
Supplementary Agenda for a meeting of the Waikato District Council to be held in the Council Chambers, District Office, 15 Galileo Street, Ngaruawahia on **THURSDAY, 15 AUGUST 2022** commencing at **9.30am**.

Information and recommendations are included in the reports to assist the Council in the decision making process and may not constitute Council's decision or policy until considered.

7. REPORTS

7.4 Three Waters Funding Agreement 2

GJ Ion
CHIEF EXECUTIVE

To	Waikato District Council
Report title	Three Waters Reform Transition Support Funding
Date:	15 August 2022
Report Author:	Deron Sharma, Three Waters Reform Project Manager
Authorised by:	Roger McCulloch, General Manager Service Delivery

1. Purpose of the report

Te Take moo te puurongo

To seek approval from Council to enter into a Funding Agreement with the Department of Internal Affairs (**DIA**)– Three Waters Services Reforms Transition Support Package (Tranche 1) (the **Funding Agreement**).

2. Executive summary

Whakaraapopotanga matua

On 19 July 2022, the Associate Minister of Local Government, Kieran McNulty, announced a \$43.28 million support package for councils to support activities relating to Three Waters Reform, of which Waikato District Council has been allotted \$797, 000.

It is the opinion of staff that the obligations placed on Council under the Funding Agreement will likely be analogous to the obligations of the Three Waters Stimulus Funding and the Better off Funding.

Staff have determined the recommendations and contents of this report to be of low significance and, accordingly, an appropriate level of engagement to keep stakeholders informed will be sufficient at this stage. An assessment of, and proposed solutions to, the imminent risks related to reputational damage and material breaches of the Funding Agreement has been presented.

Staff consider this funding necessary to carry out transition activities related to Three Waters Reform without compromising the levels of service Council committed to delivering in the Long Term Plan or at the expense of revenue generated through rates.

Thus, Staff recommend that this funding be accepted and that the Funding Agreement is signed.

3. Staff recommendations Tuutohu-aa-kaimahi

That Waikato District Council:

- a. **approves Council entering into the Three Waters Services Reforms Transition Support Package (Tranche 1) Funding Agreement with the Department of Internal Affairs.**
- b. **delegates to the Chief Executive, authority to seek to negotiate any amendments to the Funding Agreement, and authority to sign the Three Waters Services Reforms - Transition Support Package (Tranche 1) Funding Agreement with the Department of Internal Affairs on behalf of Council.**
- c. **notes that Council is currently in the process of reviewing the Three Waters Reform - Better Off Package (Tranche 1 Funding) Funding Agreement.**

4. Background Koorero whaimaarama

The Crown entered into a Heads of Agreement with New Zealand Local Government Association Incorporated Te Kahui Kaunihera o Aotearoa (LGNZ) under which, amongst other things, the Crown and LGNZ proposed that a Three Waters Reform financial support package be provided to Councils, comprised of the 'better off' package and the 'no worse off' package.

Under the Heads of Agreement, the Crown and LGNZ acknowledged that there are a range of other impacts for Councils that may represent an adverse fiscal impact, which lies outside the purview of the better off funding and the no worse off funding.

One such impact is the need for Councils to incur or suffer additional costs (including the need to re-deploy personnel and seek to back fill roles) associated with facilitating the identification and transfer of assets, liabilities and revenue, including staff involvement in working with the establishment entities and transition unit, and legal, accounting, audit and specialist consultant costs.

The Crown (through DIA) has agreed to contribute to local authorities' Eligible Costs, through the "Transition Support Package". This package comprises:

- \$43.298 million (in aggregate) available to councils to contribute towards direct Eligible Costs that councils will bear resulting from establishment and transition activities up to 30 June 2023, including funding councils' information gathering and reporting requirements relating to the transfer of assets, liabilities, workforce and contracts to Water Service Entities and complying with any additional requirements or processes mandated by the Water Services Entities Bill (once enacted) and supplementary legislation (Tranche 1); and
 - up to \$41.416 million (in aggregate) available to councils to enable councils to contribute towards councils' participation in local establishment and transition teams, including covering the costs of seconded council staff and/or providing for staff backfill (Tranche 2).
-

One of the objectives of the Transition Support Package is to ensure that Council is able to participate in the reform programme whilst delivering on three waters levels of service outlined in the Long Term Plan during the transition and establishment period.

