



Tuesday 21 March 2023

OIA IRO-366

Name: [REDACTED]

Email: [REDACTED]@[REDACTED].co.nz

Kia ora [REDACTED],

Official information request for the Shareholders and Provisions for Services Agreement's between Wellington Water and Shareholding Councils.

Thank you for your official information request dated Wednesday 15 February 2023 and clarified on Tuesday 21 February 2023. On Tuesday 21 February 2023 you asked that we include the Provision of Services Agreements with Councils.

We have considered your request in accordance with the Local Government Official Information and Meetings Act 1987 and determined that we are able to grant your request in full.

The information you have requested is enclosed in our email to you.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Ngā mihi,

[REDACTED]

Team Lead, Communications and Engagement

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www.wellingtonwater.co.nz

Our water, our future.

FOURTH VARIATION AGREEMENT IN RESPECT OF AGREEMENT FOR PROVISION OF MANAGEMENT SERVICES RELATING TO WATER SERVICES

HUTT CITY COUNCIL

WELLINGTON WATER LIMITED

 **Simpson Grierson**

Barristers & Solicitors
Auckland, Wellington & Christchurch
New Zealand
www.simpsongrierson.com

PARTIES

1. **HUTT CITY COUNCIL** of 30 Laings Road, Lower Hutt, 5010, New Zealand (**Council**)
2. **WELLINGTON WATER LIMITED** (company number 1337122) of 25 Victoria Street, Petone, Lower Hutt, 5012, New Zealand (**Wellington Water**)

BACKGROUND

- A. Council and Wellington Water entered into a service agreement dated 31 October 2013 for the provision of management services relating to water services, which was varied by an agreement dated 23 July 2015 (**First Variation Agreement**) to allow Wellington Water to be principal to the contract for arrangements it enters into in carrying out the water services for Council, was subsequently varied by an agreement dated 14 September 2018 (**Second Variation Agreement**) to update certain provisions and implement the one budget proposal and was subsequently varied by an agreement dated 29 June 2021 (**Third Variation Agreement**) under which the expiry date was extended to 30 June 2024 (**Services Agreement**) (**Services Agreement**).
- B. Council and Wellington Water have agreed to vary the terms of the Services Agreement to, amongst other things, incorporate provisions addressing the regulation of drinking water, wastewater and stormwater pursuant to the Water Services Act 2021 and the potential transition to a new arrangement for the delivery of three waters services in New Zealand on the terms set out in this agreement (**Fourth Variation Agreement**).

THIS AGREEMENT RECORDS THAT:**1. DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions:** In this Fourth Variation Agreement, unless the context indicates otherwise, words and expressions defined in the Services Agreement have the same meaning when used in this Fourth Variation Agreement.
- 1.2 **Interpretation:** In this Fourth Variation Agreement, unless the context indicates otherwise, the interpretation provisions of the Services Agreement apply as if they were set out in this Fourth Variation Agreement.

2. EFFECTIVE DATE, AMENDMENT AND CONFIRMATION

- 2.1 **Effective Date:** The parties agree that the variations to the Services Agreement set out in this Fourth Variation Agreement have effect on and from the date of this agreement (**Effective Date**).
- 2.2 **Amendment:** With effect from the Effective Date, the Services Agreement is amended and restated in the form set out in the Schedule to this Fourth Variation Agreement and references in the Services Agreement to “this agreement” shall be references to the Services Agreement as amended and restated by this Fourth Variation Agreement.

2.3 Confirmation: Each of the parties confirms and acknowledges that, except as expressly agreed in this Fourth Variation Agreement, its obligations and covenants under, and the provisions of, the Services Agreement continue and remain in full force and effect.

3. GENERAL

3.1 Assignment: A party may not assign any of its rights or obligations under this Fourth Variation Agreement without the prior written consent of the other party.

3.2 Counterparts: This Fourth Variation Agreement may be signed in counterparts. All executed counterparts will together constitute one document.

3.3 Copies: Any copy of this Fourth Variation Agreement that is received via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this agreement) may be relied on by any party as though it were an original copy of this Fourth Variation Agreement. This Fourth Variation Agreement may be entered into on the basis of an exchange of PDF or other document reproduction format.

3.4 Further Acts: Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Fourth Variation Agreement and all transactions incidental to it.

3.5 Severability: If a clause or part of a clause of this Fourth Variation Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Fourth Variation Agreement, but the rest of this Fourth Variation Agreement is not affected.

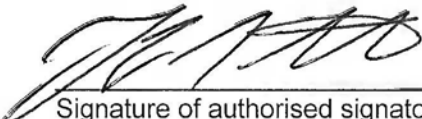
3.6 Variation: No variation of this Fourth Variation Agreement will be of any force or effect unless it is in writing and signed by the parties to this Fourth Variation Agreement and is in accordance with clause 4.7 of the Services Agreement.

3.7 Waiver: The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Fourth Variation Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

3.8 Governing Law and Jurisdiction: This Fourth Variation Agreement is governed by the laws of New Zealand.

EXECUTED

SIGNED for and on behalf of **Hutt City Council** by:



Signature of authorised signatory

JOHANNA MILLER

Name of authorised signatory

SIGNED for and on behalf of **Wellington Water Limited** by:

Signature of authorised signatory

Name of authorised signatory

EXECUTED

SIGNED for and on behalf of **Hutt City Council** by:

Signature of authorised signatory

Name of authorised signatory

SIGNED for and on behalf of **Wellington Water Limited** by:



Signature of authorised signatory

Colin Crampton

Name of authorised signatory

SCHEDULE
AMENDED AND RESTATED SERVICES AGREEMENT

**Contract for Provision of Management
Services Relating to Water Services**

Hutt City Council
Wellington Water Limited

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Agreement dated 31 October 2013, as amended and restated on
11 April 2022 ~~2021~~

Parties

Hutt City Council of 30 Laings Road, Lower Hutt (Council)

Wellington Water Limited (Wellington Water) of 25 Victoria Street, Petone, Wellington

Background

- A** Wellington Water was established in 2004 by Wellington City Council and Hutt City Council to co-operatively manage the delivery of Management Services to councils in the Wellington Region.
- B** Wellington Water is jointly owned by Hutt City Council (**HCC**), Upper Hutt City Council (**UHCC**), Porirua City Council (**PCC**), Wellington City Council (**WCC**), Wellington Regional Council (**GWRC**) and South Wairarapa District Council (**SWDC**).
- C** Wellington Water is a council-controlled trading organisation and a local government organisation under the Local Government Act 2002, and a company under the Companies Act 1993.
- D** This agreement sets out the terms under which Wellington Water will provide the Management Services to, and exercise the Statutory Powers on behalf of, Council from the Commencement Date.

Operative provisions

1 Deliverables for Council communities

- 1.1 Council has in its Long Term Plan (**LTP**) committed to certain deliverables for the Council's community. In general terms, these deliverables relate to the health, safety and development of the community, and environmental sustainability.
- 1.2 Separately:
 - 1.2.1 Wellington Water is an operator of a drinking water supply pursuant to the performance of the Bulk Water Supply Services, a drinking water supplier, stormwater network operator and a waster network operator in respect of the Network; and
 - 1.2.2 Council is an owner of a drinking water supply, a drinking water supplier, and a stormwater network operator and wastewater network operator in respect of the Network.
- 1.3 The standard of Water Services affects the achievement of certain deliverables in Council's LTP and Annual Plans, and the ability of the Council to comply with the Water Services Act. Council has contracted Wellington Water to provide Management Services in respect of Council's function in providing the Water Services because it believes it will better assist the achievement of these deliverables and at the same time provide cost and resource efficiencies.
- 1.4 Council requires Wellington Water to at all times manage the delivery of Management Services and operate its business in a way that will enable Council to achieve its LTP deliverables and performance measures and to discharge and/or assist the Council in discharging each of the Council's obligations under the Water Services Act.

2 Objectives

- 2.1 The parties will co-operate to achieve the following objectives with respect to the provision of the Management Services:
- 2.1.1 Delivery of Management Services for Council that are affordable, sustainable, accessible, and of the quality agreed in Council's LTP.
 - 2.1.2 Delivery of Management Services for Council in a manner that meets or exceeds the agreed Key Performance Indicators and Performance Measures.
 - 2.1.3 Compliance with Council's statutory, contractual and other obligations in respect of its provision of Water Services.
 - 2.1.4 Compliance with the Health and Safety at Work Act 2015 and maintenance of health and safety plans for all operational and capital project activities.
 - 2.1.5 Emergency management and response planning on behalf of Council, Wellington Water's other shareholders, and other organisations and services.
 - 2.1.6 Continuous improvement in the delivery of the agreed LTP service level for Water Services.
 - 2.1.7 That Wellington Water is familiar with and abides by all relevant Council Policies, subject to clause 4.20.
 - 2.1.8 The prompt, constructive and fair resolution of all issues between the parties.
 - 2.1.9 That Council retains direct ownership of the Network in its district, including assets and infrastructure built and purchased and asset information obtained during the term of this agreement or in existence prior to the Commencement Date of this agreement, or within the existence of this agreement.
 - 2.1.10 That the Network of Council and the networks of other Shareholding Councils in the Wellington region are managed on a co-ordinated basis.

3 Term

- 3.1 This agreement starts on the Commencement Date set out in Schedule 1 and will remain in force until the Expiry Date set out in Schedule 1, unless terminated earlier in accordance with this agreement.

4 The Management Services and Statutory Powers

Appointment and Powers

- 4.1 Council appoints Wellington Water to provide the Management Services to it and on its behalf. Wellington Water accepts this appointment.
- 4.2 Council authorises Wellington Water to perform on its behalf such acts, and gives Wellington Water such powers and authority, as are necessary to enable Wellington Water to provide the Management Services, including (without limitation) the powers specified in this agreement provided that Wellington Water shall:
- 4.2.1 Have no statutory powers other than those given by statute or expressly by Council in this agreement or by separate formal delegation;

- 4.2.2 Comply with the directions and conditions specified in every delegation, authority and instrument of appointment given to Wellington Water by Council;
- 4.2.3 Comply with any limitation on a power or delegation given by Council to Wellington Water, provided that Council will ensure that its delegations to Wellington Water enable Wellington Water's performance of the Management Services (including being principal to the contract under clause 8.4) in accordance with the Three Year Plan without further recourse to Council on a contract-by-contract basis except as agreed otherwise in relation to a particular project or service;
- 4.2.4 Have no power to delegate any of its functions or powers other than in accordance with this agreement or a delegation, authority or instrument of appointment given to Wellington Water by Council; and
- 4.2.5 Utilise all delegated functions or powers reasonably and prudently for their proper purpose.

Provision of Management Services

- 4.3 Wellington Water will at all times provide Management Services in accordance with this agreement. At all times during the term of this agreement, Wellington Water will provide the Management Services for Council:
 - 4.3.1 in a proper, timely, cost effective and professional manner;
 - 4.3.2 exercising all due care, skill and judgement, and in accordance with accepted professional and business practices and standards, including (without limitation) to the standard set out in Council's Asset Management Plans;
 - 4.3.3 in a manner designed to achieve the Objectives;
 - 4.3.4 in the best interests of Council, recognising the obligations Council has to its ratepayers, citizens and stakeholders;
 - 4.3.5 in a manner that does not reflect adversely on Council;
 - 4.3.6 in the same priority as for other Shareholding Councils for which Wellington Water provides management services (except in an emergency affecting one or more, but not all Shareholding Councils, when priority may be given to the Shareholding Council or Shareholding Councils affected by the emergency); and
 - 4.3.7 in accordance with any instructions and directions given by Council's Representative (which must be consistent with the intent and terms of this agreement), including the powers or delegations given by Council.

Variations to Management Services

- 4.4 Council may from time to time need to vary the Management Services provided by Wellington Water. In these circumstances Council will outline the proposed variation (including the need and outcomes sought) in writing.
- 4.5 Council and Wellington Water can then partner (refer Schedule 5 to determine the most effective and efficient method of achieving the outcome sought).
- 4.6 If the variation results in a change in the Management Services provided or costs incurred, Wellington Water will adjust the One Budget Charges as agreed with Council.

Variations to this Contract

- 4.7 This agreement may not be varied, apart from the specific Council information required in Schedules 1, 2, 4, 8, and 9, without the prior written approval of all Shareholding Councils. This clause is for the benefit of and intended to be enforceable by the other Shareholding Councils under the Contract and Commercial Law Act 2017.

Performance Measurement and KPIs

- 4.8 Wellington Water's performance will be measured via the agreed Key Performance Indicators.
- 4.9 Wellington Water will report on other Council performance measures as agreed from time to time, but these will not form the basis of Wellington Water's performance measurement. Other Council LTP performance measures may be used to measure Wellington Water's performance, but only after these measures are agreed with Wellington Water.

Failure to perform Management Services

- 4.10 If at any time Wellington Water fails to perform any Management Services, or believes it is unlikely to be able to deliver any part of the Management Services for Council in accordance with the terms of this agreement, Wellington Water must immediately notify Council of the failure or belief in writing, and outline the steps considered necessary to remedy the situation.
- 4.11 Council and Wellington Water can then partner (refer Schedule 5) to determine the most effective and efficient method of remedying the situation.
- 4.12 If Wellington Water fails to remedy the situation as agreed, and within a period which is reasonable in the circumstances taking into account any material risk to public health or safety or material threat to property or the environment, Council may, after consulting Wellington Water, take, or direct Wellington Water to take, any action Council considers necessary to ensure the Management Services are properly delivered and performed, and to minimise any loss or damage that might be suffered by Council or any other person as a result of Wellington Water's failure. Such action may include redirecting Management Services to a third party, the cost of which is to be met by Wellington Water.
- 4.13 Where any failure by Wellington Water to perform any Management Service materially and adversely impacts the provision of any Water Service that is essential to public health or safety or has or that threatens to damage property or the environment (or may reasonably have with the passage of time such impact or consequences) the Council may arrange for the provision of those Management Services and clauses 4.10 and 4.11 shall not apply.

Exercise of Statutory Powers

- 4.14 Council by this agreement appoints the Chief Executive Officer of Wellington Water (CEO) as its officer and gives the CEO the following powers to exercise on the Council's behalf:
- 4.14.1 the general powers of entry given to a local authority by section 171 of the LGA 2002;
 - 4.14.2 the powers given to a local authority in an emergency or where there is danger, by section 173 of the LGA 2002, provided Wellington Water notifies Council of the event as soon as possible; and

- 4.14.3 the powers in relation to construction of works on private land given to a local authority by section 181 of the LGA 2002.
- 4.15 Council (acting through its Chief Executive) shall delegate to Wellington Water and Wellington Water Personnel such further Statutory Powers as are necessary to enable Wellington Water to provide the Management Services.
- 4.16 The CEO may, subject to the terms of any delegation, delegate any of the powers set out in clause 4.14 and 4.17 to Wellington Water Personnel, other than the power to further delegate the power.
- 4.17 Council may, by separate written delegation, delegate additional powers to the CEO.
- 4.18 Council may from time to time issue initial or additional sealed warrants to Wellington Water Personnel identified by Wellington Water as suitable to hold a warrant as are required to enable Wellington Water to provide the Management Services.

Compliance with laws

- 4.19 At all times during the term of this agreement Wellington Water must, in respect of operating its business, providing the Management Services and exercising the Statutory Powers:
- 4.19.1 hold all authorisations, permits and licences required under any law; and
- 4.19.2 comply with the requirements of all applicable laws of any kind.

Compliance with policies and directions

- 4.20 Wellington Water will develop Approved Regional Policies wherever practicable. Approved Regional Policies will supersede the relevant Council policy.
- 4.21 Subject to clause 4.22, when providing the Management Services and exercising the Statutory Powers for Council, Wellington Water must, as a minimum, comply with:
- 4.21.1 Approved Regional Policies; or
- 4.21.2 where no Approved Regional Policy is in place, either:
- (a) those Council Policies listed in Schedule 8 as varied from time to time and notified to Wellington Water; or
- (b) Wellington Water's policies as agreed with Council from time to time.
- 4.22 Without limiting Wellington Water's duties and obligations under this agreement, Council may, after consulting Wellington Water, give Wellington Water by written notice such directions as Council considers reasonably necessary:
- 4.22.1 ensure that Council complies with its obligations under any law, bylaw, any document or Council Policy adopted by it, or any contract or arrangement to which it is a party; or
- 4.22.2 achieve efficiency or co-ordination with any Council business or activity,
- provided that no consultation is required where a situation or event exists that is or may become a nuisance or danger to public health, or that threatens to damage property or the environment.

- 4.23 If:
- 4.23.1 a variation to an Approved Regional Policy, a Council Policy or an agreed Wellington Water policy; or
 - 4.23.2 any direction provided by Council,
- results in a change in the Management Services provided or costs incurred by Wellington Water, Wellington Water will adjust the One Budget Charges as agreed with Council.

Protection of information systems

- 4.24 If Wellington Water is given access to a Council information technology system to enable Wellington Water to provide the Management Services, Wellington Water must:
- 4.24.1 only use the system to provide the Management Services;
 - 4.24.2 take all reasonable care in using the system, including all hardware, software and applications and observe all relevant licence agreements, Council Policies, security procedures and work practices;
 - 4.24.3 not interfere with or disrupt or cause any damage to the system;
 - 4.24.4 ensure that the system is protected from unauthorised access or use, or misuse, damage or destruction by any person;
 - 4.24.5 ensure the integrity of all data and information held on the system is not compromised; and
 - 4.24.6 follow the policies and procedures of the system to maintain the accuracy of data and information held within the system.

Continuous improvement and cost reduction initiatives

- 4.25 Council seeks to continuously improve processes and reduce costs in respect of the Water Services. Wellington Water must:
- 4.25.1 initiate and contribute to improvement processes on an ongoing basis; and
 - 4.25.2 continuously use its best efforts to reduce Council's costs in respect of its Water Services.

4A Water Services Act

Water Services Act

- 4A.1 The Council and Wellington Water acknowledge that for the purposes of the Water Services Act:
- 4A.1.1 Wellington Water is:
 - (a) an operator of a drinking water supply pursuant to the performance of the Bulk Water Supply Services, and is a drinking water supplier;
 - (b) a stormwater network operator in respect of the Network; and
 - (c) a wastewater network operator in respect of the Network;

4A.1.2 Council is:

- (a) an owner of a drinking water supply, and is a drinking water supplier;
- (b) a stormwater network operator in respect of the Network; and
- (c) a wastewater network operator in respect of the Network.

Obligations

4A.2 Without limiting any other provision of this agreement but subject to clauses 4A.3 and 4A.4 below, Wellington Water will:

4A.2.1 assist the Council to comply with its obligations under the Water Services Act in each of the capacities set out in clause 4A.1.2; and

4A.2.2 provide to Council in a timely manner all documentation, information, assistance and/or co-operation as may be reasonably necessary in order for the Council to comply with each Owner Obligation,

and the provision of such services will constitute Management Services for the purposes of this agreement.

Information

4A.3 Where Wellington Water requires Council to provide any information held by the Council (or any information that is held by a third party but which the Council is entitled to disclose to Wellington Water) in order for Wellington Water to comply with its obligations under this agreement (Required Information), then Wellington Water will, as soon as reasonably practicable after becoming aware that it requires such Required Information, request that Required Information from the Council in writing.

4A.4 As soon as reasonably practicable following receipt of a request for Required Information, Council will deliver (or procure the delivery of) such Required Information as is reasonably available to it. Any such Required Information delivered by the Council to Wellington Water will constitute Confidential Information for the purposes of this agreement.

Directions and compliance orders

4A.5 Where Wellington Water (acting reasonably) considers that compliance by it with any direction and/or compliance order issued to Wellington Water pursuant to the Water Services constitutes an:

4A.5.1 Unexpected Event, then clauses 11.14 to 11.15 will apply; and

4A.5.2 Additional Service, then clauses 11.16 to 11.18 will apply.

4A.6 Where a conflict arises between any valid direction given to Wellington Water by the Regulator and any direction of the Council, Council Policy or Approved Regional Policy, the direction of the Regulator will prevail.

5 Representatives

Representatives

5.1 Each party appoints the Representative named in Schedule 1 as its Representative under this agreement. The Representatives are responsible for the day to day administration of this agreement on behalf of the party appointing them. In the case of

Wellington Water, the Representative is also responsible for the day to day delivery of the Management Services and the supervision of all persons employed or engaged by Wellington Water in providing the Management Services.

- 5.2 The Representatives must be available and able to be contacted during normal business hours. A party must notify the other party immediately should its Representative be removed or replaced, together with the contact details of its new Representative, or of any change to its Representative's contact details.
- 5.3 Each party is responsible for the acts, omissions and defaults of its Representative. Any direction, instruction, notice, approval or other communication made or given to a Representative will be deemed to have been made by or given to the party appointing that person.

6 Employees and Consultants

Employees and Consultants

- 6.1 Wellington Water must engage Personnel of good character and with the necessary skills, expertise, qualifications and training to carry out the Management Services. Wellington Water must ensure that its Personnel perform the Management Services with due care, skill and judgement, and in an efficient, professional and cost effective manner.
- 6.2 Wellington Water will require its Personnel to comply with Council Policies, Approved Regional Policies and instructions pursuant to clause 4.3.7 when performing the Management Services for Council, subject to clause 4.21, and must:
- 6.2.1 take all reasonable steps to ensure that Personnel comply with the applicable instructions, Approved Regional Policies, Council Policies or Wellington Water's policies (as applicable), and otherwise acts in a manner consistent with Wellington Water's duties and obligations under this agreement;
 - 6.2.2 if it becomes aware that any Personnel has breached those instructions, Approved Regional Policies, Council Policies or Wellington Water's policies (as applicable), take all appropriate remedial steps and, in the case of a serious breach, forthwith advise the Council of the breach and the remedial steps taken; and
 - 6.2.3 take appropriate action against Personnel who fail to follow, or breach, and instruction, Council Policy, Approved Regional Policy or a Wellington Water policy or procedure when performing the Management Services.
- 6.3 Where a conflict occurs between a Council Policy and an Approved Regional Policy, the Approved Regional Policy will prevail.

7 Assets used to provide the Management Services and access to Water Services assets

- 7.1 Wellington Water must ensure that at all times it has sufficient and serviceable assets in order to operate efficiently and to meet its obligations under this agreement.
- 7.2 In respect of all assets accessed or used by Wellington Water in the provision of Management Services under this contract, Wellington Water must:
- 7.2.1 safeguard the assets from damage, loss and destruction; and
 - 7.2.2 keep the assets in good condition and repair (fair wear and tear excepted).

