accordance with, Item 7 in the Key Details.
- 1.3 Each Payment Request must include the amount of Funding requested, be authorised by the Chief Executive or an authorised representative of the Recipient, and be accompanied by the following supporting documentation:
- (a) a breakdown / total transaction listing of total Eligible Costs that have been or will be incurred to undertake the Permitted Funding Activities, substantiated by invoices and cost details;
 - (b) for the first Payment Request submitted following payment of the first instalment of Funding, a breakdown / total transaction listing of expenditure related to the first instalment, substantiated by invoices and cost details;
 - (c) a summary of the number of jobs created through people employed in the relation to the Permitted Funding Activities; and
 - (d) any other reasonable information or evidence requested by DIA or the Monitor in relation to summary project information or Eligible Costs that have been incurred or will be incurred.
- 1.4 DIA is not required to pay any Funding in respect of a Payment Request:
- (a) if any reports specified in the Key Details have not been provided or are not in form and substance satisfactory to DIA or the Monitor in its sole discretion;
 - (b) if the Conditions specified in Item 7 of the Key Details relating to that instalment have not been satisfied;
 - (c) if payment will result in the Funding exceeding the "Total Maximum Amount Payable" specified in the Key Details;
 - (d) if this Agreement has expired or been terminated; and/or
 - (e) while the Recipient is in material breach of this Agreement.
- For the avoidance of doubt, DIA's obligation to make Funding available under this Agreement is strictly subject to clause 6.2.
- 1.5 Subject to the terms of this Agreement, DIA must pay each valid Payment Request by the 20th day of the month after the month the relevant Payment Request is approved by the DIA, and if such day is not a Business Day, on the next Business Day. DIA will pay the Funding to the Recipient's nominated Bank Account.

- 1.6 The Funding made available under this Agreement comprises grant funding and does not comprise an equity investment or loan. It is only repayable in the specific circumstances set out in this Agreement.
- 1.7 DIA may, at its discretion, notify the Recipient in writing that it wishes to enter into a GST Offset Agreement in connection with the payment of GST on any Funding. The Recipient must, where applicable, take all such steps as are reasonably required to achieve that GST offset in accordance with the Goods and Services Tax Act 1985.

2 RECIPIENT'S RESPONSIBILITIES

Standards and compliance with laws

- 2.1 The Recipient must comply with all applicable laws, regulations, rules and professional codes of conduct or practice.

Permitted Funding Activities

- 2.2 The Recipient must not, without DIA's or the Monitor's prior written consent, make any Material Variation to the Permitted Funding Activities (including their description and scope).
- 2.3 The Recipient must ensure that the Permitted Funding Activities are carried out:
- (a) promptly with due diligence, care and skill, and in a manner that is consistent with Best Industry Practice; and
 - (b) by appropriately trained, qualified, experienced and supervised persons; and in accordance with any directions of DIA or the Monitor, notified by DIA or the Monitor in writing from time to time.
- 2.4 The Recipient must use reasonable endeavours to ensure that the Permitted Funding Activities are completed by the End Date.
- 2.5 The Recipient is solely responsible for the activities and matters carried out as Permitted Funding Activities, including being solely responsible for the acts and omissions of any contractors and subcontractors in connection with the same.
- 2.6 The Recipient must ensure that all agreements it enters into with any contractors or any other party in connection with the Permitted Funding Activities are on an "arm's length" basis, provide value-for-money and do not give rise to any Conflict of Interest. The Recipient must provide DIA with reasonable evidence of compliance with this clause 2.6 in response to any request by DIA from time to time.

Information Undertakings

- 2.7 The Recipient must provide DIA and the Monitor with the reports specified in the Key Details, in accordance with the timeframes and reporting requirements set out in the Key Details.
- 2.8 The Recipient must provide DIA and the Monitor with any other information about the Permitted Funding Activities requested by DIA and/or the Monitor within the timeframe set out in the request.
- 2.9 The Recipient must promptly notify DIA and the Monitor if:

- (a) the Recipient (or any of its personnel or contractors) becomes aware of, or subject to, a Conflict of Interest; or
- (b) the Recipient becomes aware of any matter that could reasonably be expected to have an adverse effect on the Permitted Funding Activities and any related programme, or result in a Termination Event or a breach of any term of this Agreement by the Recipient,

and if requested by DIA must promptly provide DIA with its plan to mitigate and manage such Conflict of Interest or such matter.