The Funding Agreement relates to the provision of Funding to the Council from Tranche 1. It has been reported that Tranche 2 will be made available as a mutually agreed supplement to this Agreement or via a separate funding agreement.

The total maximum amount payable to Waikato District Council for Tranche 1 is \$797,000 plus GST, which will be payable in four equal instalments of \$199,250 plus GST, subsequent to Council's submission of a payment request for funding supplemented with a quarterly progress report "in form and substance reasonably satisfactory to DIA." Of note is that the funding can be used for all Eligible Costs prior to and after the commencement date of the Funding Agreement.

Council's allocation for Tranche 2 is yet to be determined by the Department.

The end date of the Agreement is 30 June 2024, or such later date determined by the DIA in its discretion.

5. Discussion and analysis Taataritanga me ngaa tohutohu

Council has been given a deadline of 30 September 2022 to enter into this agreement (**Attachment 1**).

The Agreement places the following obligations of note on the Council:

- The Funds must be used for the Permitted funding activities, outlined in Schedule 1 of the Funding Agreement, which relates to the supply of information and resource to support Council's preparation for transition, including:
 - allocation schedules for the assets, liabilities, workforce and contracts to transfer to Water Services Entities;
 - Water Service Entity asset management plans; and
 - Water Service Entity funding and pricing plans.
- Participation in local transition activity and local transition teams.
- Complying with any additional requirements or processes mandated by the Water Services Entities Bill (once enacted) and supplementary legislation.
- Any other activities that Council reasonably considers necessary to support transition and that give effect to the intent behind this Agreement (as expressed in Item 2 of the Key Details).
- Council will be required to provide quarterly reporting, in a standard set by DIA, relating to the expended funds.

It is the opinion of staff that the obligations placed on Council under this Agreement are likely to be analogous to the obligations of the Three Waters Stimulus Funding and the Better off Funding. Accepting the recommendations of this report will fortify Council's commitment to the economic wellbeing in the Local Government Act (2002) through the circumvention of using rates income to support transition costs.

5.1 Options

Ngaa koowhiringa

Staff have assessed that there are three reasonable and viable options for the Council consider. This assessment reflects the level of significance (see paragraph 6.1), legal considerations, financial considerations, and risks to Council. The options are tabulated below (**Table 1**).

Staff recommend Option 1 because it enables Council to recover some of the costs associated with transition. It enables Council to deliver on Business as usual and levels of service. Additionally, it ensures staff's work life balance is not compromised as they endeavour to meet both National Transition Unit (NTU) data requests whilst delivering Council's business. Council will have the funding to backfill roles or engage specialists to assist with NTU data requests.

Table 1: Summary of options

<p>Option 1</p> <p>Council signs the Funding Agreement</p>	<p>Signing the Funding Agreement provides an opportunity for Council to recover costs associated with the three waters reform establishment and transition, up to \$797,000.</p> <p>While this option would place certain obligations on Council, it does not seem to be unreasonable or make Council vulnerable to financial or reputational damage. The obligations are similar to that of the Stimulus funding.</p> <p>Similar to the other funding streams within the Three Waters Reform program, there are administrative requirements associated with obtaining this fund notwithstanding reporting obligations.</p>
<p>Option 2</p> <p>Council negotiates the terms of the Funding Agreement</p>	<p>There is the option for Council to enter into negotiations with the Department of Internal Affairs.</p> <p>Crown Infrastructure Partners (CIP) who are Councils relationship manager in this process have informally indicated that DIA don't have appetite for negotiating terms with Council on the basis that it limits standardisation across the country. There is a risk that Council may not be able to negotiate the terms of the Agreement before 30 September 2022.</p>

Option 3

Council does not sign the Funding Agreement

Council is not required to enter into the Funding Agreement.