- 7.3 To the extent of carrying out Management Services, Wellington Water (or a nominated Wellington Water contractor) is entitled to access Council Water Services assets, property or infrastructure in order to discharge those Management Services.
- 7.4 Wellington Water has no power or authority to acquire or own Water Services assets or infrastructure used or to be used to provide the Water Services. All Water Services assets, property and infrastructure (whether or not in existence at the Commencement Date) used to provide the Water Services are to be owned solely by one or more Shareholding Councils.
- 7.5 The parties acknowledge that Wellington Water may acquire, lease and/or own assets used in its day to day operations in its capacity as provider of water services management services, including office space, furniture, vehicles and equipment (including IT equipment and software, tools and other technical equipment).

8 Contracts

Existing contracts

- 8.1 Where, on the Commencement Date, Council is party to a contract for works, services or supply of assets relating to Water Services:
- 8.1.1 the contract will remain with Council; and
 - 8.1.2 Wellington Water will, from the Commencement Date, manage the contract on Council's behalf to the extent that it was managed by Council prior to the Commencement Date, unless the parties (including third party contractor where required) agree to assign the contract to Wellington Water.
- 8.2 The only exceptions to this are:
- 8.2.1 the WCC contract for the provision of Wastewater treatment and facility operations services pursuant to the Design Build Operate Contract for Wastewater Treatment Project dated 23 February 1995 (the Moa Point treatment plant contract); and
 - 8.2.2 the HCC/UHCC contract for the operation of the Hutt Valley trunk wastewater system and Seaview wastewater treatment plant,
- where the parties will continue to manage the contracts on the same basis as prior to the Commencement Date.

Appointment of Wellington Water as principal's representative

- 8.3 So that Wellington Water may manage contracts referred to in clause 8.1 on behalf of Council, Council has or will appoint such Wellington Water Personnel as Council's representative and/or the engineer to the contract under every such contract. Council will give the required notice under each such contract to effect the appointment, and will at the same time copy that notice to Wellington Water. Wellington Water will appoint an alternative person Council's representative if Council, acting reasonably, requests this of Wellington Water.

Future contracts

- 8.4 Wellington Water will become the principal to all future contracts for Water Services, subject to clauses 8.5 through 8.12 and unless otherwise agreed in writing by the parties.
- 8.5 The parties acknowledge their intention that as existing contracts for operations and maintenance of Water Services and related assets expire or terminate, Wellington

Water will use its best endeavours to obtain future operations and maintenance services for Council in a manner that delivers the best possible value (in terms of quality and cost) to Council including, where appropriate, by entering into procurement arrangements which benefit both the Council and one or more other Shareholding Councils.

- 8.6 Wellington Water will procure, negotiate and enter into all future contracts for Water Services in a manner:
- 8.6.1 consistent with the applicable Annual Work Programme and performance measures and approvals in relevant plans and budgets, all applicable Council Policies and/or Approved Regional Policies and using good public sector procurement practices; and
 - 8.6.2 not inconsistent with Councils then current Annual Plan.
- 8.7 Wellington Water will deliver to Council:
- 8.7.1 an original of each new executed contract relating to Water Services to which Council is a principal or pursuant to which Council has rights and obligations, together with originals of all documents recording variations to such contracts. Wellington Water must retain a copy of all such contracts and any variation documents; and
 - 8.7.2 on Council's request, a copy of each new executed contract relating to Water Services to which Wellington Water is a principal together with copies of all documents recording variations to such contracts.
- 8.8 Wellington Water requires prior written approval by Council before it can sign a works or construction contract that is not substantively based on either NZS3910: 2013 or NZS3915: 2005 (or any replacement or additional New Zealand Standard form construction contract) with appropriate amendments or any standard form template approved by the Shareholding Councils for use by Wellington Water.
- 8.9 The Council will pay Wellington Water any amount payable by Wellington Water as principal to a third party contract pursuant to this clause 8 as a result of the termination by Council of this agreement or Council no longer requiring Wellington Water to provide the Management Services and Wellington Water will:
- 8.9.1 use its best endeavours to reduce the amount of the payment required of it;
 - 8.9.2 if requested by Council, co-operate with Council in a joint endeavour to reduce the amount of the payment; and
 - 8.9.3 transfer the contract to Council as principal and Council will assume the contract.
- 8.10 Wellington Water shall ensure that each contract entered into pursuant to this agreement where Wellington Water is the Principal contains no prohibition on the transfer of such contract from Wellington Water to Council.
- 8.11 Any Water Services asset created pursuant to a contract for capital work entered into by Wellington Water will be owned by the Council or, where applicable, those Shareholding Councils which have jointly requested Wellington Water to procure the capital works in accordance with arrangements made between Wellington Water and the Shareholding Councils in relation to that asset.
- 8.12 Any contract entered into by Wellington Water as principal pursuant to this clause 8 shall provide that any new asset shall vest in the Council on Practical Completion or handover of the asset pursuant to that contract. As between Wellington Water and

Council it is agreed that any interest in any such asset vested in Wellington Water pursuant to a contract or at law shall vest in Council on Practical Completion or handover of the asset.

- 8.13 To the extent permitted by law the parties agree that this is agreement is not intended and is not to be construed as a Construction Contract pursuant to the Construction Contracts Act 2002.

9 Resource Consents

- 9.1 Council will use its best efforts to transfer to Wellington Water all resource consents relating to Water Services assets and operations managed by Wellington Water on behalf of Council and owned by Council.
- 9.2 Until such time as resource consents are transferred to Wellington Water pursuant to clause 9.1 above, Wellington Water will continue to act on behalf of Council, as if the resource consent had been transferred.
- 9.3 Wellington Water will maintain a direct relationship with the consent authority. For resource consents in Wellington Water's name, the Council asset owner will ensure that Wellington Water's consent is obtained prior to the Council asset owner communicating with the consent authority. Such consent shall not be unreasonably withheld or delayed.
- 9.4 Wellington Water will keep Council informed in relation to discussions with the consent authority. In line with clause 25.7, during discussions with the consent authority Wellington Water may not make any commitment or obligation on expenditure or other matter that may create the impression of a commitment by Council, without Council's prior written approval.

10 Reports, information, reviews and records

Reports

- 10.1 Wellington Water shall deliver reports to Council in relation to the Management Services Wellington Water provides. The reports shall contain the information set out in Schedule 3 and other information Council may reasonably require to be included from time to time.

Local Government Act 2002 Reporting

- 10.2 Wellington Water shall provide Council with reports to meet Council's reporting cycle, or at other such intervals as Council may specify to meet the requirements of the LGA 2002. This will include, but is not limited to, reports to support Council Bylaw reviews, and policy and strategy reviews.

Service Level Agreement Performance Report ("SLA Report")

- 10.3 Wellington Water shall deliver an SLA Report covering the information set out in Schedule 3 to Council in relation to the Management Services Wellington Water provides on a quarterly basis, to be delivered by the 20th day of the month following quarter end.

Activity and Operations Reports

- 10.4 Wellington Water shall provide all other reports as outlined in the agreed Annual Work Programme (AWP).

Budgeting and Financial Reports

- 10.5 Wellington Water shall provide all information required in a timely manner to meet Council's annual financial planning and financial reporting cycles.

Information and Audit

- 10.6 Wellington Water shall promptly provide such information relating to the Water Services and/or the Management Services as Council shall reasonably request:

- 10.6.1 where such information relates to a matter that is of material interest to an elected member or the community;
- 10.6.2 where the information relates to a matter that constitutes a legal, financial or reputational risk or liability to the Council or could reasonably give rise to any such risk or liability;
- 10.6.3 where the information is reasonably required to enable the Council to fulfil its obligations under any contract with a third party;
- 10.6.4 where the information is reasonably required to enable the Council to fulfil its obligations and/or carry out its functions under any law or legislative provision; and

Council will pay all of Wellington Water's costs and expenses incurred in fulfilling any such request.

Council audits

- 10.7 Provided that clauses 3.19 to 3.21 of the Shareholders' Agreement entered into between the Shareholding Councils are complied with, Council may reasonably, and at its own cost, monitor and audit Wellington Water's performance in the delivery of the Management Services from time to time. An audit may take the form of spot checks and/or a more formal audit. The objective of such audit shall be to ascertain the level of compliance by Wellington Water with the requirements of this agreement, with a particular focus on the quality of the Management Services and compliance with legislation, consents and standards.
- 10.8 Council will give the board of Wellington Water reasonable notice if a formal audit is to be undertaken and will consider feedback provided by the board on scope, timing or requisite reviewer expertise.
- 10.9 Wellington Water shall co-operate with Council and its auditors to provide access to such information, records, premises, Wellington Water personnel and subcontractors as shall be reasonably necessary to facilitate such audits.
- 10.10 In addition to the reports to be delivered under clause 10.1, Council may from time to time and at Council's cost, require Wellington Water to provide it with information concerning any aspect of the Management Services Wellington Water provides, acting reasonably. Wellington Water must endeavour to provide the information as soon as practicable or within a timeframe agreed with Council.

Reviews

- 10.11 The parties will meet to review this agreement at a time to be agreed, but no later than the third anniversary of the Commencement Date, and every third year after that. The purpose of the review will be to determine the extent to which:
- 10.11.1 the provisions of this agreement are being complied with and are functioning adequately from a practical perspective;

10.11.2 the Performance Measures and the Key Performance Indicators are appropriate; and

10.11.3 any revision of the provisions of this agreement is necessary or desirable.

Records

10.12 Wellington Water must keep and maintain full records and documentation in relation to the Management Services and this agreement in accordance with the Public Records Act 2005, the Local Government Official Information and Meetings Act 1987, the Building Act 2004, the Water Services Act and any applicable standards or policies. Wellington Water must keep copies of these records in hard copy and in electronic form and must deliver a full set of both to Council on termination or expiry of this agreement.

10.13 Wellington Water must comply with clause 10,12 during the term of this agreement and for 7 years after the agreement set out in this agreement ends.

10.14 On request by Council, Wellington Water must make all documents and records relating to the Management Services available to Council for inspection by Council and/or its Personnel and, if required, copying.

10.15 The following records are to be provided to Council when available:

10.15.1 'as built' records and asset information,

10.15.2 asset management system data,

10.15.3 Project Information Memoranda information,

10.15.4 Land Information Memorandum information,

10.15.5 Building compliance information, and

10.15.6 such other records as reasonably required by Council from time to time.

All asset data, records and documents referred to in clauses 10.12 to 10.15 must be kept and delivered (as applicable) in a form that is compatible with Council's information system and in accordance with a timeframe to be advised by Council from time to time.

11 Three Year Plan, Annual Work Programme, One Budget Charges and Additional Services

Three Year Plan and Annual Work Programme

11.1 By 1 September each year, or by another date agreed with Council, Wellington Water will provide to Council a draft rolling Three Year Plan, for the period from 1 July to 30 June of any one year.

11.2 The draft Three Year Plan will detail:

11.2.1 for the next Financial Year commencing 1 July;

(a) the full draft Annual Work Programme;

(b) the One Budget Charges for the next Financial Year commencing 1 July (and, from the Financial Year commencing 1 July 2019 following confirmation of Council's 2018-21 LTP, such One Budget Charges will not be less than the One Budget Charges forecasted for that

Financial Year in the previous year's Three Year Plan, unless agreed otherwise);

- (c) any proposed amendments to the Key Performance Indicators;
- (d) any amendments to the Opex Charge Scope, Management Charge Scope, Contingency Sum or the Unexpected Event Reserve Cap; and

11.2.2 for the following two Financial Years, the forecast high level Annual Work Programme and the forecast One Budget Charges.

- 11.3 Each year, Wellington Water and Council will agree a final Three Year Plan based on the draft provided under clause 11.1 and in accordance with the process and timeframes set out in Schedule 6. The final Three Year Plan will be approved by the Wellington Water Board and agreed in writing by the Chief Executives or delegated representatives of both Wellington Water and Council by 30 June each year, excluding any carry-forwards still to be agreed at that point.
- 11.4 Once agreed, the Three Year Plan may only be altered in terms of programme content and budget during the course of the Financial Year by written agreement of Wellington Water and Council.

One Budget Charges

- 11.5 Council will pay Wellington Water the One Budget Charges for each Financial Year as follows:
- 11.5.1 the Management Charge will be paid in twelve equal monthly instalments;
 - 11.5.2 the Opex Charge will be paid in twelve equal monthly instalments; and
 - 11.5.3 the Capex Charge will be paid in monthly instalments of such sums as are agreed in the Three Year Plan, or as otherwise agreed from time to time, to finance the performance of Annual Work Programme.
- 11.6 Wellington Water will invoice Council (in advance) for each monthly instalment of One Budget Charges by the twenty fifth (25) day of the preceding month. Each invoice must separately identify the Management Charge, Opex Charge and Capex Charge.
- 11.7 Council must pay all valid GST invoices from Wellington Water for the One Budget Charges by the 10th business day of the month to which the invoice relates.
- 11.8 If the Three Year Plan is not agreed by 30 June for the following Financial Year, until such time as the Three Year Plan is agreed, the One Budget Charges will be based on the amount forecast for that year in the Three Year Plan adopted the previous Financial Year. Once the Three Year Plan is agreed, the One Budget Charges will be recalculated and the updated Three Year Plan (including the One Budget Charges) will be applied retrospectively from the start of the Financial Year.

Wellington Water to operate within One Budget Charges

- 11.9 Subject to clauses 11.4 and 11.15, Wellington Water must:
- 11.9.1 manage its operations within the agreed Management Charge; and
 - 11.9.2 carry out the Annual Work Programme within the Opex Charge and the Capex Charge,

- 11.10 Wellington Water may, in its discretion and with its Board's approval, amend the allocation of funds between the Management Charge and the Opex Charge provided that the total sum of the Management Charge and the Opex Charge does not change.

Contingency Sum and treatment of overs and unders in expenditure

- 11.11 The parties acknowledge that the Opex Charge includes a Contingency Sum and agree that the Contingency Sum may be used by Wellington Water, at its discretion but subject to the reporting requirements in clause 10, during the Financial Year to manage its operations and/or fund Unexpected Events.
- 11.12 The parties acknowledge that there may be overs and/or unders in relation to expenditure of the Opex Charge and the Capex Charge against the Annual Work Programme and the following applies:
- 11.12.1 subject to clause 11.13, overs and/or unders in relation to expenditure of the Opex Charge do not require Wellington Water to repay any part of the One Budget Charges or entitle Wellington Water to increase the One Budget Charges.
- 11.12.2 the treatment of any overs and/or unders in relation to expenditure of the Capex Charge against the Annual Work Programme will be agreed by the parties as part of their regular review of expenditure and any agreed wash-up process.
- 11.13 At the end of each Financial Year, the unspent portion of the Contingency Sum (if any) will be:
- 11.13.1 transferred to the Unexpected Event Reserve; and
- 11.13.2 to the extent that the Unexpected Event Reserve exceeds the Unexpected Event Reserve Cap, repaid to Council.

Unexpected Events and the Unexpected Event Reserve

- 11.14 The parties acknowledge that
- 11.14.1 the Management Services require Wellington Water to manage Unexpected Events from time to time;
- 11.14.2 that Management Services required to respond to Unexpected Events are deemed to be Additional Services;
- 11.14.3 despite clauses 11.16 and 11.17, Wellington Water may undertake Additional Services in response to Unexpected Events where it is impracticable for Council to instruct or authorise Wellington Water, providing that Council may subsequently, by written notice:
- (a) instruct Wellington Water to cease such response; or
- (b) require further Unexpected Events Costs to be agreed with Council in accordance with clause 11.17; and
- 11.14.4 that Unexpected Events Costs will be paid in accordance with clause 11.15.
- 11.15 Unexpected Events Costs incurred by Wellington Water will be paid, in the order given:
- 11.15.1 from the Unexpected Event Reserve to the extent that such funds are available; then

11.15.2 from the Contingency Sum, if such sum is available; then

11.15.3 to the extent that the amount is not available from the above sources, Council will ensure that sufficient funds are made available to Wellington Water to cover such Unexpected Events Costs.

Additional Services and contracts not covered by One Budget Charges

11.16 The parties acknowledge that, from time to time the parties may agree that Wellington Water will undertake Management Services that are Additional Services and, without limitation:

11.16.1 Council may ask Wellington Water to carry out, or propose, Additional Services; and/or

11.16.2 Subject to clause 11.14.3:

- (a) Wellington Water will notify Council if it considers that a direction from Council, or other circumstances, require it to carry out Additional Services; and
- (b) Council will, as soon as reasonably practicable after receiving notice required by 11.16.2(a), notify Wellington Water whether or not it considers the direction or other circumstances to be Additional Services.

11.17 Where Council has asked Wellington Water to carry out Additional Services under clause 11.16.1, or has notified Wellington Water under clause 11.16.2(b) that it considers a direction or other circumstances to be Additional Services:

11.17.1 Before the Additional Services commence (except in the case of an Unexpected Event where, for clarity, clause 11.14.3 applies) Wellington Water will advise Council as appropriate in the circumstances, either:

- (a) the value of the Additional Services, their programme and their impact (if any) on the Annual Work Programme; or
- (b) the mechanism under which the value of the Additional Services and the impact (if any) on the Annual Work Programme will be derived; or
- (c) a proposed budget for the Additional Services that must not be exceeded without further agreement between the parties.

11.17.2 Following receipt of Wellington Water's advice under clause 11.17.1, Council will agree, acting reasonably, with Wellington Water a value, a mechanism for valuing, or a budget (as applicable) for the Additional Services.

11.17.3 If the parties are unable to agree under clause 11.17.1, the matter will be treated as a dispute and resolved in accordance with clause 22.

11.18 Subject to agreement having been reached under clause 11.17, Wellington Water will invoice the Council for Additional Services (in the form of a valid GST invoice and separately to invoices for the One Budget Charges) and:

11.18.1 subject to clause 11.18.2, such invoices must be paid by Council no later than the 20th of the month following the invoice date.

11.18.2 Where Wellington Water is the principal under a contract, Council must pay all valid GST invoices for capital works charges within seven (7) business days of receiving an invoice from Wellington Water.

- 11.19 Where, as part of the Management Services or Additional Services, Wellington Water manages a contract between Council and a third party (where Council is Principal), Wellington Water must:
- 11.19.1 ensure that invoices from the third party where appropriate are addressed to Council care of Wellington Water; and
 - 11.19.2 when satisfied that an invoice is in order for Council to pay, send an approval (as agreed between the parties) to Council to that effect together with the invoice.
- 11.20 An invoice from a third party will only be in order for Council to pay if:
- 11.20.1 it is a valid GST invoice;
 - 11.20.2 all obligations of the third party that the invoice relates to have been met in accordance with the contract between Council and the third party;
 - 11.20.3 the invoice is for no more than the amount allowed under the contract for meeting those obligations; and
 - 11.20.4 there are no circumstances that entitle Council to, or suggest Council should as prudent business practice, dispute the invoice or withhold payment pursuant to the contract provisions.
- 11.21 Where, as part of the Management Services, Wellington Water manages a contract (where Council is Principal) whereby the third party provides services to Council and another Shareholding Council, Wellington Water must:
- 11.21.1 ensure the third party accurately accounts for and invoices separately the services it provides to Council; and
 - 11.21.2 comply with clauses 11.19 and 11.20.
 - 11.21.3 Payments made by Council in relation to an invoice from Wellington Water for work undertaken on the provision of Water Services for Council must be paid promptly to the relevant supplier of that work.

Late payments

- 11.22 Where, as a result of any payment invoiced under clause 11 not being paid by the due date, Wellington Water is required to draw down on its credit facilities, the interest cost arising thereby will be charged to the Council or Shareholding Councils (as applicable).

GST

- 11.23 If any payment under this agreement is subject to GST, the amount payable is to be increased by the amount of the GST.

Disputed Invoices

- 11.24 Council will promptly pay all amounts payable by it to Wellington Water under this agreement and will not intentionally withhold or threaten to withhold any payment due to Wellington Water, notwithstanding any dispute between Council and Wellington Water, whether as to the performance of the Management Services, the amount of the invoice or otherwise.

- 11.25 On request by Council, Wellington Water will promptly provide Council with such information and analysis in connection with the calculation of any amount invoiced to Council by Wellington Water as Council may reasonably request.

12 Intellectual Property

Ownership of intellectual property

- 12.1 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the performance of the Management Services for Council will vest in, and belong to, Council on creation. Council grants Wellington Water a revocable, non-transferable and royalty free licence to exercise all Council intellectual property rights in its Intellectual Property, for the purposes of providing the Management Services to Council. Wellington Water's licence from Council terminates when this agreement terminates.
- 12.2 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the performance of the Management Services generally and not for a particular Council will vest in, and belong to, Wellington Water on creation. Wellington Water grants Council a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-licence) to exercise all Wellington Water's intellectual property rights in its Intellectual Property.
- 12.3 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the efforts of a third party in connection with the performance of a contract relating to Water Services between Council and that third party will, as between Council and Wellington Water, vest in, and belong to, Council. If Council obtains from a third party Intellectual Property relating to the Management Services, Council will endeavour to obtain a royalty free licence for Wellington Water to use that Intellectual Property to the extent necessary for Wellington Water to meet its obligations to Council under this agreement.

Wellington Water's material

- 12.4 If any material, matter or thing (including software, documentation or data) is owned by Wellington Water and such material, matter or thing is incorporated in or attached to any Intellectual Property owned by Council (whether pursuant to clause 12.1 or otherwise), Wellington Water grants Council a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-licence) to exercise all intellectual property rights in such material, matter or thing for the purpose of accessing and using the Intellectual Property owned by Council as referred to in this clause.

No infringement

- 12.5 Wellington Water must not infringe the intellectual property rights of Council or a third party in connection with this agreement.

13 Operation and management of Wellington Water

- 13.1 Without limiting the obligations and duties of Wellington Water or its directors, Wellington Water:
- 13.1.1 must comply with the objectives in section 59 of the LGA 2002, including to be a good employer, to exhibit a sense of social and environmental responsibility and to conduct its affairs in accordance with sound business practice;
 - 13.1.2 must make all decisions in accordance with its statement of corporate intent and its constitution in accordance with section 60 of the LGA 2002;

- 13.1.3 must maintain operative business continuity plans, emergency response plans, and alternative site arrangements for the Water Services and the Management Services;
- 13.1.4 must maintain operative and health and safety plans for all Water Services, Management Services, operational activities and capital projects; and
- 13.1.5 must comply with all relevant legislation.