- 2.10 The Recipient must not at any time do anything that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of DIA or the New Zealand Government. The Recipient must keep DIA informed of any matter known to the Recipient which could reasonably be expected to have such an effect.
- 2.11 The Monitor has been appointed by DIA to undertake a review and monitoring role under this Agreement, including by:
- (a) reviewing and confirming satisfaction with the reports specified in the Key Details;
 - (b) reviewing and approving Payment Requests submitted by the Recipient;
 - (c) seeking, reviewing and confirming satisfaction with further information from the Recipient; and
 - (d) making recommendations to DIA and the New Zealand Government in respect of the Funding and the Agreement.

The Recipient agrees that all its communications and correspondence under this Agreement will be made with DIA or, to the extent directed by DIA or provided for above, the Monitor.

Funding, records and auditors

- 2.12 The Recipient must receive and manage all Funding in accordance with good financial management and accounting practices and to a high standard that demonstrates appropriate use of public funds.
- 2.13 The Recipient must keep full and accurate records (including accounting records) of the Permitted Funding Activities and retain them for at least 7 years after the last payment of Funding under this Agreement. The Recipient must permit DIA or the Monitor (or any auditor nominated by DIA or the Monitor) to inspect all records relating to the Permitted Funding Activities and must allow DIA, the Monitor and/or the auditor access to the Recipient's premises, systems, information and personnel for the purposes of this inspection. DIA shall bear any third party costs arising from such inspection, unless the inspection reveals a breach of this Agreement, in which case the Recipient shall bear such costs.

Monitoring

- 2.14 Without limiting anything in clause 2.15, at the request of the DIA (or the Monitor), the Recipient and the DIA and/or the Monitor shall meet by the 15th Business Day following the end of each six month period, to jointly discuss the Recipient's compliance with its obligations under this Agreement during the relevant six-month period (including its obligations under Items 5 and 9 of the Key Details). Where the DIA (or the Monitor)

considers (acting reasonably) that the Recipient has not complied with its obligations under this Agreement during the relevant six-month period:

- (a) DIA (or the Monitor) and the Recipient shall in good faith discuss:
 - (i) the identified areas of non-compliance and agree the steps that the Recipient will take to address such areas of non-compliance going forwards (**Remedial Plan**). If the parties are unable to agree a Remedial Plan by the 30th Business Day following the end of the relevant six month period, then DIA (or the Monitor) shall (acting reasonably and having regard to the matters raised by the Recipient in such discussions) provide the Recipient with a remedial plan which shall, for the purpose of this Agreement, be deemed to be the Remedial Plan. The Recipient shall comply with the requirements of any Remedial Plan;
 - (ii) acknowledging the commitment of resources (including staff) required by the Recipient to comply with its obligations under this Agreement (including the Transition Support Arrangements set out in Schedule 2), how the parties can work together to ensure such obligations are appropriately managed by all parties; and
- (b) DIA (or the Monitor) may increase the frequency of the reports required under Item 8 of the Key Details from six-monthly to quarterly.

2.15 At the request of the DIA (or the Monitor) at any time after the occurrence of a Relevant Event, the Recipient and the DIA and/or the Monitor shall meet promptly to jointly discuss the circumstances relating to that event. DIA (or the Monitor) and the Recipient shall in good faith discuss the steps that the Recipient will take to address that event (a **Response Plan**). If the parties are unable to agree a Response Plan within 20 Business Days following a request under this clause, then DIA (or the Monitor) shall (acting reasonably and having regard to the matters raised by the Recipient in such discussions) provide the Recipient with a response plan which shall, for the purpose of this Agreement, be deemed to be the Response Plan. The Recipient shall comply with the requirements of any Response Plan and non-compliance by the Recipient shall entitle DIA to suspend funding under this Agreement until such time as the non-compliance is remedied to DIA's satisfaction (acting reasonably).

3 INTELLECTUAL PROPERTY

- 3.1 DIA acknowledges that the Recipient and its licensors own all pre-existing intellectual property which they contribute to the Permitted Funding Activities , and all new intellectual property which they create in the course of the Permitted Funding Activities.
- 3.2 The Recipient grants an irrevocable, perpetual, royalty-free, sub-licensable licence to DIA and the Monitor to use all reports, documents, information and other materials created or provided by the Recipient to DIA or the Monitor under or in connection with the Permitted Funding Activities and this Agreement.
- 3.3 The Recipient warrants that it has obtained (or will obtain, prior to creation of each relevant work) all rights and permissions necessary to enable the grant and exercise of the licence in clause 3.2 without infringing the intellectual property rights of any third party.