Staff do not consider this agreement to bind Council into bespeaking a position regarding the Three Waters Reform.

Under the Heads of Agreement, Council has a duty to comply with the Crown via the DIA regarding Three Waters Reform, which will incur costs. The Water Service Entities have not been established so reimbursement cannot be sought for the costs associated with establishment and transition. Option 3 will likely see Council funding these costs through rates as unplanned expenditure.

5.2 Financial considerations

Whaiwhakaaro puutea

Signing the Funding Agreement will not result in a change to allocated budgets. The funding received from this Funding Agreement will be registered as a grant in Council's financial statements and expenses drawn down against the grant.

A key advantage here is that Council can avoid using rates to offset the cost of establishment and transition.

Staff do not consider there to be any material considerations against Council's debt regarding the recommendations of this report.

5.3 Legal considerations

Whaiwhakaaro-aa-ture

Council's Legal Team have reviewed the Funding Agreement, highlighting key terms in the Funding Agreement, including the grounds under which DIA can terminate the Funding Agreement, Council's requirement to adhere to reporting requirements and that Council is fully responsible for any amounts in excess of the funding contribution, and were of the view that the terms of the Funding Agreement are not unreasonable or onerous. Whilst there may be limited opportunity to negotiate the terms of the Funding Agreement, there may be more clarity needed in terms of the standalone nature of the Funding Agreement, and the payment request approval process timeframes.

5.4 Strategy and policy considerations

Whaiwhakaaro whakamaaherehere kaupapa here

The report and recommendations are consistent with the Council's policies, plans and prior decisions.

5.5 Maaori and cultural considerations

Whaiwhakaaro Maaori me oona tikanga

Staff confirm that this report and recommendations will not have any material impacts on Māori, iwi, or hapū.

5.6 Climate response and resilience considerations

Whaiwhakaaro-aa-taiao

The matters in this report have no known impact on climate change or resilience for the Council.

5.7 Risks

Tuuraru

Staff are not aware of any significant risk to Council concomitant to the recommendations of the report.

If Council is in found to be in material breach of the Funding Agreement, DIA has the option to terminate the Funding Agreement. To alleviate this, Council will ensure that the funds are utilised for “Permitted Funding Activities” and maintain communication with the assigned Entity B Relationship Manager at Crown Infrastructure Partners.

There exists a reputational risk to perceived public opinion that accepting this funding commits Council to the Three Waters Reform programme. To alleviate this, Council will need to ensure that the obligations of this Funding Agreement on Council are clearly communicated to the public. Specifically, Council will incur costs resultant from transition as a consequence of central government direction through legislation, regardless of its political perspectives on Three Waters Reform and that this funding will help with those costs without committing Council to any such political positions.

6. Significance and engagement assessment

Aromatawai paahekoheko

6.1 Significance

Te Hiranga

The decisions and matters of this specific report are assessed as of low significance in accordance with the Council’s [Significance and Engagement Policy](#). However, this report is part of a broader project or process that is, or may be in future, assessed as of moderate significance.

6.2 Engagement

Te Whakatuutakitaki

Highest level of engagement	Inform ✓	Consult <input type="checkbox"/>	Involve <input type="checkbox"/>	Collaborate <input type="checkbox"/>	Empower <input type="checkbox"/>
<i>Tick the appropriate box/boxes and specify what it involves by providing a brief explanation of the tools which will be used to engage (refer to the project engagement plan if applicable).</i>	<p>Staff do not consider any financial, statutory, or other relevant triggers to be met for engagement beyond informing relevant stakeholders.</p> <p>Council may execute a media release to inform the public if the Agreement is signed.</p>				

Planned	In Progress	Complete	
<input type="checkbox"/>	✓	<input type="checkbox"/>	Internal
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Community Boards/Community Committees
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Waikato-Tainui/Local iwi and hapuu
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Affected Communities
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Affected Businesses
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other (Please Specify)

7. Next steps

Ahu whakamua

Staff recommend that the Chief Executive be delegated the authority to seek to negotiate any amendments in accordance with legal advice, and to sign the Funding Agreement under delegated authority.