14 Confidentiality

Obligations of confidence

- 14.1 Where Wellington Water receives Confidential Information from Council under this agreement or otherwise in connection with the Management Services, Wellington Water must:
 - 14.1.1 keep the Confidential Information confidential;
 - 14.1.2 not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of this agreement;
 - 14.1.3 not, without Council's written consent, disclose Confidential Information to any person other than its personnel or Council's personnel who need the information for the purposes of this agreement; and
 - 14.1.4 establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

Further permitted use and disclosure

- 14.2 Notwithstanding clause 14.1, Wellington Water may use or disclose Confidential Information to the extent necessary to:
 - 14.2.1 comply with any law, binding directive of a regulator or a court order; or
 - 14.2.2 obtain professional advice in relation to matters arising under or in connection with this agreement.
- 14.3 Where Wellington Water believes it is required to disclose Council's Confidential Information pursuant to the Local Government Official Information and Meetings Act 1987, Wellington Water must notify and consult with Council prior to any disclosure of the information and, where appropriate, Wellington Water will refer the request for Confidential Information to Council and Council will take responsibility for the request.

Exclusions

- 14.4 Clause 14.1 does not apply to Confidential Information:
 - 14.4.1 which was known to Wellington Water at the time of disclosure, unless such knowledge arose through the breach of an obligation of confidence; or
 - 14.4.2 which Wellington Water acquires from a third party (other than Council personnel) where that third party was entitled to disclose it.

Responsibility for Personnel

- 14.5 Wellington Water must ensure that its Personnel do not do, or omit to do anything, which if done or omitted to be done by Wellington Water, would breach this clause 14.

Undertakings from Personnel

- 14.6 Council may at any time require any Personnel of Wellington Water engaged in the performance of obligations under this agreement to give written undertakings in a form prepared by Council relating to the non-disclosure of the Confidential Information and Wellington Water must promptly arrange for all such undertakings to be given.

Notification of unauthorised use

- 14.7 Wellington Water must immediately notify Council of any potential, suspected or actual unauthorised use, copying or disclosure of Council's Confidential Information.

Return of Confidential Information

- 14.8 Wellington Water must immediately on demand or on completion or termination of this agreement, return to Council any documents in its possession, power or control containing Confidential Information. Wellington Water must not retain copies of any Council Confidential Information in any form.

Obligations to continue after agreement ends

- 14.9 All obligations of confidence set out in this agreement continue in full force and effect after the agreement set out in this agreement ends.

15 Warranties

General warranties

- 15.1 Each party represents and warrants to the other on a continuing basis that:
- 15.1.1 it has full corporate power to enter into and give effect to this agreement and to complete the transactions contemplated by this agreement;
 - 15.1.2 it has taken all necessary action to authorise the execution, delivery and performance of this agreement;
 - 15.1.3 at the date of this agreement, the execution, delivery and performance of this agreement by it does not contravene any contractual, legal or other obligations that apply to it; and
 - 15.1.4 on execution of this agreement, its obligations under this agreement will be valid, binding and enforceable.

Performance of Management Services

- 15.2 Wellington Water represents and warrants to Council on a continuing basis that:
- 15.2.1 Wellington Water holds all licences, permits, consents and authorisations required under any law in relation to the provision of the Management Services and will continue to do so at all times during the term of this agreement;
 - 15.2.2 Wellington Water will use its best endeavours to meet or exceed both the Performance Measures and the KPIs.

16 Liability

Limited Liability

- 16.1 Subject to clause 16.2, Wellington Water will not be liable in damages to Council, nor will Council be liable in damages to Wellington Water, for any claims, actions, liabilities, loss, costs or expenses whatsoever arising directly or indirectly out of any damage or loss arising from any breach of this agreement by Wellington Water or Council (as the case may be), or from any negligence, act or omission of it or its Personnel.
- 16.2 Despite clause 16.1:
- 16.2.1 a party is liable to pay all amounts properly payable by that party to another party pursuant to this agreement;
 - 16.2.2 Wellington Water must undertake any actions necessary to protect Council's interests, including any follow up action required in situations of possible or actual loss (economic or otherwise) to Council; and
 - 16.2.3 if Wellington Water recovers compensation from a third party (including an insurer) in respect of an occurrence that Wellington Water would, in the absence of clause 17.1, be liable to Council for, Wellington Water will be liable to pay to Council the compensation recovered by Wellington Water, less Wellington Water's reasonable costs.

Third party claims

- 16.3 In respect of each claim made, or action taken, against Wellington Water by a third party (other than Wellington Water's Personnel) which Wellington Water may incur in, or which may arise from, it carrying out its duties and obligations to Council under this agreement, Council will pay the amount of:
- 16.3.1 Wellington Water's liability to the third party; and
 - 16.3.2 Wellington Water's losses, costs and expenses,
- to the extent that Wellington Water cannot recover these amounts under its insurance (including the amount of any excess) or from a third party.
- 16.4 Where a claim to which clause 16.3 may apply is made against Wellington Water, Wellington Water must:
- 16.4.1 forthwith advise Council of the claim; and
 - 16.4.2 comply with any directions given at any time by Council to Wellington Water in relation to the claim to protect Council's interests including follow up action required in situations of possible or actual loss (economic or otherwise).
- 16.5 Council is authorised by Wellington Water to notify other Shareholding Councils of any such third party claim.
- 16.6 If Council has paid a liability of Wellington Water pursuant to clause 16.3 and Wellington Water recovers compensation under its insurance or from a third party in respect of the occurrence giving rise to the liability, Wellington Water will pay to Council the compensation recovered by Wellington Water, but not exceeding the amount paid by Council, less Wellington Water's reasonable costs.
- 16.7 Clause 16 refers to claims, actions, liabilities, losses, costs or expenses whatsoever arising directly or indirectly out of damage or loss of any activity undertaken by Wellington Water in the provision of Management Services without limitation

irrespective of whether the Management Services consist of capital works, maintenance, operations, activities or provision of advice.

17 Insurance

Insurance

- 17.1 While Wellington Water is providing services (whether to Council or third parties), Wellington Water must maintain:
- 17.1.1 public liability insurance for an amount not less than \$20 million in respect of any claim;
 - 17.1.2 professional indemnity insurance for an amount not less than \$5 million in respect of any claim by a third party;
 - 17.1.3 motor vehicle insurance for an amount not less than \$2 million in respect of any claim by a third party;
 - 17.1.4 general insurance for repair and replacement of all items used by Wellington Water to provide the Management Services that are lost or damaged; and
 - 17.1.5 statutory liability insurance for an amount not less than \$2 million in respect of any claim.
- 17.2 Council must maintain insurance of Water Services assets the subject of the Management Services as a council would reasonably procure which may include such self-insured portion as the Council shall elect.
- 17.3 Subject to the termination transition arrangements in clause 20, Wellington Water's professional indemnity cover should be maintained for a period of 6 years after the expiry or termination of this agreement.

Insurer and terms

- 17.4 Each policy maintained in accordance with this clause 17 must be with a reputable insurer and be on terms commonly acceptable in the current insurance market.

Protection of insurance

- 17.5 Each party must comply with and observe the terms of all insurance policies referred to in clauses 17.1 and 17.2 and must not do anything which could result in any policy being rendered void or voidable. Each party must also comply with the terms of any notification or management process for a claim under a policy referred to in clauses 17.1 and 17.2.

Evidence of insurance

- 17.6 Each party must deliver to the other party evidence satisfactory to the other party that it has a particular insurance policy and that the policy is current. This should be delivered to each party's representative under this agreement as soon as possible following a request from the other party to do so.

18 Termination

- 18.1 Council may give Wellington Water written notice immediately terminating this agreement if Wellington Water ceases to carry on business, is about to become insolvent, or has a liquidator appointed to it or a receiver appointed for all or any of its assets.

- 18.2 Council may terminate this agreement on not less than twelve (12) weeks written notice to Wellington Water if:
- 18.2.1 Wellington Water is in material breach of this agreement; and
 - 18.2.2 the breach is capable of remedy; and
 - 18.2.3 Wellington Water has not remedied the breach within sixty (60) days after receiving notice requiring it to do so.
- 18.3 Council may terminate this agreement on not less than six (6) months written notice to Wellington Water if Wellington Water fails to achieve a Mandatory Key Performance Indicator in any three consecutive years.
- 18.4 Either party may terminate this agreement with effect as at 30 June in any year provided it gives written notice of termination to the other party no later than 30 June the previous year and the party giving notice has the written agreement of five (5) of the six (6) Shareholding Councils.
- 18.5 Council may terminate this agreement with effect from any given date provided it gives written notice of termination to Wellington Water and to the other Shareholding Councils no later than 36 months previous to that date.

Three Waters Structural Reform

- 18A.1 Council and Wellington Water acknowledge that the Crown (through the Department of Internal Affairs) has progressed a national programme for the transformation of local government three waters service delivery arrangements (**Crown Reform Proposal**), which would see the creation, by statute, of four new water service delivery entities that would be responsible for the ownership of all assets associated with, and the delivery, supply and management of, drinking water, stormwater and wastewater.
- 18A.2 Each of Council and Wellington Water acknowledges that if the Crown implements the Crown Reform Proposal, then it may be necessary to transition and migrate some or all of the Management Services, Bulk Water Supply Services, Network and/or any other matter contemplated by this agreement to one or more service delivery entities established as part of the Crown Reform Proposal. To the extent that any such transition or migration is required in connection with the Crown Reform Proposal, then each of Wellington Water and the Council will:
- 18A.2.1 act in good faith to:
 - (a) jointly develop and agree a transition plan, setting out the respective tasks to be accomplished by each party in connection with an orderly transition to the arrangements as set out under the Crown Reform Proposal and a schedule for the completion of the tasks;
 - (b) agree any amendments to the Management Services as may be necessary in connection with the transition to the arrangements as set out under the Crown Reform Proposal,

in each case on the basis that unless otherwise required pursuant to the Crown Reform Proposal, Wellington Water will continue to deliver the Management Services in accordance with the terms of this agreement and all applicable laws (until such time as these arrangements are terminated by the Crown Reform Proposal); and
 - 18A.2.2 perform their respective tasks under the transition plan developed under clause 18A.2.1.

- 18A.3 The parties acknowledge that the Crown may request that Wellington Water assists with the transition to any Crown Reform Proposal, including by way of establishing a transition unit within Wellington Water and/or transferring or seconding personnel to a new agency (Transition Services). Following any such request, Wellington Water will use commercially reasonable endeavours to procure funding from the Crown for all or part of the costs of any new employees, seconded employees or transferred employees that Wellington Water is required to engage or provide in connection with the Transition Services, provided that any costs or expenses that Wellington Water incurs in connection with any such Transition Services and which it is not able to recover from the Crown will constitute Management Charges for the purposes of this agreement.
- 18A.4 Wellington Water confirms that it will provide the Transition Services, if any, in accordance with good industry practice and in a manner that minimises the costs and expenses of those Transition Services to the extent reasonably practicable.
- 18A.5 If the Crown requests that Wellington Water seconds and/or transfers any Wellington Water employees to a new agency in connection with the Crown Reform Proposal, then where Wellington Water considers (acting reasonably) that the secondment or transfer of such employee may adversely impact the performance of the Management Services, then:
- 18A.5.1 Wellington Water will notify the Council, including such detail as may be reasonably necessary for the Council to assess the potential impact to the Management Services and/or costs arising out of the transfer or secondment of such employee; and
- 18A.5.2 Wellington Water will consult with each Shareholding Council (including the Council) in respect of any such secondment or transfer (including the terms thereof) prior to approving any such secondment or transfer.
- 18A.6 The parties acknowledge that clauses 19 and 20 of this agreement shall be without prejudice to any termination, transition and/or migration arrangements in respect of the Management Services, Bulk Water Supply Services, the Network and/or any other matter contemplated by this agreement pursuant to statute or other legislative instrument in connection with the Crown Reform Proposal.

19 Obligations at end of agreement

Return of property

- 19.1 When the agreement set out in this agreement ends, whether by expiration of the term or on earlier termination:
- 19.1.1 all sums outstanding or incurred in relation to this agreement prior to the Expiry Date or termination must be immediately paid;
- 19.1.2 Council may instruct Wellington Water to:
- (a) continue providing all or part of the Management Services while termination transition takes place under clause 20, at a reasonable cost based on, and no more than, the charges then payable under this agreement;
 - (b) deliver all or any part of the Property to an address nominated by Council;
 - (c) make all or any part of the Property available for collection, at the premises of Wellington Water at an agreed time;

- (d) permit Council's Personnel to have access to Wellington Water's premises for the purposes of removing all or any part of the Property;
- (e) reasonably assist Council or its new service provider to install Council's equipment and any other equipment procured by Council in connection with the termination transition;
- (f) retain or destroy all or any part of the Property; and/or
- (g) proceed with termination transition under clause 20 in relation to the relevant Service(s).

19.2 Wellington Water must immediately comply with any instructions given by Council pursuant to clause 19.1.2.

19.3 Council will pay Wellington Water's reasonable costs and expenses incurred in complying with clause 19.1 insofar as such compliance requires the performance of:

19.3.1 services in addition to the Management Services;

19.3.2 the Management Services after the expiration of termination of this agreement.

Consequences of termination

19.4 If the agreement set out in this agreement expires or is terminated for any reason:

19.4.1 each party retains its rights under this agreement and at law in respect of any breach of this agreement by the other party;

19.4.2 Wellington Water will not be entitled to any other payment or any compensation as a result of termination, subject to clause 19.3; and

19.4.3 the parties will agree in good faith whether any part of the One Budget Charges received by Wellington Water (and that have not been spent or irrevocably committed as part of the Management Services) should be repaid to Council.

Clauses survive expiration or termination of agreement

19.5 This clause and the following clauses will survive the expiration or termination (for whatever reason) of this agreement:

19.5.1 clauses 10.1 through 10.12 (Reports, information, reviews and records);

19.5.2 clause 12 (Intellectual Property);

19.5.3 clause 14 (Confidentiality);

19.5.4 clause 16 (Liability);

19.5.5 clause 19 (Obligations at end of agreement);

19.5.6 clause 20 (Termination transition);

19.5.7 clause 22 (Dispute resolution); and

19.5.8 any other clauses that make provision for continued operation.

20 Termination transition

- 20.1 Wellington Water acknowledges and agrees that both prior to and following the expiry or termination of the agreement set out in this agreement, Council must be able to maintain continuity of services whilst finding a new service provider for the ongoing provision of the Management Services, or resume providing the Management Services itself.
- 20.2 Wellington Water will comply with Council's reasonable directions to effect an orderly transition and migration of the Management Services from Wellington Water to the new service provider in accordance with the following procedures:
- 20.2.1 Wellington Water and Council will promptly and jointly develop and agree a transition plan, setting out the respective tasks to be accomplished by each party in connection with an orderly transition and a schedule for the completion of the tasks;
 - 20.2.2 Wellington Water and Council will perform their respective tasks under the transition plan developed under clause 20.2.1;
 - 20.2.3 Wellington Water and Council will discuss the transfer of any Wellington Water employees that Wellington Water identifies as being surplus to its requirements or who Council requests to be transferred;
 - 20.2.4 Wellington Water will transfer to Council any assets originally transferred to Wellington Water by Council and which are still held by Wellington Water and have not been paid for, and any other assets which Wellington Water identifies are surplus to its requirements and which Council requests to be transferred;
 - 20.2.5 Wellington Water will, upon request, provide Council with detailed specifications for any equipment which Council or any new service provider will require to properly perform the Management Services;
 - 20.2.6 where it is reasonably necessary to do so in order to maintain continuity of the Management Services, Wellington Water will deliver to Council all data (in electronic form compatible with Council's information system) which is being used by Wellington Water in connection with the Management Services;
 - 20.2.7 Wellington Water will provide any training reasonably requested by Council for its employees or employees of the new service provider who will have responsibility for the Management Services following termination transition; and
 - 20.2.8 Wellington Water will provide all information relating to the Management Services reasonably requested by Council by written notice.
- 20.3 Unless this agreement has been terminated by Council due to a breach of the agreement by Wellington Water that has not been remedied in accordance with clause 18.2, Council will pay Wellington Water its reasonable costs and expenses in complying with clause 20.2 insofar as such compliance requires:
- 20.3.1 the performance of services which are in addition to the Management Services.
 - 20.3.2 performance of the Management Services after the expiration or termination of this agreement.

21 Partnering

21.1 Wellington Water and Council agree that where practicable their relationship under this agreement will be characterised by the 'partnering' style of relationship as set out in Schedule 5 and in accordance with the following:

21.1.1 **Partnering** is a method of operating a contractual relationship to promote prompt and constructive communication and a problem solving approach between the parties. Partnering has three primary objectives:

- (a) ensuring that the contract operates smoothly;
- (b) to promote value adding to both the provision of the Management Services and each party's separate interests; and
- (c) to facilitate the avoidance of disputes;

21.1.2 the parties will implement partnering in this agreement in accordance with the style of partnering set out in Schedule 5.

21.1.3 the use of partnering techniques and the adoption of the style of partnering set out in Schedule 5 does not in any way imply any fiduciary obligations, obligation of good faith, partnership and/or joint venture between the parties; and

21.1.4 the partnering information set out in Schedule 5 is subordinate to the provisions of this agreement and shall not be considered as overriding, amending or waiving any contractual rights or obligations.

22 Dispute resolution

Meeting to attempt to resolve disputes

22.1 If a dispute arises under this agreement, a party to the dispute may at any time give written notice to the other party to the dispute requesting that a meeting take place to seek to resolve the dispute. The Representatives of the parties to the dispute must meet within ten business days of the giving of the notice and endeavour to resolve the dispute in good faith.

22.2 If such meeting does not take place or if five business days after the meeting the dispute remains unresolved, the dispute must be referred to the Chief Executives of the parties who must negotiate in good faith to resolve the dispute. If after five business days of the dispute being referred to the Chief Executive the dispute remains unresolved, a party to the dispute may refer it to the mediation of a single mediator.

22.3 The referral to mediation shall be commenced by one party to the dispute serving written notice (a **Mediation Notice**) on the other party requiring the dispute to be referred to a mediator to be appointed by the parties. Failing agreement within five business days after, and exclusive of, the date of service of the Mediation Notice, the mediator shall be appointed at the request of either party by the chairperson or any other office holder for the time being of LEADR NZ (Leading Edge Alternative Dispute Resolvers), or the nominee of such chairperson or other office holder. The guidelines that govern the mediation shall be set by the parties. Failing agreement within five business days after the appointment of the mediator, either party may request the mediator to set the guidelines (whether or not in conjunction with such party) that govern the mediation proceedings.

22.4 The parties acknowledge that the purpose of exchange of information or documents or the making of any offer of settlement pursuant to clauses 22.2 and 22.3 is to attempt to

settle the dispute between the parties. Neither party may use any information, documents or offer obtained solely by reasons of clauses 22.2 and 22.3 for any purpose other than in an attempt to settle the dispute in the context of negotiation and mediation.

- 22.5 Subject to any right any party may have to apply to a court for any interim or preliminary relief in respect of the dispute, completion or termination of the mediation shall be a condition precedent to the arbitration of the dispute or any part of it.
- 22.6 If the parties are unable to resolve the dispute by mediation within ten business days of the establishment of the mediation guidelines, the dispute shall be referred to and finally resolved by arbitration by a sole arbitrator under the Arbitration Act 1996. The arbitral proceedings shall be commenced by one party serving written notice (an **Arbitration Notice**) on the other and requiring the dispute to be referred to arbitration. The arbitrator shall be appointed by the parties, or failing agreement within five business days after, and exclusive of, the date of service of the Arbitration Notice, shall be appointed at the request of either party by the president or vice-president for the time being of the New Zealand Law Society or the nominee of such president or vice-president. The arbitration shall be conducted as soon as possible at Wellington, New Zealand. Clauses 3 and 6 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under this agreement. All other clauses in the Second Schedule shall not apply.
- 22.7 Each party shall bear its own costs, expenses and fees incurred pursuant to clauses 22.2, 22.3 and 22.6 and shall equally share the mediator's and arbitrator's fees and expenses.
- 22.8 Every party to a dispute shall act promptly with respect to the appointment of any mediator or arbitrator and in respect of all other matters and proceedings relating to the mediation and arbitration.
- 22.9 The parties to a dispute will be bound by any decision or award of the arbitrator made in accordance with the Arbitration Act 1996, subject to the rights of appeal provided by that Act.

Performance of obligations

- 22.10 During a dispute, the parties to it must continue to perform their respective obligations under this agreement.

Interlocutory relief and right to terminate

- 22.11 Clauses 22.1 to 22.10 do not restrict or limit the right of either party to obtain interlocutory relief, or to immediately terminate this agreement where this agreement provides such a right.

23 Priority

- 23.1 In the event of any inconsistency, this agreement must be interpreted in accordance with the following order of priority:
- 23.1.1 the terms and conditions set out in the body of this agreement; then
 - 23.1.2 the Schedules; and then
 - 23.1.3 any other documents or information incorporated by reference into this agreement.

24 Notices

Giving notices

24.1 Any notice, consent, information, application or request that must or may be given or made to a party under this agreement is only given or made if it is in writing and sent in one of the following ways:

24.1.1 delivered or posted to that party at its address set out in Schedule 1; or

24.1.2 emailed to that party at the email address set out in Schedule 1.

Change of address or email

24.2 If a party gives the other party three business days' notice of a change of its postal address or email address, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address or email address.

Time notice is given

24.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

24.3.1 if it is delivered, when it is left at the relevant address;

24.3.2 if it is sent by post, two business days after it is posted; or

24.3.3 if it is sent by email, one business day after it is sent.

24.4 If any notice, consent, information, application or request is delivered or received on a day that is not a business day, or if on a business day, after 5 pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

25 Miscellaneous

Approvals and consent

25.1 Except as otherwise set out in this agreement, an approval or consent to be given under this agreement may not be unreasonably withheld, and may be given subject to reasonable conditions.

Assignment

25.2 A party may not assign any of its rights or obligations under this agreement without the prior written consent of the other party.

Costs

25.3 Except as otherwise set out in this agreement, each party must pay its own costs in relation to preparing, negotiating and executing this agreement and any document related to this agreement.

Execution of separate agreements

25.4 This agreement is properly executed if each party executes either this agreement or an identical agreement. In the latter case, this agreement takes effect when the separately executed agreements are exchanged between the parties.