4 TERM AND TERMINATION

- 4.1 This Agreement will be effective on and from the Commencement Date, which will be the latest to occur of:
- (a) the date this Agreement has been signed by all parties; and
 - (b) the date on which DIA has provided written notice to the Recipient that the Conditions Precedent specified in the Key Details have either been satisfied (in the opinion of DIA) or waived by DIA (at its sole discretion).
- 4.2 This Agreement will remain in force until the End Date, unless terminated in accordance with this Agreement.
- 4.3 DIA can terminate this Agreement with immediate effect, by giving notice to the Recipient, at any time:
- (a) while DIA reasonably considers that the Recipient has become or is likely to become insolvent;
 - (b) while the Recipient is subject to the appointment of a liquidator, receiver, manager or similar person in respect of any of its assets or a Crown Manager or Commission is appointed in respect of the Recipient under Part 10 of the Local Government Act 2002; or
 - (c) subject to clause 4.4, while any one or more of the following events or circumstances remains unremedied:
 - (i) the Recipient is materially in breach of any obligation, or a condition or warranty, under this Agreement;
 - (ii) the Recipient has provided DIA with information in connection with or under this Agreement that (whether intentionally or not) is materially incorrect or misleading, and/or omits material information;
 - (iii) DIA reasonably considers that this Agreement or a Permitted Funding Activity has caused, or may cause, DIA and/or the New Zealand Government to breach any legal obligations (including its international trade obligations);
 - (iv) the Recipient abandons a Permitted Funding Activity without the prior written consent of DIA (or the Monitor);
 - (v) the Recipient is involved in any intentional or reckless conduct which, in the opinion of DIA, has damaged or could damage the reputation, good standing or goodwill of DIA or the New Zealand Government, or is involved in any material misrepresentation or any fraud;
 - (vi) the Recipient (or any of its personnel or contractors) is subject to a Conflict of Interest which cannot be managed to DIA's satisfaction; or
 - (vii) any change in law, regulations or other circumstances materially affects DIA's ability to perform its obligations under this Agreement.

- 4.4 However, where DIA considers that a Termination Event set out in clause 4.3(c) can be remedied, DIA must give notice to the Recipient requesting a remedy, and must not exercise its right of termination unless the relevant event remains unremedied for at least 14 days (or any longer period agreed with the Recipient) after that notice has been provided by DIA.
- 4.5 On expiry or termination of this Agreement, where the aggregate of (a) the total Funding paid under this Agreement and (b) any other money received or allocated by the Recipient, in each case to carry out a Permitted Funding Activity, exceeds the amount required to perform the Permitted Funding Activity, the Recipient must upon request refund to DIA the excess amount.
- 4.6 At any time DIA may recover the amount of any Funding that has been spent or used other than in accordance with this Agreement, or not applied to Eligible Costs by the End Date, together with interest on all such amounts calculated at 10% per annum from the date of the misspending to the date the money is repaid.
- 4.7 Clauses 1.2, 1.4, 1.5, 2.1, 2.7, 2.12, 2.13, 3, 4, 5, 6, 7, 8, 9, 10 and 11 survive expiry or termination of this Agreement, along with any other parts of this Agreement necessary to give effect to those provisions. Expiry or termination of this Agreement does not affect any accrued rights, including any rights in respect of a breach of this Agreement or Termination Event that occurred before expiry or termination.

5 **WARRANTIES AND UNDERTAKINGS**

- 5.1 The Recipient warrants that, in the course of its activities in connection with the Permitted Funding Activities, it will not infringe any intellectual property or other rights of any contractor or any other third party.
- 5.2 The Recipient warrants that, as at the date of this Agreement:
- (a) It has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms, and it has complied with the Local Government Act 2002 in entering into this Agreement;
 - (b) the Recipient is solvent and is not subject to the appointment of a liquidator, receiver, manager or similar person in respect of any of its assets or to the appointment of a Crown Manager or Commission under Part 10 of the Local Government Act 2002;
 - (c) all information and representations disclosed or made to DIA by the Recipient in connection with this Agreement are true and correct, do not omit any material matter, and are not likely to mislead or deceive DIA as to any material matter;
 - (d) it has disclosed to DIA all matters known to the Recipient (relating to the Permitted Funding Activities, the Recipient or its personnel) that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of DIA or the New Zealand Government; and
 - (e) it is not aware of any material information that has not been disclosed to DIA which may, if disclosed, materially adversely affect the decision of DIA whether to provide the Funding.
- 5.3 The Recipient warrants that the Funding has been or will be applied solely to Eligible Costs

and such warranty will be deemed to be repeated continuously so long as this Agreement remains in effect by reference to the facts and circumstances then existing.