8. Confirmation of statutory compliance Te Whakatuuturutanga aa-ture

As required by the Local Government Act 2002, staff confirm the following:

The report fits with Council's role and Committee's/Community Board's Terms of Reference and Delegations.	Confirmed
The report contains sufficient information about all reasonably practicable options identified and assessed in terms of their advantages and disadvantages (<i>Section 5.1</i>).	Confirmed
Staff assessment of the level of significance of the issues in the report after consideration of the Council's Significance and Engagement Policy (<i>Section 6.1</i>).	Low
The report contains adequate consideration of the views and preferences of affected and interested persons taking account of any proposed or previous community engagement and assessed level of significance (<i>Section 6.2</i>).	Confirmed
The report considers impact on Maaori (<i>Section 5.5</i>)	Not applicable
The report and recommendations are consistent with Council's plans and policies (<i>Section 5.4</i>).	Confirmed
The report and recommendations comply with Council's legal duties and responsibilities (<i>Section 5.3</i>).	Confirmed

9. Attachments Ngaa taapirihanga

Attachment 1 – Three Waters Services Reforms - Transition Support Package (Tranche 1) Funding Agreement

FUNDING AGREEMENT

BETWEEN

DEPARTMENT OF INTERNAL AFFAIRS

AND

WAIKATO DISTRICT COUNCIL

FOR

**THREE WATERS SERVICES REFORMS –
TRANSITION SUPPORT PACKAGE (TRANCHE 1)**

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) and Schedule 1 (Permitted Funding Activities).

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**)
Waikato District Council (**Recipient**)
- 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 o Aotearoa (**LGNZ**) under which, amongst other things, the Crown and LGNZ 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.

Under the Heads of Agreement, the Crown and LGNZ acknowledged that there are a range of other impacts for local authorities that may represent an adverse financial impact, which the support package outlined above does not take account of and are intended to be addressed (through a process to be agreed between the Crown (through DIA) and LGNZ) by alternative mechanisms. One such impact is the need for local authorities to incur or suffer additional costs (including the need to re-deploy personnel and seek to back fill roles) associated with facilitating the identification and transfer of assets, liabilities and revenue, including staff involvement in working with the establishment entities and transition unit, and legal, accounting, audit and specialist consultant costs.

One of the objectives of the Transition Support Package is to ensure that affected local authorities are able to participate in the reform programme without putting at risk their delivery of water services during the transition and establishment period.

The Crown (through DIA) has agreed to contribute to local authorities’ Eligible Costs, through the Transition Support Package. This package comprises:

1. \$43.298m (in aggregate) available to councils to contribute towards direct Eligible Costs that councils will bear resulting from establishment and transition activities up to 30 June 2023, including funding councils’ information gathering and reporting requirements relating to the transfer of assets, liabilities, workforce and contracts to Water Service Entities and complying with any additional requirements or processes mandated by the Water Services Entities Bill (once enacted) and

supplementary legislation (**Tranche 1**); and

2. up to \$41.416m (in aggregate) available to councils to enable councils to contribute towards councils' participation in local establishment and transition teams, including covering the costs of seconded council staff and/or providing for staff backfill (**Tranche 2**).

This Agreement relates to the provision of Funding to the Recipient from Tranche 1. Tranche 2 funding will either be made available as a mutually agreed supplement to this Agreement or via a separate funding agreement.

The Recipient is a territorial authority with statutory responsibility for delivering Three Waters services within its own district or city.

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 Permitted Funding Activities.

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**.