Further acts

- 25.5 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

No agency or partnership

- 25.6 The relationship between the parties is that of principal and contractor. Wellington Water must not represent itself as an agent or representative of Council except where required to perform the Management Services in accordance with this agreement.

No authority to act

- 25.7 No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this agreement or by express written agreement between the parties.

Severability

- 25.8 If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

Survival of indemnities

- 25.9 Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination of this agreement.

Variation

- 25.10 No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement and is in accordance with clause 4.7.

Waiver

- 25.11 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

26 Definitions and interpretation

Definitions

- 26.1 In this agreement the following definitions apply:

drinking water, drinking water supplier, drinking water supply, operator, owner, stormwater network, stormwater network operator, wastewater network,

wastewater network operator have the meanings given to them in the Water Services Act.

Additional Services means management services:

- (a) included within the Three Year Plan or Annual Work Programme, but not covered by the Management Charge Scope, Opex Charge Scope or Capex Scope (as applicable);
- (b) not included in the agreed Annual Work Programme (including, without limitation, any management services in connection with a Supply Network Event); and/or
- (c) carried out in response to Unexpected Events.

Amendment Agreement (Fourth) means the amendment and restatement agreement dated 11 April 2022 ~~2024~~ between Wellington Water and Council, pursuant to which this agreement was amended and restated.

Amendment and Restatement Date means the “Effective Date”, as such term is defined in Amendment Agreement (Fourth).

Annual Work Programme means the programme prepared and agreed in accordance with clause 11 of all Management Services to be undertaken in a financial year including:

- (a) the detailed work programme;
- (b) timing of work;
- (c) any changes to Key Performance Indicator targets; and
- (d) any specific detailed Council requirements set out in Schedule 9.

Approved Regional Policy means a regional policy developed by Wellington Water and agreed by the Shareholding Councils, or:

- (a) where the regional policy does not relate to Bulk Water Supply, agreed by the Four Cities; or
- (b) where the regional policy relates solely to Bulk Water Supply, agreed by GWRC.

Asset Management Plans means those as described as a requirement in the LGA 2002 and approved by Council.

Bulk Water Supply means the provision of drinking water to the points of supply to each of the Four Cities using GWRC's bulk water network.

Capex Charge means the annual charge agreed with the Council in the Three Year Plan (based on agreed values determined in Council's annual planning process), to be utilised by Wellington Water for payments of capital expenditure due under Water Services capital works contracts that fall within the Capex Charge Scope.

Capex Charge Scope means the capital works costs covered by the Capex Charge as detailed in the Annual Work Programme.

Commencement Date is as set out in Schedule 1.

Companies Act means the Companies Act 1993.

Confidential Information means any information provided by Council or any of its Personnel to Wellington Water or any of its Personnel, or otherwise obtained by Wellington Water or any of its Personnel, whether obtained before or after execution of this agreement, in connection with Council, the Management Services or this agreement. It includes:

- (a) all confidential business information, documents, records financial information, personal information under the Privacy Act 1993, reports, technical information and forecasts which relate to Council or its operations;
- (b) Council's Property;
- (c) Council's Intellectual Property; and
- (d) any information created under or arising out of the provision of Management Services under this agreement including information which Council could lawfully withhold under the Local Government Official Information and Meetings Act 1987.

It does not include:

- (a) information which is in or becomes part of the public domain, other than through a breach of this agreement of an obligation of confidence owed to Council or any of its Personnel; or
- (b) which Wellington Water can prove by contemporaneous written documentation was independently acquired or developed without breaching any of the obligations set out in this agreement.

Contingency Sum means the values that are not allocated to specific services, work or projects in the Annual Work Programme but that are included in the operational budget agreed with Council as part of the Three Year Plan for performance of the Annual Work Programme.

Council Policies means standards, policies and similar written documents in force for Council that relate to or govern the provision of Management Services or Water Services. The Council Policies provided at Commencement date are listed in Schedule 8.

Drainage Services means the collection, treatment and disposal of wastewater, and the disposal of stormwater drainage in the jurisdiction of Council.

Expiry Date is as set out in Schedule 1.

Financial Year means a twelve month period commencing on 1 July and ending on 30 June.

Four Cities means WCC, UHCC, HCC and PCC.

Governance Charge means the monthly charge for Wellington Water's governing expenses including directors' fees and professional indemnity insurance, audit fees and other consultancy fees relating to Wellington Water's governance.

GST means the goods and services tax levied under the Goods and Services Tax Act 1985.

HSE Act means the Health and Safety at Work Act 2015.

Intellectual Property includes copyrights, patents, trademarks, designs, brands, logos and circuit layouts, inter alia.

Key Performance Indicators (KPIs) means the standards agreed by Wellington Water and Council annually by which Wellington Water's performance under this agreement will be assessed, as set out in Wellington Water's Statement of Intent (prepared in accordance with the LGA 2002) and/or as otherwise agreed from time to time (including in the Three Year Plan), with agreed individual targets for Council.

LGA 2002 means the Local Government Act 2002.

Long Term Plan (LTP) means as described as a requirement in the LGA 2002.

Loss means any loss including any liability, cost, expense (including legal costs on a full indemnity basis), claim, proceeding, action, demand or damage

Management Charge means the annual charge agreed with the Council in the Three Year Plan in the relevant year for:

- (a) Wellington Water's internal costs of providing the Management Services (in respect of both operational and capital activities), in accordance with the Annual Work Programme;
- (b) complying with applicable law in connection with the performance of the Management Services; and
- (c) the Governance Charge,

as further described in the Management Charge Scope.

Management Charge Scope means the scope of management costs covered by the Management Charge, as set out in Schedule 4.

Management Services means both the internal and external supply of labour, personnel, professional and consultant services to the Council which are necessary or desirable to carry out on the Council's behalf the management of the Water Services as agreed in the Annual Work Programme and which may include, without limitation, those services listed in Schedule 2.

Mandatory Key Performance Indicators means the critical KPIs agreed from time to time as mandatory KPIs and set out in Wellington Water's Statement of Intent (prepared in accordance with the LGA 2002) and/or the Three Year Plan.

Network means all of the pipelines, treatment stations, reservoirs and other assets of the Council that are owned by it or used in the provision of Water Services to consumers of the Council, the collection, treatment and disposal of wastewater and stormwater drainage, and includes any additions or new assets added to the Network during the term of this contract.

Objectives means the objectives set out in clause 2.

One Budget Charges means the Management Charge, Opex Charge and Capex Charge.

Opex Charge means the annual charge agreed with the Council in the Three Year Plan for the relevant year (based on agreed values determined in Council's annual planning process), to be utilised by Wellington Water for payments of the operational costs due under Water Services operations and maintenance contracts as further detailed in the Opex Charge Scope, and includes the Contingency Sum.

Opex Charge Scope means the scope of operational costs covered by the Opex Charge, as set out in Schedule 4.

Owner Obligation means each of the following obligations of Council as owner of a drinking water supply under the Water Services Act that are not an obligation on the operator of such drinking water supply:

- (a) registering a drinking water supply, and renewing the registration of the drinking water supply, in accordance with ss23 and 56 of the Water Services Act;
- (b) preparing and lodging a drinking water safety plan with the Regulator in relation to Council's drinking water supply, in accordance with s30 of the Water Services Act; and
- (c) notifying the Regulator of any change in the registered drinking water supply information provided under s54(2), in accordance with s56(3) of the Water Services Act.

Performance Measures means any other performance measures that are not Key Performance Indicators (however described) relating to Management Services included in the Council LTP, Annual Plan, Asset Management Plans, business plans or contracts.

Personnel means any director, officer, employee, agent, contractor or professional adviser of a party.

Property means all property of Council held by Wellington Water from time to time in connection with the performance of this agreement including, without limitation, documents, data and records relating to the Management Services and associated assets and infrastructure, and documents, data and records produced by Wellington Water in connection with providing the Management Services to Council.

Regulator means Taumata Arowai, in its capacity as water services regulator established by section 8 of the Taumata Arowai-the Water Services Regulator Act 2020.

Representative means each party's representative appointed under clause 5 and specified in Schedule 1.

Shareholding Councils means the councils that are shareholders in Wellington Water. At Amendment and Restatement Date, these are GWRC, WCC, HCC, UHCC, PCC and SWDC.

SLA Report means the reporting as outlined in Schedule 3.

Statutory Powers means the statutory responsibilities, duties and powers given to Council by statute, and delegated to Wellington Water by Council under this agreement.

Supply Network Event means any requirement issued by the Regulator to Wellington Water or Council that the Council must take action under section 127(2) of the LGA 2002.

Three Year Plan means the three year plan prepared and agreed in accordance with clause 11 of Management Services to be undertaken in the three year period covered by the plan, including the Annual Work Programme and the One Budget Charges.

Unexpected Event means an event requiring management of Water Services that is not in the Annual Work Programme, being an event beyond the reasonable control of Wellington Water or the Council including acts of god, floods, storms, earthquakes, fires, power failures, riots, strikes, lockouts, war, terrorism or government action.

Unexpected Event Costs means costs due under Water Services operations and maintenance contracts to manage Unexpected Events.

Unexpected Event Reserve means the amount of any unspent Contingency Sum (up to the Unexpected Event Reserve Cap) retained by Wellington Water and available to pay for operational costs incurred by Wellington Water due to Unexpected Events.

Unexpected Event Reserve Cap means the sum set out in Schedule 4.

Water Services means Water Supply and Drainage Services, the maintenance and expansion of the Network, the planning for and provision of water conservation strategies to the public and such other deliverables in relation to the supply and maintenance of a sustainable, accessible and high quality Water Service that Council determines that it wishes to provide and as set out in its then current Long Term Plan.

Water Services Act means the Water Services Act 2021 once relevant parts, or all, of that Act is in force.

Water Supply means the provision of drinking water to the point of supply of each dwelling house and commercial or industrial premise to which drinking water is supplied, in the jurisdiction of Council.

Interpretation

26.2 In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:

26.2.1 headings are inserted for convenience only and do not affect the interpretation of this agreement;

26.2.2 a reference in this agreement to a business day means a day on which banks are open for business generally in Wellington other than a Saturday or Sunday;

26.2.3 if the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day;

26.2.4 a reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

26.2.5 words and expressions in this agreement that are defined in the LGA 2002 have the meaning given in that Act;

26.2.6 a reference in this agreement to any policy, plan, agreement or document is to that policy, plan, agreement or document as amended, noted, supplemented or replaced;

26.2.7 a reference to a clause, part, schedule or appendix is a reference to a clause, part, schedule or appendix of or to this agreement;

26.2.8 an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate, local authority or governmental agency;

26.2.9 where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;

- 26.2.10 a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- 26.2.11 references to the word 'include' or 'including' are to be construed without limitation;
- 26.2.12 a reference to this agreement includes the agreement recorded in this agreement; and
- 26.2.13 schedules and appendices form part of this agreement.

Execution and date

Executed as an agreement.

Signed for and on behalf of) _____
Council by) [Chief Executive]
)

[Authorised Signatory]

Signed for and on behalf of) _____
Wellington Water Limited in) Chief Executive
the presence of)

Witness signature:

Witness name:

Occupation:

Address:

Schedule 1

General information

Term of agreement

(Clause 3)

Commencement date: 1 November 2013

Expiry Date 30 June 2024

Council's Representative

(Clause 5)

Name Bruce Hodgins

Position Strategic Advisor

Contact details Phone: 04 570 6839
Mobile: 027 4820 461
Email: bruce.hodgins@huttcity.govt.nz

Address: 30 Laings Road, Lower Hutt

Postal: Private Bag 31912, Lower Hutt 5040

Wellington Water's Representative

(Clause 5)

Name Colin Crampton

Position Chief Executive

Contact details Phone: 04 912 4488
Mobile: 027 492 4419
Email: colin.crampton@wellingtonwater.co.nz

Address: Level 4, IBM House
25 Victoria Street, Petone

Postal: Private Bag 39 804
Wellington Mail Centre, Petone

Notices (Council)

(Clause 24)

Address 30 Laings Road, Lower Hutt

Email Address bruce.hodgins@huttcity.govt.nz

Attention Bruce Hodgins

Notices (Wellington Water)

(Clause 24)

Address Level 4, IBM House
25 Victoria Street
Petone

Email Address colin.crampton@wellingtonwater.co.nz

Attention Colin Crampton

Schedule 2

Management Services

(Clause 26.1)

1. The Management Services include (without limitation) the following tasks and activities:
 - 1.1 carrying out the functions, duties and responsibilities of the principal's representative and engineer's representative (where applicable) under all contracts for Water Services works to which Council is party;
 - 1.2 carrying out all the functions, duties and responsibilities of the principal under all contracts for Water Services works to which Wellington Water is party;
 - 1.3 project managing all contracts relating to Water Services, including overseeing the provision of all works and services by contractors and consultants in accordance with the contract and managing contractor and consultant performance in accordance with recognised benchmarks;
 - 1.4 monitoring, reporting on and administering all financial and operational aspects of contracts relating to Water Services;
 - 1.5 any services as set out in clause 4A.2 (*Obligations*);
 - 1.6 monitoring and managing Council's obligations under the HSE Act in respect of the Management Services, the assets and infrastructure used to provide Water Services and all works to or affecting such assets and infrastructure, to the extent there are any, and ensuring Wellington Water and/or Council do not breach their obligations under the HSE Act;
 - 1.7 providing expert advice in respect of Management Services in conjunction with consultants and other experts engaged by Council or by consultants engaged by Wellington Water or by Wellington Water on Council's behalf;
 - 1.8 arranging the provision of Water Services works in accordance with the approved Annual Work Programme, Council's Annual Plans and Long Term Plan, and approved Asset Management Plans;
 - 1.9 managing on Council's behalf its contract with the Wellington Regional Council for the supply of bulk water (on the same basis as prior to Commencement Date);
 - 1.10 providing costing advice to Council for the purposes of Council's charges for the provision of Water Services and related matters, including (without limitation) water rates and costs, trade waste charges, consent and permit fees, and user charges;
 - 1.11 provide representation at wholesale and retail water supply negotiations and meetings;
 - 1.12 preparing for Council draft Asset Management Plans, business plans and the draft Annual Work Programme for assets and infrastructure used to provide Water Services, all in accordance with the requirements of this agreement, the LGA 2002 and industry best practice or Council's practice if that exceeds industry best practice;

- 1.13 managing on Council's behalf the wastewater treatment plant owned by Council;
- 1.14 assisting Council to prepare budgets, financial statements and forecasts, and any other information required in a LTP, Annual Plan, Annual Report or any other document relating to the provision of the Management Services by Wellington Water. All budgets are to be prepared in accordance with instructions given from time to time;
- 1.15 assisting Council (in the manner agreed between the Council and Wellington Water) to undertake asset valuations in respect of the Council's three waters assets;
- 1.16 assisting and co-operating with all audits of Water Services assets or infrastructure;
- 1.17 providing Council with timely, accurate and quality data so that Council can keep its information systems up to date in respect of water assets and infrastructure;
- 1.18 monitoring the insurance cover required and held by Council in respect of Water Services and assets, prepare any required infrastructure insurance fund update and advising Council of any deficiency or insurance cover;
- 1.19 advising Council on its trade waste functions;
- 1.20 identifying and advising Council of all circumstances where a prosecution or claim for damage relating to water, waste water, sewage, trade waste, Water Services, or assets and infrastructure used to provide Water Services could be brought against Council or by Council, and providing all information and assistance for such prosecutions and claims;
- 1.21 responding to requests from Council for information required by it to administer any law, including (without limitation) the Resource Management Act 1991 and the Building Act 2004;
- 1.22 responding, within five business days or the response times set by Council's system, whichever is the lesser, to public and customer enquiries and requests for service in relation to Water Services, including meeting such persons where appropriate;
- 1.23 managing all routine, operational and work programme related communications, marketing and community engagement. For the avoidance of doubt, any non-routine communications, marketing, community engagement or use of Council brand, will be carried out in collaboration and with approval of Council;
- 1.24 advising and assisting Council in identifying and quantifying the value of third party damage caused to Councils three water networks;
- 1.25 assuring compliance with Council's responsibilities under the Civil Defence and Emergency Management Act (CDEM Act) with respect to water and wastewater as a lifeline utility. This will include assisting with and responding to emergencies involving Water Services and the provision of an afterhours service outside of standard office hours;
- 1.26 providing services to assist meeting Council's community and stakeholder consultation obligations, including with mana whenua, in relation to matters involving Water Services;

- 1.27 co-ordinating with other units of Council or with other parties to ensure that programmed work involving Water Services is planned around other relevant infrastructure work and around other planned events (for example festivals, sporting events or other special events);
- 1.28 assisting Council to prepare and maintain its various plans in relation to the Water Services, including but not limited to its LTP, District Plan, Emergency Response and Recovery Plans, Risk Management Plans (strategic and operational), Code of Engineering Practice, Business Continuity Plan and Environmental Plan;
- 1.29 undertaking any other emergency and civil defence planning in relation to Council's Water Services, as agreed with Council;
- 1.30 continuously monitoring the appropriateness and effectiveness of bylaws and policies relating to Water Services, suggesting improvements and assisting Council draft bylaw amendments and policy papers;
- 1.31 attending and participating in Council meetings, and meetings with Council officers, contractors, consultants and/or the public, including preparing reports and briefings for such meetings where reasonably required;
- 1.32 preparing for Council's approval a report which complies with section 125 of the LGA 2002;
- 1.33 in conjunction with Council, managing legal issues and services relating to Water Services, other than those related to prosecutions and claims for damage which Council will manage;
- 1.34 assisting Council to maintain and update its asset register;
- 1.35 obtaining resource consents required for Water Services;
- 1.36 preparing detailed current and future Water Services work programmes;
- 1.37 providing a water meter reading service and meter information to Council Finance for invoicing;
- 1.38 maintaining Council's proactive water supply leak detection programme;
- 1.39 administering Council's garden watering restrictions;
- 1.40 promoting water conservation and education;
- 1.41 undertaking any other water conservation and environmental sustainability planning in relation to Council's Water Services, as agreed with Council;
- 1.42 planning and advice, including the provision of Asset Management Plans in respect of the Network and Water Services;
- 1.43 providing the necessary inputs to the Council's Annual Plan and Long Term Plan so as to enable the Council to make appropriate decisions as to work necessary on an annual and long term basis to maintain, renew and as necessary expand the Network so as to be able to provide Water Services on an affordable, sustainable basis to a standard determined by Council;
- 1.44 managing the carrying out of all necessary operating and renewal work on the Network as agreed in the Annual Work Programme and Council's Annual Plans and Long Term Plan;

- 1.45 managing the carrying out of all capital works on and for the expansion of the Network as agreed in the Annual Work Programme and Council's Annual Plans and Long Term Plan;
 - 1.46 providing all strategic and policy advice reasonably necessary to ensure that the Water Services are delivered by Council on an affordable and sustainable basis;
 - 1.47 managing the application of resource consents necessary to ensure Water Services delivery;
 - 1.48 any activities that would have been reasonably anticipated as constituting part of the Water Services offering by both parties at the Commencement date; and
 - 1.49 any other services as agreed between the parties, subject to clause 4.6.
2. The Management Services do not include:
- 2.1 any activity relating to billing and the setting of water charges, apart from the providing of costing advice and the like as described above;
 - 2.2 the approval of Council policies or strategies, Asset Management Plans, Statements of Intent, budgets, Annual Plans and LTPs; and
 - 2.3 any service which reasonably, or as outlined in this agreement, remains with Council.

Schedule 3

Service Level Agreement (SLA) Reports

(Clauses 10.1 and 10.3)

- Monthly and quarterly reporting (including financial reports) as agreed between Council and Wellington Water
- The quarterly SLA reports shall be structured as follows:

- 1 Introduction
- 2 Quarterly Meeting Action Log
- 3 Highlights
- 4 Key Performance Indicators Reporting
- 5 Agreed Performance Metrics
- 6 Long Term Plan Water Indicators
- 7 Agreed Customer Performance Indicators

And any other quarterly SLA reporting requirements arising from Schedule 9.

Schedule 4

One Budget Charge details

(Clauses 11 and 26.1)

Opex Charge Scope

The Opex Charge covers controllable costs incurred by Wellington Water as further described in the detailed operational controllable cost budget agreed with Council as part of the Three Year Plan. Controllable costs include, for example, charges for repairs and maintenance of Water Supply assets, costs of consumables such as chemicals and consultants and contractors' charges.

The following costs are outside the Opex Charge Scope:

- Council's internal costs relating to Water Supply, such as allocations, financing and depreciation
- Costs identified as remaining with Council pending expiration of existing contractual terms and/or which may be transferred to Wellington Water at a later date.

Management Charge Scope

The Management Charge covers management costs incurred by Wellington Water as further described in the detailed management cost budget agreed with Council as part of the Three Year Plan. Management costs include, for example, Council's proportion of Wellington Water employees' salaries, lease payments and other operating expenses for Wellington Water's office (including IT and telecommunications costs), insurance premiums and vehicle expenses. The Management Charge also includes the Governance Charge.

Unexpected Event Reserve Cap

The Unexpected Event Reserve Cap is 5% of the Opex Charge for the current Financial Year.

Schedule 5 Partnering

(Clause 21)

Partnering Philosophy

1. Partnering encourages the development of relationships of trust, co-operation, open communication and team work.

Definition

2. Partnering is a commitment between two or more organisations for the purpose of achieving specific business objectives by maximising the effectiveness of co-operation.

Expected Results

3. Results that partnering is expected to produce include:
 - 3.1 less adversarial relationships;
 - 3.2 improved problem solving;
 - 3.3 improved planning;
 - 3.4 improved responsiveness;
 - 3.5 increased openness;
 - 3.6 fewer errors;
 - 3.7 improved efficiency;
 - 3.8 improved quality;
 - 3.9 reduction in service charges; and
 - 3.10 potential for savings through innovation.

Dispute Prevention

4. Dispute prevention is recognised as the best dispute resolution. Partnering relationships of trust, open communication and processes for effective issue resolution can minimise the risk of issues escalating into disputes.
5. It is important however, that issues of conflict should not be 'brushed under the carpet', but rather, dealt with at the time the conflict occurs to avoid frustration and the threat to the continuation of the agreement.

Type of Relationship

6. Partnering relationships can be different for each contractual situation.

7. Partnering does not over-ride the agreement, but provides a 'way of working' that is mutually beneficial. If partnering fails, then the parties can still resort to contractual remedies.