- 5.4 DIA warrants that, as at the date of this Agreement, it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.
- 5.5 The Recipient acknowledges that DIA has entered into this Agreement in reliance on these warranties and undertakings.
- 5.6 The Recipient acknowledges and agrees that DIA has made no warranty or representation that any funding or financial support is or will be available to the Recipient in respect of the Permitted Funding Activities, other than the Funding.

6 LIABILITY

- 6.1 The maximum liability of DIA under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to the total amount of Funding paid or payable under this Agreement.
- 6.2 The Recipient undertakes to pay any and all cost overruns of the Permitted Funding Activities and any funding shortfall, and DIA and the New Zealand Government have no obligations or responsibility whatsoever in respect of such cost overruns and funding shortfall and accept no financial risk in the Permitted Funding Activities.
- 6.3 DIA is not liable for any claim under or in connection with this Agreement or the Permitted Funding Activities, whether arising in contract, tort (including negligence) or otherwise, where such claim is or relates to any loss of profit, loss of revenue, loss of use, loss of reputation, loss of goodwill, loss of opportunity (in each case whether direct, indirect or consequential) or any other indirect, consequential or incidental loss or damages of any kind whatsoever.
- 6.4 The Monitor will not have any liability whatsoever under or in connection with this Agreement to DIA or the Recipient. The limitation of liability set out in this clause does not apply to the Monitor's liability for any fraudulent, malicious or criminal act or omission of the Monitor to the extent that such liability cannot be limited or excluded by law.

7 CONFIDENTIALITY

- 7.1 Subject to clause 7.2 and 7.3, each party must keep the other parties' Confidential Information in confidence, and must use or disclose that Confidential Information only to the extent necessary to perform its obligations, and/or take the intended benefit of its rights, under this Agreement. However, this will not prohibit:
 - (a) either party from using or disclosing any information with the written prior consent of the relevant other party;
 - (b) use or disclosure of information that has become generally known to the public other than through a breach of this Agreement;
 - (c) either party from disclosing information to its personnel, contractors or advisors with a need to know, so long as the relevant personnel, contractors and advisors use the information solely to enable that party to perform its obligations and/or take the intended benefit of its rights under this Agreement, and so long as they

are informed of the confidential nature of the information and, in the case of the Recipient, the Recipient receives an acknowledgement from its personnel, contractors or advisors that they acknowledge, and must comply with, the confidentiality obligations in this Agreement as if they were party to it;

- (d) disclosure required by any law, or any compulsory order or requirement issued pursuant to any law; or
- (e) DIA or the Monitor from using or disclosing to any party any documents, reports or information received in relation to this Agreement, provided that prior to any such disclosure DIA or the Monitor (as applicable) removes all information that is commercially sensitive to the Recipient from the relevant work.

7.2 The Recipient acknowledges and agrees that nothing in this Agreement restricts DIA and/or the Monitor's ability to:

- (a) discuss, and provide all information in respect of, any matters concerning the Recipient, the Permitted Funding Activities or this Agreement with any Minister of the Crown, the Monitor, any other government agency or any of their respective advisors;
- (b) meet its obligations under any constitutional or parliamentary convention (or other obligation at law) of or in relation to the New Zealand Parliament, the New Zealand House of Representatives or any of its Committees, any Minister of the Crown, or the New Zealand Auditor-General, including any obligations under the Cabinet Manual including the "no surprises" principle; and
- (c) publicise and report on the awarding of the Funding, including the Recipient's and any of its contractor's names, the amount and duration of the Funding and a brief description of the Permitted Funding Activities, on websites; in media releases; general announcements and annual reports.