- 3 **Condition Precedent** No Funding is payable under this Agreement until DIA has received this Agreement, duly executed by the Recipient, which must occur by 30 September 2022 (or such later date as DIA may agree).
- 4 **Permitted Funding Activities** The Recipient may only use the Funding:
 1. for the purposes set out in Schedule 1; and
 2. for any other purpose with DIA's prior written approval,
 (each a **Permitted Funding Activity**).
 The Recipient may at any time request DIA to approve other purposes or activities that relate to giving effect to the intent behind this Agreement (as expressed in Item 2 above) and DIA will act promptly and reasonably in considering such requests.
- 5 **End Date** The End Date is 30 June 2024, or such later date determined by DIA in its discretion.
- 6 **Funding** The total Funding available under this Agreement is up to NZ\$797,000 plus GST (if any). This is the Total Maximum Amount Payable.
 The first instalment of Funding under this Agreement is NZ\$199,250 plus GST (if any) subject to receipt of a duly completed Payment Request in accordance with clause 1 of Part 2.
 Subsequent instalments will be paid quarterly in three equal instalments, 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 quarterly reports specified in the Key Details, together with the other information required in this Agreement.
 - (c) No Termination Event, or event entitling DIA to suspend Funding under this Agreement, subsisting.

Payment Requests

The first Payment Request may be submitted upon the Commencement Date occurring. Each subsequent Payment Request may only be submitted at the same time as submission of a quarterly report in accordance with Item 7 (Reporting) of the Key Details, and no more than one such Payment Request

may be submitted in any Quarter, except to the extent agreed by DIA in its sole discretion.

7 Reporting

The Recipient will provide DIA via the DIA's Grant Management System portal with quarterly reports by the 15th Business Day following the end of Quarter, with effect from the Commencement Date, up to and including the Quarter ending on the End Date. Each quarterly 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 reasonably satisfactory to DIA.

Each quarterly report must include the following information:

- (a) a high level description of Permitted Funding Activities undertaken during the relevant Quarter and the associated Eligible Costs;
- (b) a summary of the amount actually expended (or committed) on account of Eligible Costs during the relevant Quarter; and
- (c) any other information relevant to this Agreement and/or DIA's involvement in connection with the Permitted Funding Activities that is notified by DIA in writing to the Recipient.

8 Representative

DIA's Representative:

Name: Heather Shotter

Email: threewaters@dia.govt.nz

Recipient's Representative:

Name: [name]

Email: [email]

9 Address for Notices

To DIA:

Three Waters Reform
Level 7, 45 Pipitea Street
Wellington 6011

Attention: Heather Shotter

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

To the Recipient:

[address]

Attention: [name]

Email: [email]

SIGNATURES

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

Name: Heather Shotter

Position: Executive Director, Three Waters National Transition Unit

Date:

SIGNED for and on behalf of **WAIKATO DISTRICT COUNCIL** by the person(s) named below, being a person(s) duly authorised to enter into obligations on behalf of the Recipient:

Name:

Position:

Date:

END OF PART 1

PART 2: GENERAL TERMS

1 FUNDING

- 1.1 DIA must pay the Funding to the Recipient, subject to the terms of this Agreement. The Recipient must use the Funding solely on Eligible Costs. The Funding may be paid in advance of the Recipient actually incurring (or suffering) costs or expenses that comprise Eligible Costs and the Recipient shall be entitled to reimburse itself for any such costs that it has paid for out of its own funds. DIA may request the Recipient to provide it with reasonable details (e.g. invoices or other cost details) in support of costs that the Recipient has treated as Eligible Costs for the purposes of this Agreement provided that DIA only expects to make such requests if it has reason to believe that the Recipient may not be applying sufficient rigour or discipline to the classification or quantum of costs it is treating as Eligible Costs. Before making such a request, DIA must first raise any concerns it has with the Recipient and provide the Recipient a reasonable opportunity to provide details or an explanation before DIA requests a fuller accounting for how Funding has been applied.
- 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 6 in the Key Details.
- 1.3 Each Payment Request must specify the amount of Funding requested (in the case of Tranche 1 Funding, each Payment Request shall be for 25% of its full Tranche 1 Funding entitlement), be authorised by the Chief Executive or an authorised representative of the Recipient, be in the form of a valid GST invoice complying with the Goods and Services Tax Act 1985, and (other than for the first instalment) be accompanied by the report for the preceding Quarter
- 1.4 DIA is not required to pay any Funding in respect of a Payment Request:
- (a) if the Recipient has failed to respond (or respond adequately) to any information requests made by DIA under and in accordance with this Agreement (including under clause 1.1);
 - (b) if the conditions specified in Item 6 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 5.2.
- 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 is not a loan. It is only repayable in the specific circumstances set out in this Agreement.