Key elements of partnering

A *Commitment*

8. Commitment to partnering must come from the top management of each stakeholder. This leadership must be visible, supportive and ongoing.

B *Equity*

9. All stakeholders' goals must be considered in reaching mutual goals and there is a commitment to meeting each stakeholder's requirements by searching for solutions to these goals.

C *Trust*

10. Successful partnering relies on relationships of trust.

D *Mutual Objectives*

11. Partnering takes into account the objectives of the parties set out in clause 2 which reflect the parties' requirements for a successful contract.

E *Timely Responsiveness*

12. Rapid issue resolution should minimise the number of issues that escalate into dispute. Partnering aims at problems being solved at the lowest possible level and the earliest possible time. Agreed processes can be established to ensure this occurs.

F *Frank Discussion*

13. Partnering helps the identification of each party's position by creating an environment where frank discussion is appropriate and legitimate. This can happen without precipitating confrontation.

G *Risks Associated with Partnering*

14. It is important to distinguish partnering from partnership. Both involve relationships of trust, long-term commitment and joint goals. Partnering is not a partnership or joint venture.
15. Partnering does not mean being soft and all parties to the relationship need to be vigilant for indications of potential dispute and seek resolution of problems before they escalate to dispute. If this occurs effectively, then the need to resort to contractual remedies is minimised.

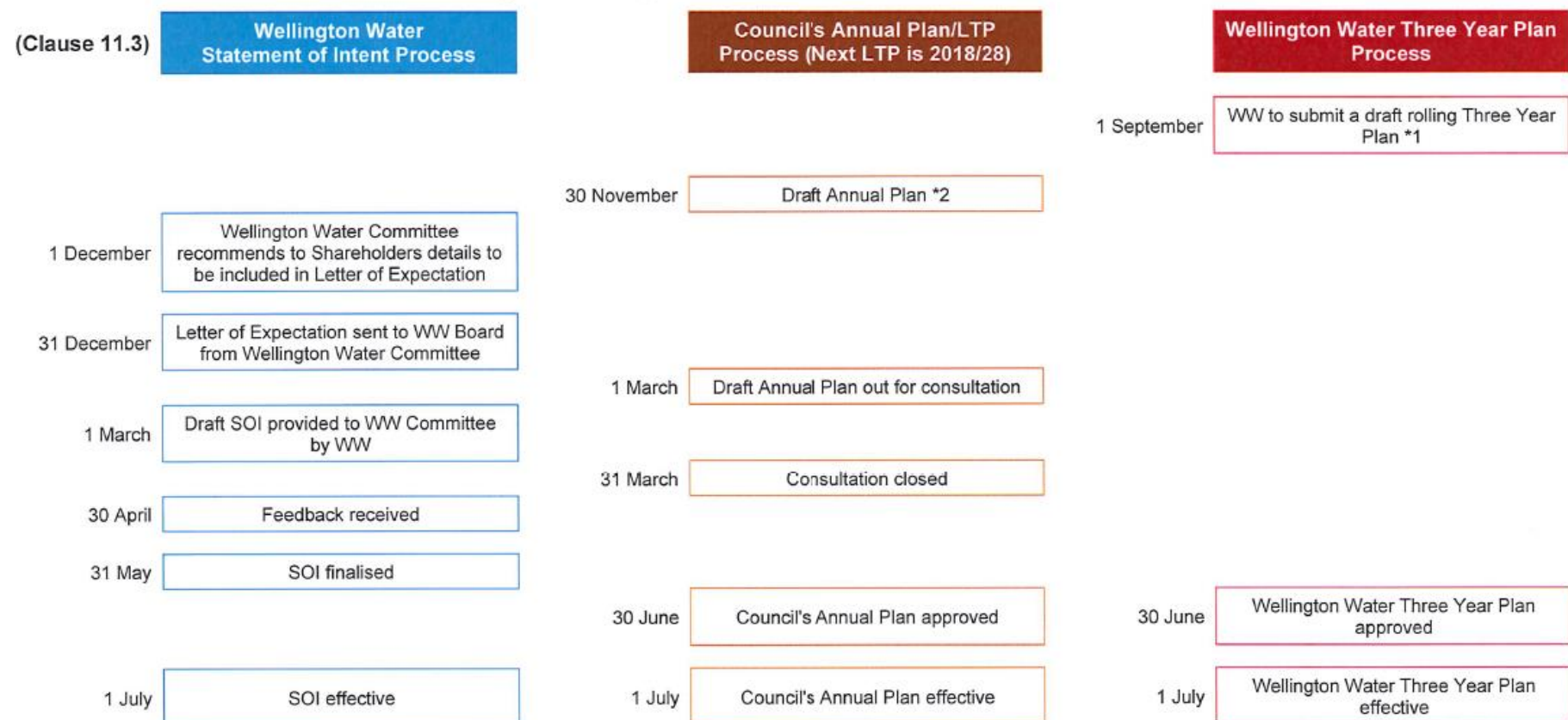
Summary

16. Partnering is a 'way of working' which is based upon mutual trust, and recognition that working together achieves better results than a confrontational, strictly contractual relationship.

Schedule 6

Three Year Plan approval process

(Clause 11.3) Three Year Plan approval process



*1 Including a full draft Annual Work Programme for the next Financial Year and a forecast high level programme for the two following Financial Years.

*2 Council prepares Annual Plan including information supplied by Wellington Water in its draft Three Year Plan.

Schedule 7

Not Used

Schedule 8
Applicable Council Policies
(Clause 4.21)

Hutt City Council Policies

- 1 To be confirmed by Council at a later date.

Schedule 9

Additional Annual Work Programme Information Required (Clause 26.1)

No additional information required.

FOURTH VARIATION AGREEMENT IN RESPECT OF AGREEMENT FOR PROVISION OF MANAGEMENT SERVICES RELATING TO WATER SERVICES

UPPER HUTT CITY COUNCIL

WELLINGTON WATER LIMITED

 **Simpson Grierson**

Barristers & Solicitors
Auckland, Wellington & Christchurch
New Zealand
www.simpsongrierson.com

PARTIES

1. **UPPER HUTT CITY COUNCIL** of 838 - 842 Fergusson Drive, Upper Hutt, 5018, New Zealand (**Council**)
2. **WELLINGTON WATER LIMITED** (company number 1337122) of 25 Victoria Street, Petone, Lower Hutt, 5012, New Zealand (**Wellington Water**)

BACKGROUND

- A. Council and Wellington Water entered into a service agreement dated 31 October 2013 for the provision of management services relating to water services, which was varied by an agreement dated 2 October 2015 (**First Variation Agreement**) to allow Wellington Water to be principal to the contract for arrangements it enters into in carrying out the water services for Council, was subsequently varied by an agreement dated 12 December 2018 (**Second Variation Agreement**) to update certain provisions and implement the one budget proposal, and was subsequently varied by an agreement dated 29 June 2021 (**Third Variation Agreement**) under which the expiry date was extended to 30 June 2024 (**Services Agreement**).
- B. Council and Wellington Water have agreed to vary the terms of the Services Agreement to, amongst other things, incorporate provisions addressing the regulation of drinking water, wastewater and stormwater pursuant to the Water Services Act 2021 and the potential transition to a new arrangement for the delivery of three waters services in New Zealand on the terms set out in this agreement (**Fourth Variation Agreement**).

THIS AGREEMENT RECORDS THAT:**1. DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions:** In this Fourth Variation Agreement, unless the context indicates otherwise, words and expressions defined in the Services Agreement have the same meaning when used in this Fourth Variation Agreement.
- 1.2 **Interpretation:** In this Fourth Variation Agreement, unless the context indicates otherwise, the interpretation provisions of the Services Agreement apply as if they were set out in this Fourth Variation Agreement.

2. EFFECTIVE DATE, AMENDMENT AND CONFIRMATION

- 2.1 **Effective Date:** The parties agree that the variations to the Services Agreement set out in this Fourth Variation Agreement have effect on and from the date of this agreement (**Effective Date**).
- 2.2 **Amendment:** With effect from the Effective Date, the Services Agreement is amended in the manner set out in this clause 2.2, and references in the Services Agreement to "this agreement" shall be references to the Services Agreement as amended by this Fourth Variation Agreement:

(a) Clauses 1.2 and 1.3 of the Services Agreement will be deleted and replaced with the following new clauses 1.2, 1.3 and 1.4:.

1.2 Separately:

1.2.1 Wellington Water is an operator of a drinking water supply pursuant to the performance of the Bulk Water Supply Services, a drinking water supplier, stormwater network operator and a wastewater network operator in respect of the Network; and

1.2.2 Council is an owner of a drinking water supply, a drinking water supplier, and a stormwater network operator and wastewater network operator in respect of the Network.

1.3 *The standard of Bulk Water Supply Services affects the achievement of certain deliverables in Council's LTP and Annual Plans, and the ability of the Council to comply with the Water Services Act. Council has contracted Wellington Water to provide Management Services in respect of Council's function in providing the Bulk Water Supply Services because it believes it will better assist the achievement of these deliverables and at the same time provide cost and resource efficiencies.*

1.4 *Council requires Wellington Water to at all times manage the delivery of Management Services and operate its business in a way that will enable Council to achieve its LTP deliverables and performance measures and to discharge and/or assist the Council in discharging each of the Council's obligations under the Water Services Act.*

(b) The reference to "the Contracts (Privity) Act 1982" in clause 4.7 will be deleted and replaced with a reference to "the Contract and Commercial Law Act 2017".

(c) The following new clause 4A will be inserted immediately following clause 4:

"4A Water Services Act

Water Services Act

4A.1 *The Council and Wellington Water acknowledge that for the purposes of the Water Services Act:*

4A.1.1 *Wellington Water is:*

(a) *an operator of a drinking water supply pursuant to the performance of the Bulk Water Supply Services, and is a drinking water supplier;*

(b) *a stormwater network operator in respect of the Network; and*

(c) *a wastewater network operator in respect of the Network;*

4A.1.2 *Council is:*

(a) *an owner of a drinking water supply, and is a drinking water supplier;*

- (b) a stormwater network operator in respect of the Network;
and
- (c) a wastewater network operator in respect of the Network.

Obligations

4A.2 Without limiting any other provision of this agreement but subject to clauses 4A.3 and 4A.4 below, Wellington Water will:

4A.2.1 assist the Council to comply with its obligations under the Water Services Act in each of the capacities set out in clause 4A.1.2; and

4A.2.2 provide to Council in a timely manner all documentation, information, assistance and/or co-operation as may be reasonably necessary in order for the Council to comply with each Owner Obligation,

and the provision of such services will constitute Management Services for the purposes of this agreement.

Information

4A.3 Where Wellington Water requires Council to provide any information held by the Council (or any information that is held by a third party but which the Council is entitled to disclose to Wellington Water) in order for Wellington Water to comply with its obligations under this agreement (**Required Information**), then Wellington Water will, as soon as reasonably practicable after becoming aware that it requires such Required Information, request that Required Information from the Council in writing.

4A.4 As soon as reasonably practicable following receipt of a request for Required Information, Council will deliver (or procure the delivery of) such Required Information as is reasonably available to it. Any such Required Information delivered by the Council to Wellington Water will constitute Confidential Information for the purposes of this agreement.

Directions and compliance orders

4A.5 Where Wellington Water (acting reasonably) considers that compliance by it with any direction and/or compliance order issued to Wellington Water pursuant to the Water Services constitutes an:

4A.5.1 Unexpected Event, then clauses 11.14 to 11.15 will apply; and

4A.5.2 Additional Service, then clauses 11.16 to 11.18 will apply.

4A.6 Where a conflict arises between any valid direction given to Wellington Water by the Regulator and any direction of the Council, Council Policy or Approved Regional Policy, the direction of the Regulator will prevail.”

- (d) The existing clause 10.12 will be deleted and replaced with the following new clause 10.12:

“Wellington Water must keep and maintain full records and documentation in relation to the Management Services and this agreement in accordance with the

Public Records Act 2005, the Local Government Official Information and Meetings Act 1987, the Building Act 2004, the Water Services Act and any applicable standards or policies. Wellington Water must keep copies of these records in hard copy and in electronic form and must deliver a full set of both to Council on termination or expiry of this agreement.”

- (e) The reference to “four (4) of the five (5) Shareholding Councils” in clause 18.4 will be deleted and replaced with a reference to “five (5) of the six (6) Shareholding Councils”.
- (f) The following new clauses 18A.1 to 18A.1.6 will be inserted immediately following clause 18.5:

Three Waters Structural Reform

18A.1 *Council and Wellington Water acknowledge that the Crown (through the Department of Internal Affairs) has progressed a national programme for the transformation of local government three waters service delivery arrangements (**Crown Reform Proposal**), which would see the creation, by statute, of four new water service delivery entities that would be responsible for the ownership of all assets associated with, and the delivery, supply and management of, drinking water, stormwater and wastewater.*

18A.2 *Each of Council and Wellington Water acknowledges that if the Crown implements the Crown Reform Proposal, then it may be necessary to transition and migrate some or all of the Management Services, Bulk Water Supply Services, Network and/or any other matter contemplated by this agreement to one or more service delivery entities established as part of the Crown Reform Proposal. To the extent that any such transition or migration is required in connection with the Crown Reform Proposal, then each of Wellington Water and the Council will:*

18A.2.1 *act in good faith to:*

- (a) *jointly develop and agree a transition plan, setting out the respective tasks to be accomplished by each party in connection with an orderly transition to the arrangements as set out under the Crown Reform Proposal and a schedule for the completion of the tasks;*
- (b) *agree any amendments to the Management Services as may be necessary in connection with the transition to the arrangements as set out under the Crown Reform Proposal,*

in each case on the basis that unless otherwise required pursuant to the Crown Reform Proposal, Wellington Water will continue to deliver the Management Services in accordance with the terms of this agreement and all applicable laws (until such time as these arrangements are terminated by the Crown Reform Proposal); and

18A.2.2 *perform their respective tasks under the transition plan developed under clause 18A.2.1.*

18A.3 *The parties acknowledge that the Crown may request that Wellington Water assists with the transition to any Crown Reform Proposal, including by way of establishing a transition unit within Wellington Water and/or transferring or seconding personnel to a new agency (**Transition Services**). Following*

any such request, Wellington Water will use commercially reasonable endeavours to procure funding from the Crown for all or part of the costs of any new employees, seconded employees or transferred employees that Wellington Water is required to engage or provide in connection with the Transition Services, provided that any costs or expenses that Wellington Water incurs in connection with any such Transition Services and which it is not able to recover from the Crown will constitute Management Charges for the purposes of this agreement.

18A.4 Wellington Water confirms that it will provide the Transition Services, if any, in accordance with good industry practice and in a manner that minimises the costs and expenses of those Transition Services to the extent reasonably practicable.

18A.5 If the Crown requests that Wellington Water second and/or transfers any Wellington Water employees to a new agency in connection with the Crown Reform Proposal, then where Wellington Water considers (acting reasonably) that the secondment or transfer of such employee may adversely impact the performance of the Management Services, then:

18A.5.1 Wellington Water will notify the Council, including such detail as may be reasonably necessary for the Council to assess the potential impact to the Management Services and/or costs arising out of the transfer or secondment of such employee; and

18A.5.2 Wellington Water will consult with each Shareholding Council (including the Council) in respect of any such secondment or transfer (including the terms thereof) prior to approving any such secondment or transfer.

18A.6 The parties acknowledge that clauses 19 and 20 of this agreement shall be without prejudice to any termination, transition and/or migration arrangements in respect of the Management Services, Bulk Water Supply Services, the Network and/or any other matter contemplated by this agreement pursuant to statute or other legislative instrument in connection with the Crown Reform Proposal.”

(g) The following new definitions will be inserted into clause 26.1 in alphabetical order:

“drinking water, drinking water supplier, drinking water supply, operator, owner, stormwater network, stormwater network operator, wastewater network, wastewater network operator have the meanings given to them in the Water Services Act.”

“Amendment Agreement (Fourth) means the amendment and restatement agreement dated 11 April 2022 ~~2024~~ between Wellington Water and Council, pursuant to which this agreement was amended and restated.”

“Amendment and Restatement Date means the “Effective Date”, as such term is defined in Amendment Agreement (Fourth).”

“Owner Obligation means each of the following obligations of Council as owner of a drinking water supply under the Water Services Act that are not an obligation on the operator of such drinking water supply:

- (a) *registering a drinking water supply, and renewing the registration of the drinking water supply, in accordance with ss23 and 56 of the Water Services Act;*
- (b) *preparing and lodging a drinking water safety plan with the Regulator in relation to Council's drinking water supply, in accordance with s30 of the Water Services Act; and*
- (c) *notifying the Regulator of any change in the registered drinking water supply information provided under s54(2), in accordance with s56(3) of the Water Services Act."*

"Regulator means *Taumata Arowai, in its capacity as water services regulator established by section 8 of the Taumata Arowai-the Water Services Regulator Act 2020.*"

"Supply Network Event means *any requirement issued by the Regulator to Wellington Water or Council that the Council must take action under section 127(2) of the LGA 2002.*"

"Water Services Act means *the Water Services Act 2021 once relevant parts, or all, of that Act is in force.*"

- (h) The existing definition of "Additional Services" in clause 26 will be deleted and replaced with the following new definition of "Additional Services":

"Additional Services means *management services:*

- (a) *included within the Three Year Plan or Annual Work Programme, but not covered by the Management Charge Scope, Opex Charge Scope or Capex Scope (as applicable);*
 - (b) *not included in the agreed Annual Work Programme (including, without limitation, any management services in connection with a Supply Network Event); and/or*
 - (c) *carried out in response to Unexpected Events."*
- (i) The term "potable water" in the definition of "Bulk Water Supply" in clause 26.1 will be deleted and replaced
 - (j) The term "sewage" in the definition of "Drainage Services", and "Network" in clause 26.1 will be deleted and replaced with "wastewater."
 - (k) The existing definition of "Management Charge" in clause 26 will be deleted and replaced with the following new definition of "Management Charge":

"Management Charge means *the annual charge agreed with the Council in the Three Year Plan in the relevant year for:*

- (a) *Wellington Water's internal costs of providing the Management Services (in respect of both operational and capital activities), in accordance with the Annual Work Programme;*
- (b) *complying with applicable law in connection with the performance of the Management Services; and*

(c) *the Governance Charge,*
as further described in the Management Charge Scope.”

- (l) The existing definition of “Shareholding Councils” in clause 26 is deleted and replaced with the following new definition of “Shareholding Councils”:

“Shareholding Councils means the councils that are shareholders in Wellington Water. At Amendment and Restatement Date, these are GWRC, WCC, HCC, UHCC, PCC and SWDC.”

- (m) Schedule 1 will be deleted and replaced with the form of Schedule 1 as set out in the Schedule to this Fourth Variation Agreement;

- (n) The following new sub-paragraph 1.5 will be inserted in paragraph 1 of schedule 2 (with a consequent change to the numbering of each subsequent sub-paragraph):

“1.5 any services as set out in clause 4A.2 (Obligations);”

- (o) The existing paragraph 1.14 reading *“preparing on Council’s behalf its utility valuations and implement its on line valuation methodology”* will be deleted and replaced with the following paragraph:

“1.15 assisting Council (in the manner agreed between the Council and Wellington Water) to undertake asset valuations in respect of the Council’s three waters assets;”

- 2.3 Confirmation:** Each of the parties confirms and acknowledges that, except as expressly agreed in this Fourth Variation Agreement, its obligations and covenants under, and the provisions of, the Services Agreement continue and remain in full force and effect.

3. GENERAL

- 3.1 Assignment:** A party may not assign any of its rights or obligations under this Fourth Variation Agreement without the prior written consent of the other party.

- 3.2 Counterparts:** This Fourth Variation Agreement may be signed in counterparts. All executed counterparts will together constitute one document.

- 3.3 Copies:** Any copy of this Fourth Variation Agreement that is received via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this agreement) may be relied on by any party as though it were an original copy of this Fourth Variation Agreement. This Fourth Variation Agreement may be entered into on the basis of an exchange of PDF or other document reproduction format.

- 3.4 Further Acts:** Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Fourth Variation Agreement and all transactions incidental to it.

- 3.5 Severability:** If a clause or part of a clause of this Fourth Variation Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Fourth Variation Agreement, but the rest of this Fourth Variation Agreement is not affected.

- 3.6 Variation:** No variation of this Fourth Variation Agreement will be of any force or effect unless it is in writing and signed by the parties to this Fourth Variation Agreement and is in accordance with clause 4.7 of the Services Agreement.
- 3.7 Waiver:** The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Fourth Variation Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 3.8 Governing Law and Jurisdiction:** This Fourth Variation Agreement is governed by the laws of New Zealand.

EXECUTED

SIGNED for and on behalf of **Upper Hutt City Council** by:



Signature of authorised signatory

Geoff Swainson

Name of authorised signatory

SIGNED for and on behalf of **Wellington Water Limited** by:

Signature of authorised signatory

Name of authorised signatory

EXECUTED

SIGNED for and on behalf of **Upper Hutt City Council** by:

Signature of authorised signatory

Name of authorised signatory

SIGNED for and on behalf of **Wellington Water Limited** by:



Signature of authorised signatory

Colin Crampton

Name of authorised signatory

SCHEDULE**Schedule 1****General Information****Term of agreement**
(Clause 3)

Commencement date 1 November 2013

Expiry Date 30 June 2024

Council's Representative
(Clause 5)

Name Geoff Swainson

Position Asset Management and Operations

Contact details Phone: +64 4 527 2169
Email: Geoff.Swainson@uhcc.govt.nz

Address: 838-842 Fergusson Drive, Upper Hutt,
5018

Postal: 838-842 Fergusson Drive, Upper Hutt,
5018

Wellington Water's Representative
(Clause 5)

Name Colin Crampton

Position Chief Executive

Contact details Phone: 04 912 4488
Mobile: 027 492 4419
Email: colin.crampton@wellingtonwater.co.nz

Address: Level 4, IBM House
25 Victoria Street, Petone

Postal: Private Bag 39 804
Wellington Mail Centre, Petone

Notices (Council)

(Clause 24)

Address 838 – 842 Fergusson Drive, Upper Hutt

Email Address Geoff.Swainson@uhcc.govt.nz

Attention Geoff Swainson

Notices (Wellington Water)

(Clause 24)

Address Level 4, IBM House
25 Victoria Street
Petone

Email Address colin.crampton@wellingtonwater.co.nz

Attention Colin Crampton

FOURTH VARIATION AGREEMENT IN RESPECT OF AGREEMENT FOR PROVISION OF MANAGEMENT SERVICES RELATING TO WATER SERVICES

WELLINGTON CITY COUNCIL

WELLINGTON WATER LIMITED

 **Simpson Grierson**

Barristers & Solicitors
Auckland, Wellington & Christchurch
New Zealand
www.simpsongrierson.com

PARTIES

1. **WELLINGTON CITY COUNCIL** of 113 The Terrace, Wellington Central, 6011, New Zealand (**Council**)
2. **WELLINGTON WATER LIMITED** (company number 1337122) of 25 Victoria Street, Petone, Lower Hutt, 5012, New Zealand (**Wellington Water**)

BACKGROUND

- A. Council and Wellington Water entered into a service agreement dated 31 October 2013 for the provision of management services relating to water services, which was varied by an agreement in 2015 to allow Wellington Water to be principal to the contract for arrangements it enters into in carrying out the water services for Council, was subsequently varied by an agreement (**Second Variation Agreement**) to update certain provisions and implement the one budget proposal, and was subsequently amended and restated by an agreement dated 29 June 2021 (**Third Variation Agreement**) under which the expiry date was extended to 30 June 2024 (**Services Agreement**).
- B. Council and Wellington Water have agreed to vary the terms of the Services Agreement to, amongst other things, incorporate provisions addressing the regulation of drinking water, wastewater and stormwater pursuant to the Water Services Act 2021 and the potential transition to a new arrangement for the delivery of three waters services in New Zealand on the terms set out in this agreement (**Fourth Variation Agreement**).