7.3 The Recipient acknowledges that:

- (a) the contents of this Agreement; and
- (b) information provided to DIA and the Monitor (including the reports specified in the Key Details),

may be official information in terms of the Official Information Act 1982 and, in line with the purpose and principles of the Official Information Act 1982, this Agreement and such information may be released to the public unless there is good reason under the Official Information Act 1982 to withhold it.

7.4 DIA acknowledges that the Recipient is subject to the Local Government Official Information and Meetings Act 1987 and that its confidentiality obligations under this clause 7 are subject to its compliance with that Act.

8 MEDIA AND COMMUNICATIONS

8.1 The Recipient will keep DIA informed on a "no surprises" basis in relation to any media statements or press releases (including social media posts) to be made by the Recipient regarding this Agreement and/or DIA's involvement in connection with the Permitted Funding Activities.

- 8.2 The Recipient will refer any enquiries from the media or any other person about the terms or performance of this Agreement to DIA's Representative.
- 8.3 The Recipient will acknowledge the New Zealand Government as a source of funding in all publications (including any digital presence) and publicity regarding the Permitted Funding Activities in accordance with funding acknowledgement guidelines agreed with DIA.
- 8.4 The Recipient does not have the right to enter into any commitment, contract or agreement on behalf of DIA or any associated body, or to make any public statement or comment on behalf of DIA or the New Zealand Government.
- 8.5 All correspondence with DIA under this clause 8 must be directed to DIA's Representative and copied to threewaters@dia.govt.nz and the Monitor.

9 **DISPUTES**

- 9.1 In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, or in relation to any question regarding its existence, breach, termination or invalidity (in each case, a **Dispute**), either party may give written notice to the other parties specifying the nature of the Dispute and requesting discussions under this clause 9 (**Dispute Notice**). As soon as reasonably practicable following receipt of a Dispute Notice, the parties must meet (in person, or by audio or video conference) and endeavour to resolve the Dispute by discussion, negotiation and agreement.
- 9.2 If the matter cannot be amicably settled within 20 Business Days after the date of the Dispute Notice then, at the request in writing of either party, the matter in respect of which the Dispute has arisen must be submitted, together with a report describing the nature of such matter, to the Representatives (or, if no such Representatives have been appointed, the respective Chief Executives of the parties) (together the **Dispute Representatives**).
- 9.3 Within 20 Business Days after the receipt of a request under clause 9.2, one individual (who does not act in his or her professional capacity as legal counsel for either party) selected by each of the Dispute Representatives, must make a presentation of no longer than 30 minutes to each of the Dispute Representatives (which may be by telephone or remotely), who will then attempt in good faith to reach a common decision within a half-day. The decision of the Dispute Representatives is binding on the parties.
- 9.4 In the case of a Dispute, if the Dispute Representatives have not met within 20 Business Days of receiving a request in accordance with clause 9.2, or if they fail to reach a common decision within the stated time period, either party may by notice in writing to the other parties refer the Dispute to be referred to mediation before a single mediator appointed by the parties. Each party will bear its own costs of mediation and the costs of the mediator will be divided evenly between the parties to the dispute.
- 9.5 If the parties are unable to agree on the appointment of a mediator within 5 Business Days of the notice requiring the Dispute to be referred to mediation, a mediator may be appointed at the request of any party by the Arbitrators' and Mediators' Institute of New Zealand Inc.
- 9.6 If the Dispute is not resolved within 20 Business Days of referral to mediation, the parties may commence court proceedings without further participation in any mediation.
- 9.7 Nothing in this clause 9 will prevent either party from seeking urgent interim relief from a

court (or other tribunal) of competent jurisdiction.

10 REPRESENTATIVES

- 10.1 All matters or enquiries regarding this Agreement must be directed to each party's Representative (set out in the Key Details).
- 10.2 Each party may from time to time change the person designated as its Representative on 10 Business Days' written notice to the other parties.