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 when engaging in activities that give rise to Eligible Costs that will be paid for by Funding made available under this Agreement.

Permitted Funding Activities

- 2.2 The Recipient must ensure that the Permitted Funding Activities are carried out:
- (a) with reasonable diligence, care and skill; and
 - (b) consistent with any plan or parameters agreed to between the Recipient and DIA.
- 2.3 The Recipient must use reasonable endeavours to ensure that the Permitted Funding Activities are completed by the End Date. DIA acknowledges that the cost of back-fill staff will continue to the end of any applicable fixed term or contract period and it may not be practicable for the Recipient to align such periods with the End Date.
- 2.4 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.
- 2.5 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 that has not been appropriately managed. The Recipient must provide DIA with reasonable evidence of compliance with this clause 2.5 in response to any request by DIA from time to time provided that DIA only expects to make such a request if it has reason to believe that the Recipient is not complying with the standards referred to above.

Information Undertakings

- 2.6 The Recipient must provide DIA with the reports specified in the Key Details, in accordance with the timeframes and reporting requirements set out in the Key Details.
- 2.7 The Recipient must provide DIA with any other information about the Permitted Funding Activities requested by DIA within the timeframe set out in the request provided that, before making such a request, DIA must have due regard to (on the one hand) the nature of the activity and the likely quantum of the cost involved and (on the other hand) the administrative burden for the Recipient in responding to the request such that the former justifies the latter.
- 2.8 The Recipient must promptly notify DIA if:
- (a) the Recipient (or any of its personnel or contractors) becomes aware of, or subject to, a Conflict of Interest that is not subject to appropriate management; or
 - (b) the Recipient becomes aware of any matter that could reasonably be expected to 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 matter.

Funding, records and auditors

- 2.9 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.
- 2.10 The Recipient must keep full and accurate records (including accounting records) of the Eligible Costs and retain them for at least 7 years after the last payment of Funding under this Agreement. The Recipient must permit DIA (or any auditor nominated by DIA) to inspect all records relating to the Eligible Costs and must allow DIA 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.

3 TERM AND TERMINATION

- 3.1 This Agreement will be effective on and from the Commencement Date, which will be the date this Agreement has been signed by both parties.
- 3.2 This Agreement will remain in force until the End Date, unless terminated in accordance with this Agreement. If an Eligible Cost relates to a period after the End Date then this Agreement (including the Recipient's reporting obligations under Item 7 (Reporting) of the Key Details) shall continue until such time as the Permitted Funding Activity or associated arrangement giving rise to that Eligible Cost has been completed.
- 3.3 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 3.4, 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 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;
- (v) the Recipient (or any of its personnel or contractors) is subject to a Conflict of Interest which cannot be managed to DIA's reasonable satisfaction; or
- (vi) any change in law, regulations or other circumstances materially affects DIA's ability to perform its obligations under this Agreement.

- 3.4 However, where DIA considers that a Termination Event set out in clause 3.3(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.
- 3.5 On expiry or termination of this Agreement, where the total Funding paid under this Agreement exceeds the aggregate amount incurred (or committed to) by the Recipient on account of Eligible Costs, the Recipient must upon request refund to DIA the excess amount.
- 3.6 At any time DIA may recover the amount of any Funding that has been spent or used other than to pay (including by reimbursement) Eligible Costs, 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.
- 3.7 Clauses 1.2, 1.4, 1.5, 2.1, 2.6, 2.9, 2.10, , 3, 4, 5, 6, 7, 8, 9 and 10 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.

4 **WARRANTIES AND UNDERTAKINGS**

- 4.1 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 would, if disclosed, be likely to materially adversely affect the decision of DIA whether to provide the Funding.