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- 1.2 **Interpretation:** In this Fourth Variation Agreement, unless the context indicates otherwise, the interpretation provisions of the Services Agreement apply as if they were set out in this Fourth Variation Agreement.

2. EFFECTIVE DATE, AMENDMENT AND CONFIRMATION

- 2.1 **Effective Date:** The parties agree that the variations to the Services Agreement set out in this Fourth Variation Agreement have effect on and from the date of this Fourth Variation Agreement (**Effective Date**).
- 2.2 **Amendment:** With effect from the Effective Date, the Services Agreement is amended and restated in the form set out in the Schedule to this Fourth Variation Agreement and references in the Services Agreement to “this agreement” shall be references to the Services Agreement as amended and restated by this Fourth Variation Agreement.

2.3 Confirmation: Each of the parties confirms that, except as expressly agreed in this Fourth Variation Agreement, its obligations and covenants under, and the provisions of, the Services Agreement continue and remain in full force and effect.

3. GENERAL

3.1 Assignment: A party may not assign any of its rights or obligations under this Fourth Variation Agreement without the prior written consent of the other party.

3.2 Counterparts: This Fourth Variation Agreement may be signed in counterparts. All executed counterparts will together constitute one document.

3.3 Copies: Any copy of this Fourth Variation Agreement that is received via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this agreement) may be relied on by any party as though it were an original copy of this Fourth Variation Agreement. This Fourth Variation Agreement may be entered into on the basis of an exchange of PDF or other document reproduction format.

3.4 Further Acts: Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Fourth Variation Agreement and all transactions incidental to it.

3.5 Severability: If a clause or part of a clause of this Fourth Variation Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Fourth Variation Agreement, but the rest of this Fourth Variation Agreement is not affected.

3.6 Variation: No variation of this Fourth Variation Agreement will be of any force or effect unless it is in writing and signed by the parties to this Fourth Variation Agreement and is in accordance with clause 4.7 of the Services Agreement.

3.7 Waiver: The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Fourth Variation Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

3.8 Governing Law and Jurisdiction: This Fourth Variation Agreement is governed by the laws of New Zealand.

EXECUTED

SIGNED for and on behalf of **Wellington City Council** by:



Signature of authorised signatory

Siobhan Procter
CIO
Wellington City Council

Name of authorised signatory

SIGNED for and on behalf of **Wellington Water Limited** by:

Signature of authorised signatory

Name of authorised signatory

EXECUTED

SIGNED for and on behalf of **Wellington City Council** by:

Signature of authorised signatory

Name of authorised signatory

SIGNED for and on behalf of **Wellington Water Limited** by:



Signature of authorised signatory

Colin Crampton

Name of authorised signatory

SCHEDULE
AMENDED AND RESTATED SERVICES AGREEMENT

Contract for Provision of Management Services Relating to Water Services

Wellington City Council

Wellington Water Limited

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Agreement dated 31 October 2013 as amended and restated on
11 April 2022 ~~2024~~

Parties

Wellington City Council of 113 The Terrace, Wellington Central, Wellington (**Council**)

Wellington Water Limited of 25 Victoria Street, Petone, Wellington (**Wellington Water**)

Background

- A Wellington Water was established in 2004 by Wellington City Council and Hutt City Council to co-operatively manage the delivery of Management Services to councils in the Wellington Region.
- B Wellington Water is jointly owned by Hutt City Council (**HCC**), Upper Hutt City Council (**UHCC**), Porirua City Council (**PCC**), Wellington City Council (**WCC**), Wellington Regional Council (**GWRC**) and South Wairarapa District Council (**SWDC**).
- C Wellington Water is a council-controlled trading organisation and a local government organisation under the Local Government Act 2002, and a company under the Companies Act 1993.
- D This agreement sets out the terms under which Wellington Water will provide the Management Services to, and exercise the Statutory Powers on behalf of, Council from the Commencement Date.

Operative provisions

1 Deliverables for Council communities

- 1.1 Council has in its Long Term Plan (**LTP**) committed to certain deliverables for the Council's community. In general terms, these deliverables relate to the health, safety and development of the community, and environmental sustainability.
- 1.2 Separately:
 - 1.2.1 Wellington Water is an operator of a drinking water supply pursuant to the performance of the Water Services, a drinking water supplier, stormwater network operator and a wastewater network operator in respect of the Network; and
 - 1.2.2 Council is an owner of a drinking water supply, a drinking water supplier, and a stormwater network operator and wastewater network operator in respect of the Network.
- 1.3 The standard of Water Services affects the achievement of certain deliverables in Council's LTP and Annual Plans, and the ability of the Council to comply with the Water Services Act. Council has contracted Wellington Water to provide Management Services

in respect of Council's function in providing the Water Services because it believes it will better assist the achievement of these deliverables and at the same time provide cost and resource efficiencies.

- 1.4 Council requires Wellington Water to at all times manage the delivery of Management Services and operate its business in a way that will enable Council to achieve its LTP deliverables and performance measures and to discharge and/or assist the Council in discharging each of the Council's obligations under the Water Services Act.

2 Objectives

- 2.1 The parties will co-operate to achieve the following objectives with respect to the provision of the Management Services:

- 2.1.1 Delivery of Management Services for Council that are affordable, sustainable, accessible, and of the quality agreed in Council's LTP.
- 2.1.2 Delivery of Management Services for Council in a manner that meets or exceeds the agreed Key Performance Indicators and Performance Measures.
- 2.1.3 Compliance with Council's statutory, contractual and other obligations in respect of its provision of Water Services.
- 2.1.4 Compliance with the Health and Safety at Work Act 2015 and maintenance of health and safety plans for all operational and capital project activities.
- 2.1.5 Emergency management and response planning on behalf of Council, Wellington Water's other shareholders, and other organisations and services.
- 2.1.6 Continuous improvement in the delivery of the agreed LTP service level for Water Services.
- 2.1.7 That Wellington Water is familiar with and abides by all relevant Council Policies, subject to clause 4.20.
- 2.1.8 The prompt, constructive and fair resolution of all issues between the parties.
- 2.1.9 That Council retains direct ownership of the Network in its district, including assets and infrastructure built and purchased and asset information obtained during the term of this agreement or in existence prior to the Commencement Date of this agreement, or within the existence of this agreement.
- 2.1.10 That the Network of Council and the networks of other Shareholding Councils in the Wellington region are managed on a co-ordinated basis.

3 Term

- 3.1 This agreement starts on the Commencement Date set out in Schedule 1 and will remain in force until the Expiry Date set out in Schedule 1, unless terminated earlier in accordance with this agreement.

4 The Management Services and Statutory Powers

Appointment and Powers

- 4.1 Council appoints Wellington Water to provide the Management Services to it and on its behalf. Wellington Water accepts this appointment.
- 4.2 Council authorises Wellington Water to perform on its behalf such acts, and gives Wellington Water such powers and authority, as are necessary to enable Wellington Water to provide the Management Services, including (without limitation) the powers specified in this agreement provided that Wellington Water shall:
- 4.2.1 Have no statutory powers other than those given by statute or expressly by Council in this agreement or by separate formal delegation;
 - 4.2.2 Comply with the directions and conditions specified in every delegation, authority and instrument of appointment given to Wellington Water by Council;
 - 4.2.3 Comply with any limitation on a power or delegation given by Council to Wellington Water, provided that Council will ensure that its delegations to Wellington Water enable Wellington Water's performance of the Management Services (including being principal to the contract under clause 8.4) in accordance with the Three Year Plan without further recourse to Council on a contract-by-contract basis except as agreed otherwise in relation to a particular project or service;
 - 4.2.4 Have no power to delegate any of its functions or powers other than in accordance with this agreement or a delegation, authority or instrument of appointment given to Wellington Water by Council; and
 - 4.2.5 Utilise all delegated functions or powers reasonably and prudently for their proper purpose.

Provision of Management Services

- 4.3 Wellington Water will at all times provide Management Services in accordance with this agreement. At all times during the term of this agreement, Wellington Water will provide the Management Services for Council:
- 4.3.1 in a proper, timely, cost effective and professional manner;
 - 4.3.2 exercising all due care, skill and judgement, and in accordance with accepted professional and business practices and standards, including (without limitation) to the standard set out in Council's Asset Management Plans;
 - 4.3.3 in a manner designed to achieve the Objectives;
 - 4.3.4 in the best interests of Council, recognising the obligations Council has to its ratepayers, citizens and stakeholders;
 - 4.3.5 in a manner that does not reflect adversely on Council;
 - 4.3.6 in the same priority as for other Shareholding Councils for which Wellington

Water provides management services (except in an emergency affecting one or more, but not all Shareholding Councils, when priority may be given to the Shareholding Council or Shareholding Councils affected by the emergency); and

- 4.3.7 in accordance with any instructions and directions given by Council's Representative (which must be consistent with the intent and terms of this agreement), including the powers or delegations given by Council.

Variations to Management Services

- 4.4 Council may from time to time need to vary the Management Services provided by Wellington Water. In these circumstances Council will outline the proposed variation (including the need and outcomes sought) in writing.
- 4.5 Council and Wellington Water can then partner (refer Schedule 5 to determine the most effective and efficient method of achieving the outcome sought).
- 4.6 If the variation results in a change in the Management Services provided or costs incurred, Wellington Water will adjust the One Budget Charges as agreed with Council.

Variations to this Contract

- 4.7 This agreement may not be varied, apart from the specific Council information required in Schedules 1, 2, 4, 8, and 9, without the prior written approval of all Shareholding Councils. This clause is for the benefit of and intended to be enforceable by the other Shareholding Councils under the Contract and Commercial Law Act 2017.

Performance Measurement and KPIs

- 4.8 Wellington Water's performance will be measured via the agreed Key Performance Indicators.
- 4.9 Wellington Water will report on other Council performance measures as agreed from time to time, but these will not form the basis of Wellington Water's performance measurement. Other Council LTP performance measures may be used to measure Wellington Water's performance, but only after these measures are agreed with Wellington Water.

Failure to perform Management Services

- 4.10 If at any time Wellington Water fails to perform any Management Services, or believes it is unlikely to be able to deliver any part of the Management Services for Council in accordance with the terms of this agreement, Wellington Water must immediately notify Council of the failure or belief in writing, and outline the steps considered necessary to remedy the situation.
- 4.11 Council and Wellington Water can then partner (refer Schedule 5) to determine the most effective and efficient method of remedying the situation.
- 4.12 If Wellington Water fails to remedy the situation as agreed, and within a period which is reasonable in the circumstances taking into account any material risk to public health or safety or material threat to property or the environment, Council may, after consulting Wellington Water, take, or direct Wellington Water to take, any action Council considers

necessary to ensure the Management Services are properly delivered and performed, and to minimise any loss or damage that might be suffered by Council or any other person as a result of Wellington Water's failure. Such action may include redirecting Management Services to a third party, the cost of which is to be met by Wellington Water.

- 4.13 Where any failure by Wellington Water to perform any Management Service materially and adversely impacts the provision of any Water Service that is essential to public health or safety or has or that threatens to damage property or the environment (or may reasonably have with the passage of time such impact or consequences) the Council may arrange for the provision of those Management Services and clauses 4.10 and 4.11 shall not apply.

Exercise of Statutory Powers

- 4.14 Council by this agreement appoints the Chief Executive Officer of Wellington Water (**CEO**) as its officer and gives the CEO the following powers to exercise on the Council's behalf:
- 4.14.1 the general powers of entry given to a local authority by section 171 of the LGA 2002;
 - 4.14.2 the powers given to a local authority in an emergency or where there is danger, by section 173 of the LGA 2002, provided Wellington Water notifies Council of the event as soon as possible; and
 - 4.14.3 the powers in relation to construction of works on private land given to a local authority by section 181 of the LGA 2002.
- 4.15 Council (acting through its Chief Executive) shall delegate to Wellington Water and Wellington Water Personnel such further Statutory Powers as are necessary to enable Wellington Water to provide the Management Services.
- 4.16 The CEO may, subject to the terms of any delegation, delegate any of the powers set out in clause 4.14 and 4.17 to Wellington Water Personnel, other than the power to further delegate the power.
- 4.17 Council may, by separate written delegation, delegate additional powers to the CEO.
- 4.18 Council may from time to time issue initial or additional sealed warrants to Wellington Water Personnel identified by Wellington Water as suitable to hold a warrant as are required to enable Wellington Water to provide the Management Services.

Compliance with laws

- 4.19 At all times during the term of this agreement Wellington Water must, in respect of operating its business, providing the Management Services and exercising the Statutory Powers:
- 4.19.1 hold all authorisations, permits and licences required under any law; and
 - 4.19.2 comply with the requirements of all applicable laws of any kind.

Compliance with policies and directions

- 4.20 Wellington Water will develop Approved Regional Policies wherever practicable. Approved Regional Policies will supersede the relevant Council policy.
- 4.21 Subject to clause 4.22, when providing the Management Services and exercising the Statutory Powers for Council, Wellington Water must, as a minimum, comply with:
- 4.21.1 Approved Regional Policies; or
- 4.21.2 where no Approved Regional Policy is in place, either:
- (a) those Council Policies listed in Schedule 8 as varied from time to time and notified to Wellington Water; or
- (b) Wellington Water's policies as agreed with Council from time to time.
- 4.22 Without limiting Wellington Water's duties and obligations under this agreement, Council may, after consulting Wellington Water, give Wellington Water by written notice such directions as Council considers reasonably necessary to:
- 4.22.1 ensure that Council complies with its obligations under any law, bylaw, any document or Council Policy adopted by it, or any contract or arrangement to which it is a party; or
- 4.22.2 achieve efficiency or co-ordination with any Council business or activity,
- provided that no consultation is required where a situation or event exists that is or may become a nuisance or danger to public health, or that threatens to damage property or the environment.
- 4.23 If:
- 4.23.1 a variation to an Approved Regional Policy, a Council Policy or an agreed Wellington Water policy; or
- 4.23.2 any direction provided by Council,
- results in a change in the Management Services provided or costs incurred by Wellington Water, Wellington Water will adjust the One Budget Charges as agreed with Council.

Protection of information systems

- 4.24 If Wellington Water is given access to a Council information technology system to enable Wellington Water to provide the Management Services, Wellington Water must:
- 4.24.1 only use the system to provide the Management Services;
- 4.24.2 take all reasonable care in using the system, including all hardware, software and applications and observe all relevant licence agreements, Council Policies, security procedures and work practices;

- 4.24.3 not interfere with or disrupt or cause any damage to the system;
- 4.24.4 ensure that the system is protected from unauthorised access or use, or misuse, damage or destruction by any person;
- 4.24.5 ensure the integrity of all data and information held on the system is not compromised; and
- 4.24.6 follow the policies and procedures of the system to maintain the accuracy of data and information held within the system.

Continuous improvement and cost reduction initiatives

- 4.25 Council seeks to continuously improve processes and reduce costs in respect of the Water Services. Wellington Water must:
 - 4.25.1 initiate and contribute to improvement processes on an ongoing basis; and
 - 4.25.2 continuously use its best efforts to reduce Council's costs in respect of its Water Services.

4A Water Services Act

Water Services Act

- 4A.1 The Council and Wellington Water acknowledge that for the purposes of the Water Services Act:
 - 4A.1.1 Wellington Water is:
 - (a) an operator of a drinking water supply pursuant to the performance of the Water Services, and is a drinking water supplier;
 - (b) a stormwater network operator in respect of the Network; and
 - (c) a wastewater network operator in respect of the Network;
 - 4A.1.2 Council is:
 - (a) an owner of a drinking water supply, and is a drinking water supplier;
 - (b) a stormwater network operator in respect of the Network; and
 - (c) a wastewater network operator in respect of the Network.

Obligations

- 4A.2 Without limiting any other provision of this agreement but subject to clauses 4A.3 and 4A.4 below, Wellington Water will:
 - 4A.2.1 assist the Council to comply with its obligations under the Water Services Act in each of the capacities set out in clause 4A.1.2; and

4A.2.2 provide to Council in a timely manner all documentation, information, assistance and/or co-operation as may be reasonably necessary in order for the Council to comply with each Owner Obligation,

and the provision of such services will constitute Management Services for the purposes of this agreement.

Information

4A.3 Where Wellington Water requires Council to provide any information held by the Council (or any information that is held by a third party but which the Council is entitled to disclose to Wellington Water) in order for Wellington Water to comply with its obligations under this agreement (**Required Information**), then Wellington Water will, as soon as reasonably practicable after becoming aware that it requires such Required Information, request that Required Information from the Council in writing.

4A.4 As soon as reasonably practicable following receipt of a request for Required Information, Council will deliver (or procure the delivery of) such Required Information as is reasonably available to it. Any such Required Information delivered by the Council to Wellington Water will constitute Confidential Information for the purposes of this agreement.

Directions and compliance orders

4A.5 Where Wellington Water (acting reasonably) considers that compliance by it with any direction and/or compliance order issued to Wellington Water pursuant to the Water Services constitutes an:

4A.5.1 Unexpected Event, then clauses 11.14 to 11.15 will apply; and

4A.5.2 Additional Service, then clauses 11.16 to 11.18 will apply.

4A.6 Where a conflict arises between any valid direction given to Wellington Water by the Regulator and any direction of the Council, Council Policy or Approved Regional Policy, the direction of the Regulator will prevail.

5 Representatives

Representatives

5.1 Each party appoints the Representative named in Schedule 1 as its Representative under this agreement. The Representatives are responsible for the day to day administration of this agreement on behalf of the party appointing them. In the case of Wellington Water, the Representative is also responsible for the day to day delivery of the Management Services and the supervision of all persons employed or engaged by Wellington Water in providing the Management Services.

5.2 The Representatives must be available and able to be contacted during normal business hours. A party must notify the other party immediately should its Representative be removed or replaced, together with the contact details of its new Representative, or of any change to its Representative's contact details.

5.3 Each party is responsible for the acts, omissions and defaults of its Representative. Any direction, instruction, notice, approval or other communication made or given to a Representative will be deemed to have been made by or given to the party appointing

that person.

6 Employees and Consultants

Employees and Consultants

- 6.1 Wellington Water must engage Personnel of good character and with the necessary skills, expertise, qualifications and training to carry out the Management Services. Wellington Water must ensure that its Personnel perform the Management Services with due care, skill and judgement, and in an efficient, professional and cost effective manner.
- 6.2 Wellington Water will require its Personnel to comply with Council Policies, Approved Regional Policies and instructions pursuant to clause 4.3.7 when performing the Management Services for Council, subject to clause 4.21, and must:
- 6.2.1 take all reasonable steps to ensure that Personnel comply with the applicable instructions, Approved Regional Policies, Council Policies or Wellington Water's policies (as applicable), and otherwise acts in a manner consistent with Wellington Water's duties and obligations under this agreement;
 - 6.2.2 if it becomes aware that any Personnel has breached those instructions, Approved Regional Policies, Council Policies or Wellington Water's policies (as applicable), take all appropriate remedial steps and, in the case of a serious breach, forthwith advise the Council of the breach and the remedial steps taken; and
 - 6.2.3 take appropriate action against Personnel who fail to follow, or breach, and instruction, Council Policy, Approved Regional Policy or a Wellington Water policy or procedure when performing the Management Services.
- 6.3 Where a conflict occurs between a Council Policy and an Approved Regional Policy, the Approved Regional Policy will prevail.

7 Assets used to provide the Management Services and access to Water Services assets

- 7.1 Wellington Water must ensure that at all times it has sufficient and serviceable assets in order to operate efficiently and to meet its obligations under this agreement.
- 7.2 In respect of all assets accessed or used by Wellington Water in the provision of Management Services under this contract, Wellington Water must:
- 7.2.1 safeguard the assets from damage, loss and destruction; and
 - 7.2.2 keep the assets in good condition and repair (fair wear and tear excepted).
- 7.3 To the extent of carrying out Management Services, Wellington Water (or a nominated Wellington Water contractor) is entitled to access Council Water Services assets, property or infrastructure in order to discharge those Management Services.
- 7.4 Wellington Water has no power or authority to acquire or own Water Services assets or infrastructure used or to be used to provide the Water Services. All Water Services

assets, property and infrastructure (whether or not in existence at the Commencement Date) used to provide the Water Services are to be owned solely by one or more Shareholding Councils.

- 7.5 The parties acknowledge that Wellington Water may acquire, lease and/or own assets used in its day to day operations in its capacity as provider of water services management services, including office space, furniture, vehicles and equipment (including IT equipment and software, tools and other technical equipment).

8 Contracts

Existing contracts

- 8.1 Where, on the Commencement Date, Council is party to a contract for works, services or supply of assets relating to Water Services:

8.1.1 the contract will remain with Council; and

8.1.2 Wellington Water will, from the Commencement Date, manage the contract on Council's behalf to the extent that it was managed by Council prior to the Commencement Date, unless the parties (including third party contractor where required) agree to assign the contract to Wellington Water.