11 GENERAL

- 11.1 Each notice or other communication given under this Agreement (each a **notice**) must be in writing and delivered personally or sent by post or email to the address of the relevant party set out in the Key Details or to any other address from time to time designated for that purpose by at least 10 Business Days' prior written notice to the other parties. A notice under this Agreement is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
- (b) **Post:** posted, 5 Business Days after posting or, in the case of international post, 7 Business Days after posting; and
- (c) **Email:** sent by email:
 - (i) If sent between the hours of 9am and 5pm (local time) on a Business Day, at the time of transmission; or
 - (ii) If subclause (i) does not apply, at 9am (local time) on the Business Day most immediately after the time of sending,

provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

- 11.2 The Recipient agrees to execute and deliver any documents and to do all things as may be required by DIA to obtain the full benefit of this Agreement according to its true intent.
- 11.3 No legal partnership, employer-employee, principal-agent or joint venture relationship is created or evidenced by this Agreement.
- 11.4 This Agreement constitutes the sole and entire understanding with respect to the subject matter hereof and supersedes all prior discussions, representations and understandings, written or oral.
- 11.5 No amendment to this Agreement will be effective unless agreed in writing by the parties, provided that the Monitor's agreement will not be required in respect of (and the Monitor will be deemed to have agreed to) any amendment to this Agreement that does not relate to the scope of the Monitor' review and monitoring role under this Agreement (including, for example, the Transition Support Arrangements).
- 11.6 Neither the Recipient nor the Monitor may assign or transfer any of their contractual rights or obligations under this Agreement, except with DIA's prior written approval.

- 11.7 DIA may assign or transfer any of its contractual rights or obligations under this Agreement without the other parties' prior approval. DIA may at any time disclose to a proposed assignee or transferee any information which relates to, or was provided in connection with, the Recipient, the Permitted Funding Activities or this Agreement.
- 11.8 No failure, delay or indulgence by any party in exercising any power or right conferred on that party by this Agreement shall operate as a waiver. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights.
- 11.9 The exercise by a party of any express right set out in this Agreement is without prejudice to any other rights, powers or remedies available to a party in contract, at law or in equity, including any rights, powers or remedies which would be available if the express rights were not set out in this Agreement.
- 11.10 This Agreement is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this Agreement.
- 11.11 Any provision of this Agreement that is invalid or unenforceable will be deemed deleted, and will not affect the other provisions of this Agreement, all of which remain in force to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 11.12 This Agreement is to be governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 11.13 This Agreement may be executed in any number of counterparts (including duly electronically signed, scanned and emailed copies). So long as each party has received a counterpart signed by each of the other parties, the counterparts together shall constitute a binding and enforceable agreement. This Agreement is intended to constitute a binding and enforceable agreement in accordance with its terms.

END OF PART 2

PART 3: DEFINITIONS AND CONSTRUCTION

Defined terms

In this Agreement, unless the context requires otherwise, terms defined in the Agreement have the meaning set out therein and:

Authorisation means:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a governmental agency or required by any law (including any consent under the Resource Management Act 1991); or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a governmental agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

Best Industry Practice means that degree of skill, care and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of services engaged in the same type of undertaking as that of the Recipient or any contractors (as applicable) under the same or similar circumstances as those contemplated by this Agreement.

Business Day means any day other than a Saturday, Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003.

Commencement Date has the meaning given in clause 4.1 of Part 2.

Conditions means the conditions to the payment of a Funding instalment as specified in Item 7 of the Key Details.

Confidential Information of a party (Owner), means any information in the possession or control of another party (Holder) that:

- (a) was originally acquired by the Holder in connection with this Agreement through disclosures made by or at the request of the Owner; and/or
- (b) was originally acquired by the Holder in connection with this Agreement through any access to, or viewing, inspection or evaluation of, the premises, facilities, documents, systems or other assets owned or controlled by the Owner; and/or
- (c) is derived from information of a kind described in paragraph (a) or (b) above;

but excludes any information which the Holder can show:

- (d) was lawfully acquired by the Holder, entirely independently of its activities in connection with this Agreement, and is free of any other obligation of confidence owed to the Owner; and/or
- (e) has been independently developed by the Holder without reference to the Owner's Confidential Information, and without breaching any other obligation of confidence owed to the Owner.

Notwithstanding the foregoing, the terms of this Agreement are not Confidential Information.

Conflict of Interest means any matter, circumstance, interest or activity of the Recipient, its personnel or contractors, or any other person with whom the Recipient has a relationship that:

- (a) conflicts with:
 - (i) the obligations of the Recipient (or its personnel or contractors) to DIA or the Monitor under this Agreement; or
 - (ii) the interests of the Recipient in relation to this Agreement and/or the undertaking of the Permitted Funding Activities; or

- (b) otherwise impairs or might appear to impair the ability of the Recipient (or any of its personnel or contractors) to carry out the Permitted Funding Activities diligently and independently in accordance with this Agreement.