- 4.2 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.
- 4.3 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.
- 4.4 The Recipient acknowledges that DIA has entered into this Agreement in reliance on these warranties and undertakings.
- 4.5 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.

5 **LIABILITY**

- 5.1 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.
- 5.2 The Recipient shall remain responsible for meeting the cost of any Permitted Funding Activities the total cost of which exceeds the Funding contribution made available under this Agreement, and DIA and the New Zealand Government have no obligations or responsibility whatsoever in respect of such costs and accept no financial risk on account of the Permitted Funding Activities provided that this shall in no way reduce or limit the Recipient's entitlement to funding to be made available under the "no worse off" package referred to in Item 2 of the Key Details.
- 5.3 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 **CONFIDENTIALITY**

- 6.1 Subject to clause 6.2 and 6.3, each party must keep the other party's 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 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 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 removes all information that is commercially sensitive to the Recipient from the relevant work.

6.2 The Recipient acknowledges and agrees that nothing in this Agreement restricts DIA'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, 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 name, 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.

6.3 The Recipient acknowledges that:

- (a) the contents of this Agreement; and
- (b) information provided to DIA (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.

6.4 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 6 are subject to its compliance with that Act.

7 MEDIA AND COMMUNICATIONS

7.1 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.

- 7.2 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.
- 7.3 The Recipient will acknowledge the New Zealand Government as a source of funding that contributes towards the Recipient meeting the cost of the Permitted Funding Activities.
- 7.4 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.
- 7.5 All correspondence with DIA under this clause 7 must be directed to DIA's Representative and copied to threewaters@dia.govt.nz.

8 DISPUTES

- 8.1 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 party specifying the nature of the Dispute and requesting discussions under this clause 8 (**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.
- 8.2 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**).
- 8.3 Within 20 Business Days after the receipt of a request under clause 8.2, 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.
- 8.4 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 8.2, or if they fail to reach a common decision within the stated time period, either party may by notice in writing to the other party 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.
- 8.5 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.
- 8.6 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.
- 8.7 Nothing in this clause 8 will prevent either party from seeking urgent interim relief from a court (or other tribunal) of competent jurisdiction.

9 REPRESENTATIVES

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

10 GENERAL

- 10.1 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 party. 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.

- 10.2 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.
- 10.3 No legal partnership, employer-employee, principal-agent or joint venture relationship is created or evidenced by this Agreement.
- 10.4 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.
- 10.5 No amendment to this Agreement will be effective unless agreed in writing by both parties.
- 10.6 The Recipient may not assign or transfer any of its contractual rights or obligations under this Agreement, except with DIA's prior written approval.
- 10.7 DIA may assign or transfer any of its contractual rights or obligations under this Agreement without the Recipient's 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.
- 10.8 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.

- 10.9 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.
- 10.10 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.
- 10.11 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.
- 10.12 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.
- 10.13 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:

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 3.1 of Part 2.

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 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.

Eligible Costs means the actual costs that have been (including before the Commencement Date) or will be reasonably incurred by the Recipient to undertake a Permitted Funding Activity in accordance with this Agreement, including overhead and management time that is 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.

Key Details means Part 1 of this Agreement.

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.

Termination Event means any one or more of the events or circumstances set out in clause 3.3.

Water Services Entity means:

- (a) the new water services entities to be established by legislation giving effect to the Three Waters Reform Programme; and
- (b) 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

Permitted funding activities

- Information gathering exercises relating to transition, including responding to requests for information from the DIA's Three Waters National Transition Unit.
- The supply of information and resource to support council's preparation for transition, including:
 - allocation schedules for the assets, liabilities, workforce and contracts to transfer to Water Services Entities;
 - Water Service Entity asset management plans; and
 - Water Service Entity funding and pricing plans.
- Participation in local transition activity and local transition teams.
- Complying with any additional requirements or processes mandated by the Water Services Entities Bill (once enacted) and supplementary legislation.
- Any other activities that councils reasonably consider necessary to support transition and that give effect to the intent behind this Agreement (as expressed in Item 2 of the Key Details).