- 8.2 The only exceptions to this are:

8.2.1 the WCC contract for the provision of Wastewater treatment and facility operations services pursuant to the Design Build Operate Contract for Wastewater Treatment Project dated 23 February 1995 (the Moa Point treatment plant contract); and

8.2.2 the HCC/UHCC contract for the operation of the Hutt Valley trunk wastewater system and Seaview wastewater treatment plant,

where the parties will continue to manage the contracts on the same basis as prior to the Commencement Date.

Appointment of Wellington Water as principal's representative

- 8.3 So that Wellington Water may manage contracts referred to in clause 8.1 on behalf of Council, Council has or will appoint such Wellington Water Personnel as Council's representative and/or the engineer to the contract under every such contract. Council will give the required notice under each such contract to effect the appointment, and will at the same time copy that notice to Wellington Water. Wellington Water will appoint an alternative person Council's representative if Council, acting reasonably, requests this of Wellington Water.

Future contracts

- 8.4 Wellington Water will become the principal to all future contracts for Water Services, subject to clauses 8.5 through 8.12 and unless otherwise agreed in writing by the parties.

- 8.5 The parties acknowledge their intention that as existing contracts for operations and maintenance of Water Services and related assets expire or terminate, Wellington Water

will use its best endeavours to obtain future operations and maintenance services for Council in a manner that delivers the best possible value (in terms of quality and cost) to Council including, where appropriate, by entering into procurement arrangements which benefit both the Council and one or more other Shareholding Councils.

- 8.6 Wellington Water will procure, negotiate and enter into all future contracts for Water Services in a manner:
- 8.6.1 consistent with the applicable Annual Work Programme and performance measures and approvals in relevant plans and budgets, all applicable Council Policies and/or Approved Regional Policies and using good public sector procurement practices; and
 - 8.6.2 not inconsistent with Councils then current Annual Plan.
- 8.7 Wellington Water will deliver to Council:
- 8.7.1 an original of each new executed contract relating to Water Services to which Council is a principal or pursuant to which Council has rights and obligations, together with originals of all documents recording variations to such contracts. Wellington Water must retain a copy of all such contracts and any variation documents; and
 - 8.7.2 on Council's request, a copy of each new executed contract relating to Water Services to which Wellington Water is a principal together with copies of all documents recording variations to such contracts.
- 8.8 Wellington Water requires prior written approval by Council before it can sign a works or construction contract that is not substantively based on either NZS3910: 2013 or NZS3915: 2005 (or any replacement or additional New Zealand Standard form construction contract) with appropriate amendments or any standard form template approved by the Shareholding Councils for use by Wellington Water.
- 8.9 The Council will pay Wellington Water any amount payable by Wellington Water as principal to a third party contract pursuant to this clause 8 as a result of the termination by Council of this agreement or Council no longer requiring Wellington Water to provide the Management Services and Wellington Water will:
- 8.9.1 use its best endeavours to reduce the amount of the payment required of it;
 - 8.9.2 if requested by Council, co-operate with Council in a joint endeavour to reduce the amount of the payment; and
 - 8.9.3 transfer the contract to Council as principal and Council will assume the contract.
- 8.10 Wellington Water shall ensure that each contract entered into pursuant to this agreement where Wellington Water is the Principal contains no prohibition on the transfer of such contract from Wellington Water to Council.
- 8.11 Any Water Services asset created pursuant to a contract for capital work entered into by Wellington Water will be owned by the Council or, where applicable, those Shareholding

Councils which have jointly requested Wellington Water to procure the capital works in accordance with arrangements made between Wellington Water and the Shareholding Councils in relation to that asset.

- 8.12 Any contract entered into by Wellington Water as principal pursuant to this clause 8 shall provide that any new asset shall vest in the Council on Practical Completion or handover of the asset pursuant to that contract. As between Wellington Water and Council it is agreed that any interest in any such asset vested in Wellington Water pursuant to a contract or at law shall vest in Council on Practical Completion or handover of the asset.
- 8.13 To the extent permitted by law the parties agree that this agreement is not intended and is not to be construed as a Construction Contract pursuant to the Construction Contracts Act 2002.

9 Resource Consents

- 9.1 Council will use its best efforts to transfer to Wellington Water all resource consents relating to Water Services assets and operations managed by Wellington Water on behalf of Council and owned by Council.
- 9.2 Until such time as resource consents are transferred to Wellington Water pursuant to clause 9.1 above, Wellington Water will continue to act on behalf of Council. as if the resource consent had been transferred.
- 9.3 Wellington Water will maintain a direct relationship with the consent authority. For resource consents in Wellington Water's name, the Council asset owner will ensure that Wellington Water's consent is obtained prior to the Council asset owner communicating with the consent authority. Such consent shall not be unreasonably withheld or delayed.
- 9.4 Wellington Water will keep Council informed in relation to discussions with the consent authority. In line with clause 25.7, during discussions with the consent authority Wellington Water may not make any commitment or obligation on expenditure or other matter that may create the impression of a commitment by Council, without Council's prior written approval.

10 Reports, information, reviews and records

Reports

- 10.1 Wellington Water shall deliver reports to Council in relation to the Management Services Wellington Water provides. The reports shall contain the information set out in Schedule 3 and other information Council may reasonably require to be included from time to time.

Local Government Act 2002 Reporting

- 10.2 Wellington Water shall provide Council with reports to meet Council's reporting cycle, or at other such intervals as Council may specify to meet the requirements of the LGA 2002. This will include, but is not limited to, reports to support Council Bylaw reviews, and policy and strategy reviews.

Service Level Agreement Performance Report ("SLA Report")

- 10.3 Wellington Water shall deliver an SLA Report covering the information set out in

Schedule 3 to Council in relation to the Management Services Wellington Water provides on a quarterly basis, to be delivered by the 20th day of the month following quarter end.

Activity and Operations Reports

10.4 Wellington Water shall provide all other reports as outlined in the agreed Annual Work Programme (AWP).

Budgeting and Financial Reports

10.5 Wellington Water shall provide all information required in a timely manner to meet Council's annual financial planning and financial reporting cycles.

Information and Audit

10.6 Wellington Water shall promptly provide such information relating to the Water Services and/or the Management Services as Council shall reasonably request:

10.6.1 where such information relates to a matter that is of material interest to an elected member or the community;

10.6.2 where the information relates to a matter that constitutes a legal, financial or reputational risk or liability to the Council or could reasonably give rise to any such risk or liability;

10.6.3 where the information is reasonably required to enable the Council to fulfil its obligations under any contract with a third party;

10.6.4 where the information is reasonably required to enable the Council to fulfil its obligations and/or carry out its functions under any law or legislative provision; and

Council will pay all of Wellington Water's costs and expenses incurred in fulfilling any such request.

Council audits

10.7 Provided that clauses 3.19 to 3.21 of the Shareholders' Agreement entered into between the Shareholding Councils are complied with, Council may reasonably, and at its own cost, monitor and audit Wellington Water's performance in the delivery of the Management Services from time to time. An audit may take the form of spot checks and/or a more formal audit. The objective of such audit shall be to ascertain the level of compliance by Wellington Water with the requirements of this agreement, with a particular focus on the quality of the Management Services and compliance with legislation, consents and standards.

10.8 Council will give the board of Wellington Water reasonable notice if a formal audit is to be undertaken and will consider feedback provided by the board on scope, timing or requisite reviewer expertise.

10.9 Wellington Water shall co-operate with Council and its auditors to provide access to such information, records, premises, Wellington Water personnel and subcontractors as shall be reasonably necessary to facilitate such audits.

- 10.10 In addition to the reports to be delivered under clause 10.1, Council may from time to time and at Council's cost, require Wellington Water to provide it with information concerning any aspect of the Management Services Wellington Water provides, acting reasonably. Wellington Water must endeavour to provide the information as soon as practicable or within a timeframe agreed with Council.

Reviews

- 10.11 The parties will meet to review this agreement at a time to be agreed, but no later than the third anniversary of the Commencement Date, and every third year after that. The purpose of the review will be to determine the extent to which:
- 10.11.1 the provisions of this agreement are being complied with and are functioning adequately from a practical perspective;
 - 10.11.2 the Performance Measures and the Key Performance Indicators are appropriate; and
 - 10.11.3 any revision of the provisions of this agreement is necessary or desirable.

Records

- 10.12 Wellington Water must keep and maintain full records and documentation in relation to the Management Services and this agreement in accordance with the Public Records Act 2005, the Local Government Official Information and Meetings Act 1987, the Building Act 2004, the Water Services Act and any applicable standards or policies. Wellington Water must keep copies of these records in hard copy and in electronic form and must deliver a full set of both to Council on termination or expiry of this agreement.
- 10.13 Wellington Water must comply with clause 10.12 during the term of this agreement and for 7 years after the agreement set out in this agreement ends.
- 10.14 On request by Council, Wellington Water must make all documents and records relating to the Management Services available to Council for inspection by Council and/or its Personnel and, if required, copying.
- 10.15 The following records are to be provided to Council when available:
- 10.15.1 'as built' records and asset information,
 - 10.15.2 asset management system data,
 - 10.15.3 Project Information Memoranda information,
 - 10.15.4 Land Information Memorandum information,
 - 10.15.5 Building compliance information, and
 - 10.15.6 such other records as reasonably required by Council from time to time.
- 10.16 All asset data, records and documents referred to in clauses 10.12 to 10.15 must be kept and delivered (as applicable) in a form that is compatible with Council's information system and in accordance with a timeframe to be advised by Council from time to time.

11 Three Year Plan, Annual Work Programme, One Budget Charges and Additional Services

Three Year Plan and Annual Work Programme

- 11.1 By 1 September each year, or by another date agreed with Council, Wellington Water will provide to Council a draft rolling Three Year Plan, for the period from 1 July to 30 June of any one year.
- 11.2 The draft Three Year Plan will detail:
- 11.2.1 for the next Financial Year commencing 1 July;
- (a) the full draft Annual Work Programme;
 - (b) the One Budget Charges for the next Financial Year commencing 1 July (and, from the Financial Year commencing 1 July 2019 following confirmation of Council's 2018-21 LTP, such One Budget Charges will not be less than the One Budget Charges forecasted for that Financial Year in the previous year's Three Year Plan, unless agreed otherwise);
 - (c) any proposed amendments to the Key Performance Indicators;
 - (d) any amendments to the Opex Charge Scope, Management Charge Scope, Contingency Sum or the Unexpected Event Reserve Cap; and
- 11.2.2 for the following two Financial Years, the forecast high level Annual Work Programme and the forecast One Budget Charges.
- 11.3 Each year, Wellington Water and Council will agree a final Three Year Plan based on the draft provided under clause 11.1 and in accordance with the process and timeframes set out in Schedule 6. The final Three Year Plan will be approved by the Wellington Water Board and agreed in writing by the Chief Executives or delegated representatives of both Wellington Water and Council by 30 June each year, excluding any carry-forwards still to be agreed at that point.
- 11.4 Once agreed, the Three Year Plan may only be altered in terms of programme content and budget during the course of the Financial Year by written agreement of Wellington Water and Council.

One Budget Charges

- 11.5 Council will pay Wellington Water the One Budget Charges for each Financial Year as follows:
- 11.5.1 the Management Charge will be paid in twelve equal monthly instalments;
- 11.5.2 the Opex Charge will be paid in twelve equal monthly instalments; and
- 11.5.3 the Capex Charge will be paid in monthly instalments of such sums as are agreed in the Three Year Plan, or as otherwise agreed from time to time, to finance the performance of Annual Work Programme.

- 11.6 Wellington Water will invoice Council (in advance) for each monthly instalment of One Budget Charges by the twenty fifth (25) day of the preceding month. Each invoice must separately identify the Management Charge, Opex Charge and Capex Charge.
- 11.7 Council must pay all valid GST invoices from Wellington Water for the One Budget Charges by the 10th business day of the month to which the invoice relates.
- 11.8 If the Three Year Plan is not agreed by 30 June for the following Financial Year, until such time as the Three Year Plan is agreed, the One Budget Charges will be based on the amount forecast for that year in the Three Year Plan adopted the previous Financial Year. Once the Three Year Plan is agreed, the One Budget Charges will be recalculated and the updated Three Year Plan (including the One Budget Charges) will be applied retrospectively from the start of the Financial Year.

Wellington Water to operate within One Budget Charges

- 11.9 Subject to clauses 11.4 and 11.15, Wellington Water must:
- 11.9.1 manage its operations within the agreed Management Charge; and
 - 11.9.2 carry out the Annual Work Programme within the Opex Charge and the Capex Charge,
- 11.10 Wellington Water may, in its discretion and with its Board's approval, amend the allocation of funds between the Management Charge and the Opex Charge provided that the total sum of the Management Charge and the Opex Charge does not change.

Contingency Sum and treatment of overs and unders in expenditure

- 11.11 The parties acknowledge that the Opex Charge includes a Contingency Sum and agree that the Contingency Sum may be used by Wellington Water, at its discretion but subject to the reporting requirements in clause 10, during the Financial Year to manage its operations and/or fund Unexpected Events.
- 11.12 The parties acknowledge that there may be overs and/or unders in relation to expenditure of the Opex Charge and the Capex Charge against the Annual Work Programme and the following applies:
- 11.12.1 subject to clause 11.13, overs and/or unders in relation to expenditure of the Opex Charge do not require Wellington Water to repay any part of the One Budget Charges or entitle Wellington Water to increase the One Budget Charges.
 - 11.12.2 the treatment of any overs and/or unders in relation to expenditure of the Capex Charge against the Annual Work Programme will be agreed by the parties as part of their regular review of expenditure and any agreed wash-up process.
- 11.13 At the end of each Financial Year, the unspent portion of the Contingency Sum (if any) will be:
- 11.13.1 transferred to the Unexpected Event Reserve; and
 - 11.13.2 to the extent that the Unexpected Event Reserve exceeds the Unexpected

Event Reserve Cap, repaid to Council.

Unexpected Events and the Unexpected Event Reserve

11.14 The parties acknowledge that:

11.14.1 the Management Services require Wellington Water to manage Unexpected Events from time to time;

11.14.2 that Management Services required to respond to Unexpected Events are deemed to be Additional Services;

11.14.3 despite clauses 11.16 and 11.17, Wellington Water may undertake Additional Services in response to Unexpected Events where it is impracticable for Council to instruct or authorise Wellington Water, providing that Council may subsequently, by written notice:

(a) instruct Wellington Water to cease such response; or

(b) require further Unexpected Events Costs to be agreed with Council in accordance with clause 11.17; and

11.14.4 that Unexpected Events Costs will be paid in accordance with clause 11.15.

11.15 Unexpected Events Costs incurred by Wellington Water will be paid, in the order given:

11.15.1 from the Unexpected Event Reserve to the extent that such funds are available; then

11.15.2 from the Contingency Sum, if such sum is available; then

11.15.3 to the extent that the amount is not available from the above sources, Council will ensure that sufficient funds are made available to Wellington Water to cover such Unexpected Events Costs.

Additional Services and contracts not covered by One Budget Charges

11.16 The parties acknowledge that, from time to time the parties may agree that Wellington Water will undertake Management Services that are Additional Services and, without limitation:

11.16.1 Council may ask Wellington Water to carry out, or propose, Additional Services; and/or

11.16.2 Subject to clause 11.14.3:

(a) Wellington Water will notify Council if it considers that a direction from Council, or other circumstances, require it to carry out Additional Services; and

(b) Council will, as soon as reasonably practicable after receiving notice required by 11.16.2(a), notify Wellington Water whether or not it considers the direction or other circumstances to be Additional

Services.

- 11.17 Where Council has asked Wellington Water to carry out Additional Services under clause 11.16.1, or has notified Wellington Water under clause 11.16.2(b) that it considers a direction or other circumstances to be Additional Services:
- 11.17.1 Before the Additional Services commence (except in the case of an Unexpected Event where, for clarity, clause 11.14.3 applies) Wellington Water will advise Council as appropriate in the circumstances, either:
- (a) the value of the Additional Services, their programme and their impact (if any) on the Annual Work Programme; or
 - (b) the mechanism under which the value of the Additional Services and the impact (if any) on the Annual Work Programme will be derived; or
 - (c) a proposed budget for the Additional Services that must not be exceeded without further agreement between the parties.
- 11.17.2 Following receipt of Wellington Water's advice under clause 11.17.1, Council will agree, acting reasonably, with Wellington Water a value, a mechanism for valuing, or a budget (as applicable) for the Additional Services.
- 11.17.3 If the parties are unable to agree under clause 11.17.1, the matter will be treated as a dispute and resolved in accordance with clause 22.
- 11.18 Subject to agreement having been reached under clause 11.17, Wellington Water will invoice the Council for Additional Services (in the form of a valid GST invoice and separately to invoices for the One Budget Charges) and:
- 11.18.1 subject to clause 11.18.2, such invoices must be paid by Council no later than the 20th of the month following the invoice date.
- 11.18.2 Where Wellington Water is the principal under a contract, Council must pay all valid GST invoices for capital works charges within seven (7) business days of receiving an invoice from Wellington Water.
- 11.19 Where, as part of the Management Services or Additional Services, Wellington Water manages a contract between Council and a third party (where Council is Principal), Wellington Water must:
- 11.19.1 ensure that invoices from the third party where appropriate are addressed to Council care of Wellington Water; and
- 11.19.2 when satisfied that an invoice is in order for Council to pay, send an approval {as agreed between the parties) to Council to that effect together with the invoice.
- 11.20 An invoice from a third party will only be in order for Council to pay if:
- 11.20.1 it is a valid GST invoice;

- 11.20.2 all obligations of the third party that the invoice relates to have been met in accordance with the contract between Council and the third party;
 - 11.20.3 the invoice is for no more than the amount allowed under the contract for meeting those obligations; and
 - 11.20.4 there are no circumstances that entitle Council to, or suggest Council should as prudent business practice, dispute the invoice or withhold payment pursuant to the contract provisions.
- 11.21 Where, as part of the Management Services, Wellington Water manages a contract (where Council is Principal) whereby the third party provides services to Council and another Shareholding Council, Wellington Water must:
- 11.21.1 ensure the third party accurately accounts for and invoices separately the services it provides to Council; and
 - 11.21.2 comply with clauses 11.19 and 11.20.
 - 11.21.3 Payments made by Council in relation to an invoice from Wellington Water for work undertaken on the provision of Water Services for Council must be paid promptly to the relevant supplier of that work.

Late payments

- 11.22 Where, as a result of any payment invoiced under clause 11 not being paid by the due date, Wellington Water is required to draw down on its credit facilities, the interest cost arising thereby will be charged to the Council or Shareholding Councils (as applicable).

GST

- 11.23 If any payment under this agreement is subject to GST, the amount payable is to be increased by the amount of the GST.

Disputed Invoices

- 11.24 Council will promptly pay all amounts payable by it to Wellington Water under this agreement and will not intentionally withhold or threaten to withhold any payment due to Wellington Water, notwithstanding any dispute between Council and Wellington Water, whether as to the performance of the Management Services, the amount of the invoice or otherwise.
- 11.25 On request by Council, Wellington Water will promptly provide Council with such information and analysis in connection with the calculation of any amount invoiced to Council by Wellington Water as Council may reasonably request.

12 Intellectual Property

Ownership of intellectual property

- 12.1 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the performance of the Management Services for Council will vest in, and belong to, Council on creation. Council grants Wellington Water a revocable, non-transferable and royalty free licence to exercise all Council intellectual property

rights in its Intellectual Property, for the purposes of providing the Management Services to Council. Wellington Water's licence from Council terminates when this agreement terminates.

- 12.2 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the performance of the Management Services generally and not for a particular Council will vest in, and belong to, Wellington Water on creation. Wellington Water grants Council a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-license) to exercise all Wellington Water's intellectual property rights in its Intellectual Property.
- 12.3 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the efforts of a third party in connection with the performance of a contract relating to Water Services between Council and that third party will, as between Council and Wellington Water, vest in, and belong to, Council. If Council obtains from a third party Intellectual Property relating to the Management Services, Council will endeavour to obtain a royalty free licence for Wellington Water to use that Intellectual Property to the extent necessary for Wellington Water to meet its obligations to Council under this agreement.

Wellington Water's material

- 12.4 If any material, matter or thing (including software, documentation or data) is owned by Wellington Water and such material, matter or thing is incorporated in or attached to any Intellectual Property owned by Council (whether pursuant to clause 12.1 or otherwise), Wellington Water grants Council a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-license) to exercise all intellectual property rights in such material, matter or thing for the purpose of accessing and using the Intellectual Property owned by Council as referred to in this clause.

No infringement

- 12.5 Wellington Water must not infringe the intellectual property rights of Council or a third party in connection with this agreement.

13 Operation and management of Wellington Water

- 13.1 Without limiting the obligations and duties of Wellington Water or its directors, Wellington Water:
- 13.1.1 must comply with the objectives in section 59 of the LGA 2002, including to be a good employer, to exhibit a sense of social and environmental responsibility and to conduct its affairs in accordance with sound business practice;
 - 13.1.2 must make all decisions in accordance with its statement of corporate intent and its constitution in accordance with section 60 of the LGA 2002;
 - 13.1.3 must maintain operative business continuity plans, emergency response plans, and alternative site arrangements for the Water Services and the Management Services;
 - 13.1.4 must maintain operative and health and safety plans for all Water Services,

Management Services, operational activities and capital projects; and

13.1.5 must comply with all relevant legislation.

14 Confidentiality

Obligations of confidence

14.1 Where Wellington Water receives Confidential Information from Council under this agreement or otherwise in connection with the Management Services, Wellington Water must:

14.1.1 keep the Confidential Information confidential;

14.1.2 not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of this agreement;

14.1.3 not, without Council's written consent, disclose Confidential Information to any person other than its personnel or Council's personnel who need the information for the purposes of this agreement; and

14.1.4 establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

Further permitted use and disclosure

14.2 Notwithstanding clause 14.1, Wellington Water may use or disclose Confidential Information to the extent necessary to:

14.2.1 comply with any law, binding directive of a regulator or a court order; or

14.2.2 obtain professional advice in relation to matters arising under or in connection with this agreement.

14.3 Where Wellington Water believes it is required to disclose Council's Confidential Information pursuant to the Local Government Official Information and Meetings Act 1987, Wellington Water must notify and consult with Council prior to any disclosure of the information and, where appropriate, Wellington Water will refer the request for Confidential Information to Council and Council will take responsibility for the request.