Eligible Costs means the actual costs that have been or will be reasonably incurred by the Recipient on or after the Commencement Date and no later than the End Date to undertake a Permitted Funding Activity in accordance with this Agreement, excluding overhead and management time that is not directly attributable to undertaking a Permitted Funding Activity.

Funding means the funding or any part of the funding (as the context requires) payable by DIA to the Recipient in accordance with the terms of this Agreement, as described in the Key Details.

Funding Proposal means the Funding Proposal setting out the scope of the Permitted Funding Activities(s) to which Funding is to be applied, in the form approved by DIA.

GST Offset Agreement means a deed of assignment between DIA as Assignor and the Recipient as Assignee providing for the offset of the amount of GST in accordance with the Goods and Services Tax Act 1985.

Key Details means Part 1 of this Agreement.

Material Variation means, in respect of a Permitted Funding Activity, any variation which on its own or together with any other variation or variations results in, or is likely to result in the budgeted expenditure (taking into account all variations) being exceeded or a Permitted Funding Activity being materially delayed, or any variation that materially amends the scope, specifications or function of a Permitted Funding Activity.

Monitor means Crown Infrastructure Partners Limited, appointed by the DIA to assist in managing the Funding by undertaking a review and monitoring role.

Payment Request means a request submitted to DIA by the Recipient seeking payment of Funding.

Quarter means a financial quarter, being a three monthly period ending on 30 June, 30 September, 31 December or 31 March.

Relevant Event means actual or forecast failure to materially achieve an outcome(s) of the Funding Proposal (as determined by DIA or the Monitor acting reasonably), including where arising from unfunded cost overruns, material unapproved scope changes, material delay in achieving the delivery timeframes, or failure to meet the End Date for completion of the Permitted Funding Activities.

Reform Objectives means the following:

- (a) that there are safeguards (including legislative protection) against privatisation and mechanisms that provide for continued public ownership;
- (b) significantly improving the safety and quality of drinking water services, and the environmental performance of drinking water, wastewater and stormwater systems (which are crucial to good public health and wellbeing, and achieving good environmental outcomes);
- (c) ensuring all New Zealanders have equitable access to affordable three waters services and that the Water Services Entities will listen, and take account of, local community and consumer voices;
- (d) improving the coordination of resources, planning, and unlocking strategic opportunities to consider New Zealand's infrastructure and environmental needs at a larger scale;
- (e) ensuring the overall integration and coherence of the wider regulatory and institutional settings (including the economic regulation of water services and resource management and planning reforms) in which the local

government sector and their communities must operate;

- (f) increasing the resilience of three waters service provision to both short- and long-term risks and events, particularly climate change and natural hazards;
- (g) moving the supply of three waters services to a more financially sustainable footing, and addressing the affordability and capability challenges faced by small suppliers and local authorities;
- (h) improving transparency about, and accountability for, the planning, delivery and costs of three waters services, including the ability to benchmark the performance of the new Water Services Entities; and
- (i) undertaking the reform in a manner that enables local government to further enhance the way in which it can deliver on its broader “wellbeing mandates” as set out in the Local Government Act 2002.

Remedial Plan has the meaning given in clause 2.14(a) of Part 2.

Response Plan has the meaning given in clause 2.15 of Part 2.

Termination Event means any one or more of the events or circumstances set out in clause 4.3.

Transition Support Arrangements means the obligations set out in Schedule 2.

Water Services Entity means:

- (j) the new water services entities to be established by legislation giving effect to the Three Waters Reform Programme; and
- (k) the local establishment entities to be established by legislation in advance of the establishment of the new water services entities.

Construction

In the construction of this Agreement, unless the context requires otherwise:

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;

Inclusions: a reference to “includes” is a reference to “includes without limitation”, and “include”, “included” and “including” have corresponding meanings;

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;

Parties: a reference to a party to this Agreement or any other document includes that party's personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Precedence : if there is any conflict between the different parts of this Agreement, then unless specifically stated otherwise, the Key Details will prevail over Part 2;

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;

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;

Writing: a reference to “written” or “in writing” includes email and any commonly

used electronic document format such as .DOC or .PDF.

END OF PART 3

SCHEDULE 1: PERMITTED FUNDING ACTIVITIES

[Note: Permitted activities on which the Recipient may spend the Funding on, as described in the Recipient's approved Funding Proposa will be inserted by DIA]

SCHEDULE 2: TRANSITION SUPPORT ARRANGEMENTS

The Recipient will collaborate and co-operate with the DIA (including through the DIA's National Transition Unit (**NTU**)) to provide for the implementation and carrying out of certain parts of the Three Waters Reform Programme, as further described below.

In making requests under these arrangements, DIA (including the NTU) will have regard to the Recipient's available resources and the competing demands on those resources. It is intended that such requests are made and considered by DIA, the NTU and the Recipient in a collaborative and co-operative manner with a view to achieving the Reform Objectives and ensuring the Recipient is able to continue to carry out its other functions and activities.

The Recipient agrees to provide the collaboration and co-operation requested. If a council controlled organisation (**CCO**) of the Recipient is involved in the delivery of water services then the Recipient agrees to ensure that its CCO does the same.

1. The Recipient will collaborate and co-operate with the DIA (including the NTU) to facilitate the Three Waters Reform Programme (to the extent the law permits).
2. Subject to the consent of any affected employee (and in compliance with the Recipient's employment law and health and safety obligations), the Recipient will:
 - (a) comply with any reasonable request by the Executive Director of the DIA's National Transition Unit (**NTU**) for employees of the Recipient to be seconded to, or otherwise facilitate the engagement of employees with, the DIA for the purpose of assisting the DIA with the Three Waters Reform Programme; and
 - (b) enable, and where necessary facilitate, the participation of the Recipient's staff in any process or engagement with the NTU that relates to their potential employment with a Water Services Entity, including (but not limited to) attending information sessions, accessing NTU channels such as the "People Platform", providing input into the Water Services Entity organisational design and role design, engaging in unions and professional body processes developed to engage and support staff through transition.
3. The Recipient will respond to and comply with any reasonable request by the Executive Director of the NTU for information that the Recipient holds for the purpose of assisting the DIA with the Three Waters Reform Programme.
4. The Recipient acknowledges and agrees that its obligation to provide information under paragraph 3:
 - (a) may include, subject to compliance with applicable laws including the Privacy Act 2020, a requirement to provide information in relation to the assets, liabilities, contracts, property, employees, customers, processes, pricing information relating to water services fees and associated costs, and any other matters that relate to water services delivery;
 - (b) includes a requirement to comply with any reasonable request to research and collate information; and
 - (c) includes a requirement to comply with any reasonable request to provide information in a particular format and within a particular timeframe.
5. The Recipient will notify, and respond to requests for information by, DIA of intended decisions:
 - (a) that relate to the provision of water services; or
 - (b) that may affect (other than in an immaterial way) the provision of water services.

The Recipient acknowledges that such decisions include a decision:

- (c) to adopt or amend a long-term plan or to adopt an annual plan, in each case as contemplated by the Local Government Act 2002;
 - (d) to adopt a policy required by the Local Government Act 2002;
 - (e) that is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy or plan adopted by the Recipient under the Local Government Act 2002;
 - (f) to purchase or dispose of assets other than in accordance with its long-term plan;
 - (g) to purchase or dispose of an asset, if the purchase or disposal of the asset will have a material impact on the capacity to provide water services or on the financial well-being of the Recipient;
 - (h) to enter into any contract (other than an employment agreement) that imposes, or will continue to impose, any obligation in relation to the delivery of water services on the existing local authority after 30 June 2024 and the consideration for which is material in the context of the three water services or operations of the Recipient;
or
 - (i) to borrow money for a period that extends beyond 30 June 2024.
6. The Recipient must not act inconsistently with its long-term plan and its annual plan as it relates to the provision of water services.
7. The Recipient shall include estimated and indicative prices for water services on invoices to consumers on an information only basis, based on a water revenue discovery process undertaken by the DIA. This disclosure obligation will not apply until the DIA has completed this discovery process and notified the Recipient of the basis of disclosure.
8. The Recipient must respond to and comply with any reasonable request by the Executive Director of the NTU to assist DIA and the NTU in the preparation of asset management plans and pricing plans for the Water Services Entities. The Recipient acknowledges that such requests may include:
- (a) a request to compile certain categories of information as part of an information base to inform the preparation of such plans (including, for example, existing water services assets held by or on behalf of the Recipient, current sources of funding for water services and details of employee roles within the Recipient's region or district that are involved in providing water services); and
 - (b) a request to consider particular options or matters for the Recipient's region or district to inform the preparation of such plans.