Exclusions

14.4 Clause 14.1 does not apply to Confidential Information:

14.4.1 which was known to Wellington Water at the time of disclosure, unless such knowledge arose through the breach of an obligation of confidence; or

14.4.2 which Wellington Water acquires from a third party (other than Council personnel) where that third party was entitled to disclose it.

Responsibility for Personnel

14.5 Wellington Water must ensure that its Personnel do not do, or omit to do anything, which if done or omitted to be done by Wellington Water, would breach this clause 14.

Undertakings from Personnel

- 14.6 Council may at any time require any Personnel of Wellington Water engaged in the performance of obligations under this agreement to give written undertakings in a form prepared by Council relating to the non-disclosure of the Confidential Information and Wellington Water must promptly arrange for all such undertakings to be given.

Notification of unauthorised use

- 14.7 Wellington Water must immediately notify Council of any potential, suspected or actual unauthorised use, copying or disclosure of Council's Confidential Information.

Return of Confidential Information

- 14.8 Wellington Water must immediately on demand or on completion or termination of this agreement, return to Council any documents in its possession, power or control containing Confidential Information. Wellington Water must not retain copies of any Council Confidential Information in any form.

Obligations to continue after agreement ends

- 14.9 All obligations of confidence set out in this agreement continue in full force and effect after the agreement set out in this agreement ends.

15 Warranties

General warranties

- 15.1 Each party represents and warrants to the other on a continuing basis that:
- 15.1.1 it has full corporate power to enter into and give effect to this agreement and to complete the transactions contemplated by this agreement;
 - 15.1.2 it has taken all necessary action to authorise the execution, delivery and performance of this agreement;
 - 15.1.3 at the date of this agreement, the execution, delivery and performance of this agreement by it does not contravene any contractual, legal or other obligations that apply to it; and
 - 15.1.4 on execution of this agreement, its obligations under this agreement will be valid, binding and enforceable.

Performance of Management Services

- 15.2 Wellington Water represents and warrants to Council on a continuing basis that:
- 15.2.1 Wellington Water holds all licences, permits, consents and authorisations required under any law in relation to the provision of the Management Services and will continue to do so at all times during the term of this agreement;
 - 15.2.2 Wellington Water will use its best endeavours to meet or exceed both the Performance Measures and the KPIs.

16 Liability

Limited liability

- 16.1 Subject to clause 16.2, Wellington Water will not be liable in damages to Council, nor will Council be liable in damages to Wellington Water, for any claims, actions, liabilities, loss, costs or expenses whatsoever arising directly or indirectly out of any damage or loss arising from any breach of this agreement by Wellington Water or Council (as the case may be), or from any negligence, act or omission of it or its Personnel.
- 16.2 Despite clause 16.1:
- 16.2.1 a party is liable to pay all amounts properly payable by that party to another party pursuant to this agreement;
 - 16.2.2 Wellington Water must undertake any actions necessary to protect Council's interests, including any follow up action required in situations of possible or actual loss (economic or otherwise) to Council; and
 - 16.2.3 if Wellington Water recovers compensation from a third party (including an insurer) in respect of an occurrence that Wellington Water would, in the absence of clause 17.1, be liable to Council for, Wellington Water will be liable to pay to Council the compensation recovered by Wellington Water, less Wellington Water's reasonable costs.

Third party claims

- 16.3 In respect of each claim made, or action taken, against Wellington Water by a third party (other than Wellington Water's Personnel) which Wellington Water may incur in, or which may arise from, it carrying out its duties and obligations to Council under this agreement, Council will pay the amount of:
- 16.3.1 Wellington Water's liability to the third party; and
 - 16.3.2 Wellington Water's losses, costs and expenses,
- to the extent that Wellington Water cannot recover these amounts under its insurance (including the amount of any excess) or from a third party.
- 16.4 Where a claim to which clause 16.3 may apply is made against Wellington Water, Wellington Water must:
- 16.4.1 forthwith advise Council of the claim; and
 - 16.4.2 comply with any directions given at any time by Council to Wellington Water in relation to the claim to protect Council's interests including follow up Contract for Provision of Management Services Relating to Water Service action required in situations of possible or actual loss (economic or otherwise).
- 16.5 Council is authorised by Wellington Water to notify other Shareholding Councils of any such third party claim.
- 16.6 If Council has paid a liability of Wellington Water pursuant to clause 16.3 and Wellington

Water recovers compensation under its insurance or from a third party in respect of the occurrence giving rise to the liability, Wellington Water will pay to Council the compensation recovered by Wellington Water, but not exceeding the amount paid by Council, less Wellington Water's reasonable costs.

- 16.7 Clause 16 refers to claims, actions, liabilities, losses, costs or expenses whatsoever arising directly or indirectly out of damage or loss of any activity undertaken by Wellington Water in the provision of Management Services without limitation irrespective of whether the Management Services consist of capital works, maintenance, operations, activities or provision of advice.

17 Insurance

Insurance

- 17.1 While Wellington Water is providing services (whether to Council or third parties), Wellington Water must maintain:
- 17.1.1 public liability insurance for an amount not less than \$20 million in respect of any claim;
 - 17.1.2 professional indemnity insurance for an amount not less than \$5 million in respect of any claim by a third party;
 - 17.1.3 motor vehicle insurance for an amount not less than \$2 million in respect of any claim by a third party;
 - 17.1.4 general insurance for repair and replacement of all items used by Wellington Water to provide the Management Services that are lost or damaged; and
 - 17.1.5 statutory liability insurance for an amount not less than \$2 million in respect of any claim.
- 17.2 Council must maintain insurance of Water Services assets the subject of the Management Services as a council would reasonably procure which may include such self-insured portion as the Council shall elect.
- 17.3 Subject to the termination transition arrangements in clause 20, Wellington Water's professional indemnity cover should be maintained for a period of 6 years after the expiry or termination of this agreement.

Insurer and terms

- 17.4 Each policy maintained in accordance with this clause 17 must be with a reputable insurer and be on terms commonly acceptable in the current insurance market.

Protection of insurance

- 17.5 Each party must comply with and observe the terms of all insurance policies referred to in clauses 17.1 and 17.2 and must not do anything which could result in any policy being rendered void or voidable. Each party must also comply with the terms of any notification or management process for a claim under a policy referred to in clauses 17.1 and 17.2.

Evidence of insurance

- 17.6 Each party must deliver to the other party evidence satisfactory to the other party that it has a particular insurance policy and that the policy is current. This should be delivered to each party's representative under this agreement as soon as possible following a request from the other party to do so.

18 Termination

- 18.1 Council may give Wellington Water written notice immediately terminating this agreement if Wellington Water ceases to carry on business, is about to become insolvent, or has a liquidator appointed to it or a receiver appointed for all or any of its assets.
- 18.2 Council may terminate this agreement on not less than twelve {12} weeks written notice to Wellington Water if:
- 18.2.1 Wellington Water is in material breach of this agreement; and
 - 18.2.2 the breach is capable of remedy; and
 - 18.2.3 Wellington Water has not remedied the breach within sixty (60) days after receiving notice requiring it to do so.
- 18.3 Council may terminate this agreement on not less than six (6) months written notice to Wellington Water if Wellington Water fails to achieve a Mandatory Key Performance Indicator in any three consecutive years.
- 18.4 Either party may terminate this agreement with effect as at 30 June in any year provided it gives written notice of termination to the other party no later than 30 June the previous year and the party giving notice has the written agreement of five (5) of the six (6) Shareholding Councils.
- 18.5 Council may terminate this agreement with effect from any given date provided it gives written notice of termination to Wellington Water and to the other Shareholding Councils no later than 36 months previous to that date.

18A Three Waters Structural Reform

- 18A.1 Council and Wellington Water acknowledge that the Crown (through the Department of Internal Affairs) has progressed a national programme for the transformation of local government three waters service delivery arrangements (**Crown Reform Proposal**), which would see the creation, by statute, of four new water service delivery entities that would be responsible for the ownership of all assets associated with, and the delivery, supply and management of, drinking water, stormwater and wastewater.
- 18A.2 Each of Council and Wellington Water acknowledges that if the Crown implements the Crown Reform Proposal, then it may be necessary to transition and migrate some or all of the Management Services, Water Services, Network and/or any other matter contemplated by this agreement to one or more service delivery entities established as part of the Crown Reform Proposal. To the extent that any such transition or migration is required in connection with the Crown Reform Proposal, then each of Wellington Water and the Council will:

18A.2.1 act in good faith to:

- (a) jointly develop and agree a transition plan, setting out the respective tasks to be accomplished by each party in connection with an orderly transition to the arrangements as set out under the Crown Reform Proposal and a schedule for the completion of the tasks;
- (b) agree any amendments to the Management Services as may be necessary in connection with the transition to the arrangements as set out under the Crown Reform Proposal,

in each case on the basis that unless otherwise required pursuant to the Crown Reform Proposal, Wellington Water will continue to deliver the Management Services in accordance with the terms of this agreement and all applicable laws (until such time as these arrangements are terminated by the Crown Reform Proposal); and

18A.2.2 perform their respective tasks under the transition plan developed under clause 18A.2.1.

18A.3 The parties acknowledge that the Crown may request that Wellington Water assists with the transition to any Crown Reform Proposal, including by way of establishing a transition unit within Wellington Water and/or transferring or seconding personnel to a new agency (Transition Services). Following any such request, Wellington Water will use commercially reasonable endeavours to procure funding from the Crown for all or part of the costs of any new employees, seconded employees or transferred employees that Wellington Water is required to engage or provide in connection with the Transition Services, provided that any costs or expenses that Wellington Water incurs in connection with any such Transition Services and which it is not able to recover from the Crown will constitute Management Charges for the purposes of this agreement.

18A.4 Wellington Water confirms that it will provide the Transition Services, if any, in accordance with good industry practice and in a manner that minimises the costs and expenses of those Transition Services to the extent reasonably practicable

18A.5 If the Crown requests that Wellington Water seconds and/or transfers any Wellington Water employees to a new agency in connection with the Crown Reform Proposal, then where Wellington Water considers (acting reasonably) that the secondment or transfer of such employee may adversely impact the performance of the Management Services, then:

18A.5.1 Wellington Water will notify the Council, including such detail as may be reasonably necessary for the Council to assess the potential impact to the Management Services and/or costs arising out of the transfer or secondment of such employee; and

18A.5.2 Wellington Water will consult with each Shareholding Council (including the Council) in respect of any such secondment or transfer (including the terms thereof) prior to approving any such secondment or transfer.

18A.6 The parties acknowledge that clauses 19 and 20 of this agreement shall be without prejudice to any termination, transition and/or migration arrangements in respect of the Management Services, Bulk Water Supply Services, the Network and/or any other matter contemplated by this agreement pursuant to statute or other legislative instrument in connection with the Crown Reform Proposal.

19 Obligations at end of agreement

Return of property

- 19.1 When the agreement set out in this agreement ends, whether by expiration of the term or on earlier termination:
- 19.1.1 all sums outstanding or incurred in relation to this agreement prior to the Expiry Date or termination must be immediately paid;
- 19.1.2 Council may instruct Wellington Water to:
- (a) continue providing all or part of the Management Services while termination transition takes place under clause 20, at a reasonable cost based on, and no more than, the charges then payable under this agreement;
 - (b) deliver all or any part of the Property to an address nominated by Council;
 - (c) make all or any part of the Property available for collection, at the premises of Wellington Water at an agreed time;
 - (d) permit Council's Personnel to have access to Wellington Water's premises for the purposes of removing all or any part of the Property;
 - (e) reasonably assist Council or its new service provider to install Council's equipment and any other equipment procured by Council in connection with the termination transition;
 - (f) retain or destroy all or any part of the Property: and/or
 - (g) proceed with termination transition under clause 20 in relation to the relevant Service(s).
- 19.2 Wellington Water must immediately comply with any instructions given by Council pursuant to clause 19.1.2.
- 19.3 Council will pay Wellington Water's reasonable costs and expenses incurred in complying with clause 19.1 insofar as such compliance requires the performance of:
- 19.3.1 services in addition to the Management Services;
- 19.3.2 the Management Services after the expiration of termination of this agreement.

Consequences of termination

- 19.4 If the agreement set out in this agreement expires or is terminated for any reason:
- 19.4.1 each party retains its rights under this agreement and at law in respect of any breach of this agreement by the other party;
- 19.4.2 Wellington Water will not be entitled to any other payment or any compensation as a result of termination, subject to clause 19.3; and

- 19.4.3 the parties will agree in good faith whether any part of the One Budget Charges received by Wellington Water (and that have not been spent or irrevocably committed as part of the Management Services) should be repaid to Council.

Clauses survive expiration or termination of agreement

- 19.5 This clause and the following clauses will survive the expiration or termination (for whatever reason) of this agreement:

- 19.5.1 clauses 10.1 through 10.12 (Reports, information, reviews and records);
- 19.5.2 clause 12 (Intellectual Property);
- 19.5.3 clause 14 (Confidentiality);
- 19.5.4 clause 16 (Liability);
- 19.5.5 clause 19 (Obligations at end of agreement);
- 19.5.6 clause 20 (Termination transition);
- 19.5.7 clause 22 (Dispute resolution); and
- 19.5.8 any other clauses that make provision for continued operation.

20 Termination transition

- 20.1 Wellington Water acknowledges and agrees that both prior to and following the expiry or termination of the agreement set out in this agreement, Council must be able to maintain continuity of services whilst finding a new service provider for the ongoing provision of the Management Services, or resume providing the Management Services itself.
- 20.2 Wellington Water will comply with Council's reasonable directions to effect an orderly transition and migration of the Management Services from Wellington Water to the new service provider in accordance with the following procedures:
- 20.2.1 Wellington Water and Council will promptly and jointly develop and agree a transition plan, setting out the respective tasks to be accomplished by each party in connection with an orderly transition and a schedule for the completion of the tasks;
- 20.2.2 Wellington Water and Council will perform their respective tasks under the transition plan developed under clause 20.2.1;
- 20.2.3 Wellington Water and Council will discuss the transfer of any Wellington Water employees that Wellington Water identifies as being surplus to its requirements or who Council requests to be transferred;
- 20.2.4 Wellington Water will transfer to Council any assets originally transferred to Wellington Water by Council and which are still held by Wellington Water and have not been paid for, and any other assets which Wellington Water identifies are surplus to its requirements and which Council requests to be transferred;

- 20.2.5 Wellington Water will, upon request, provide Council with detailed specifications for any equipment which Council or any new service provider will require to properly perform the Management Services;
 - 20.2.6 where it is reasonably necessary to do so in order to maintain continuity of the Management Services, Wellington Water will deliver to Council all data (in electronic form compatible with Council's information system) which is being used by Wellington Water in connection with the Management Services;
 - 20.2.7 Wellington Water will provide any training reasonably requested by Council for its employees or employees of the new service provider who will have responsibility for the Management Services following termination transition; and
 - 20.2.8 Wellington Water will provide all information relating to the Management Services reasonably requested by Council by written notice.
- 20.3 Unless this agreement has been terminated by Council due to a breach of the agreement by Wellington Water that has not been remedied in accordance with clause 18.2, Council will pay Wellington Water its reasonable costs and expenses in complying with clause 20.2 insofar as such compliance requires:
- 20.3.1 the performance of services which are in addition to the Management Services.
 - 20.3.2 performance of the Management Services after the expiration or termination of this agreement.

21 Partnering

- 21.1 Wellington Water and Council agree that where practicable their relationship under this agreement will be characterised by the 'partnering' style of relationship as set out in Schedule 5 and in accordance with the following:
- 21.1.1 Partnering is a method of operating a contractual relationship to promote prompt and constructive communication and a problem solving approach between the parties. Partnering has three primary objectives:
 - (a) ensuring that the contract operates smoothly;
 - (b) to promote value adding to both the provision of the Management Services and each party's separate interests; and
 - (c) to facilitate the avoidance of disputes;
 - 21.1.2 the parties will implement partnering in this agreement in accordance with the style of partnering set out in Schedule 5.
 - 21.1.3 the use of partnering techniques and the adoption of the style of partnering set out in Schedule 5 does not in any way imply any fiduciary obligations, obligation of good faith, partnership and/or joint venture between the parties; and
 - 21.1.4 the partnering information set out in Schedule 5 is subordinate to the provisions of this agreement and shall not be considered as overriding, amending or

waiving any contractual rights or obligations.

22 Dispute resolution

Meeting to attempt to resolve disputes

- 22.1 If a dispute arises under this agreement, a party to the dispute may at any time give written notice to the other party to the dispute requesting that a meeting take place to seek to resolve the dispute. The Representatives of the parties to the dispute must meet within ten business days of the giving of the notice and endeavour to resolve the dispute in good faith.
- 22.2 If such meeting does not take place or if five business days after the meeting the dispute remains unresolved, the dispute must be referred to the Chief Executives of the parties who must negotiate in good faith to resolve the dispute. If after five business days of the dispute being referred to the Chief Executive the dispute remains unresolved, a party to the dispute may refer it to the mediation of a single mediator.
- 22.3 The referral to mediation shall be commenced by one party to the dispute serving written notice (a Mediation Notice) on the other party requiring the dispute to be referred to a mediator to be appointed by the parties. Failing agreement within five business days after, and exclusive of, the date of service of the Mediation Notice, the mediator shall be appointed at the request of either party by the chairperson or any other office holder for the time being of LEADR NZ (Leading Edge Alternative Dispute Resolvers), or the nominee of such chairperson or other office holder. The guidelines that govern the mediation shall be set by the parties. Failing agreement within five business days after the appointment of the mediator, either party may request the mediator to set the guidelines (whether or not in conjunction with such party) that govern the mediation proceedings.
- 22.4 The parties acknowledge that the purpose of exchange of information or documents or the making of any offer of settlement pursuant to clauses 22.2 and 22.3 is to attempt to settle the dispute between the parties. Neither party may use any information, documents or offer obtained solely by reasons of clauses 22.2 and 22.3 for any purpose other than in an attempt to settle the dispute in the context of negotiation and mediation.
- 22.5 Subject to any right any party may have to apply to a court for any interim or preliminary relief in respect of the dispute, completion or termination of the mediation shall be a condition precedent to the arbitration of the dispute or any part of it.
- 22.6 If the parties are unable to resolve the dispute by mediation within ten business days of the establishment of the mediation guidelines, the dispute shall be referred to and finally resolved by arbitration by a sole arbitrator under the Arbitration Act 1996. The arbitral proceedings shall be commenced by one party serving written notice (an Arbitration Notice) on the other and requiring the dispute to be referred to arbitration. The arbitrator shall be appointed by the parties, or failing agreement within five business days after, and exclusive of, the date of service of the Arbitration Notice, shall be appointed at the request of either party by the president or vice-president for the time being of the New Zealand Law Society or the nominee of such president or vice-president. The arbitration shall be conducted as soon as possible at Wellington, New Zealand. Clauses 3 and 6 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under this agreement. All other clauses in the Second Schedule shall not apply.

- 22.7 Each party shall bear its own costs, expenses and fees incurred pursuant to clauses 22.2, 22.3 and 22.6 and shall equally share the mediator's and arbitrator's fees and expenses.
- 22.8 Every party to a dispute shall act promptly with respect to the appointment of any mediator or arbitrator and in respect of all other matters and proceedings relating to the mediation and arbitration.
- 22.9 The parties to a dispute will be bound by any decision or award of the arbitrator made in accordance with the Arbitration Act 1996, subject to the rights of appeal provided by that Act.

Performance of obligations

- 22.10 During a dispute, the parties to it must continue to perform their respective obligations under this agreement.

Interlocutory relief and right to terminate

- 22.11 Clauses 22.1 to 22.10 do not restrict or limit the right of either party to obtain interlocutory relief, or to immediately terminate this agreement where this agreement provides such a right.

23 Priority

- 23.1 In the event of any inconsistency, this agreement must be interpreted in accordance with the following order of priority:
- 23.1.1 the terms and conditions set out in the body of this agreement; then
 - 23.1.2 the Schedules; and then
 - 23.1.3 any other documents or information incorporated by reference into this agreement.

24 Notices

Giving notices

- 24.1 Any notice, consent, information, application or request that must or may be given or made to a party under this agreement is only given or made if it is in writing and sent in one of the following ways:
- 24.1.1 delivered or posted to that party at its address set out in Schedule 1; or
 - 24.1.2 emailed to that party at the email address set out in Schedule 1.

Change of address or email

- 24.2 If a party gives the other party three business days' notice of a change of its postal address or email address, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address or email address.

Time notice is given

24.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

24.3.1 if it is delivered, when it is left at the relevant address;

24.3.2 if it is sent by post, two business days after it is posted; or

24.3.3 if it is sent by email, one business day after it is sent.

24.4 If any notice, consent, information, application or request is delivered or received on a day that is not a business day, or if on a business day, after 5 pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

25 Miscellaneous

Approvals and consent

25.1 Except as otherwise set out in this agreement, an approval or consent to be given under this agreement may not be unreasonably withheld, and may be given subject to reasonable conditions.

Assignment

25.2 A party may not assign any of its rights or obligations under this agreement without the prior written consent of the other party.

Costs

25.3 Except as otherwise set out in this agreement, each party must pay its own costs in relation to preparing, negotiating and executing this agreement and any document related to this agreement.

Execution of separate agreements

25.4 This agreement is properly executed if each party executes either this agreement or an identical agreement. In the latter case, this agreement takes effect when the separately executed agreements are exchanged between the parties.

Further acts

25.5 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

No agency or partnership

25.6 The relationship between the parties is that of principal and contractor. Wellington Water must not represent itself as an agent or representative of Council except where required to perform the Management Services in accordance with this agreement.

No authority to act

25.7 No party has any power or authority to act for or to assume any obligation or

responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this agreement or by express written agreement between the parties.

Severability

25.8 If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

Survival of indemnities

25.9 Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination of this agreement.

Variation

25.10 No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement and is in accordance with clause 4.7.

Waiver

25.11 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

26 Definitions and interpretation

Definitions

26.1 In this agreement the following definitions apply:

drinking water, drinking water supplier, drinking water supply, operator, owner, stormwater network, stormwater network operator, wastewater network, wastewater network operator have the meanings given to them in the Water Services Act.

Additional Services means management services:

- (a) included within the Three Year Plan or Annual Work Programme, but not covered by the Management Charge Scope, Opex Charge Scope or Capex Scope (as applicable);
- (b) not included in the agreed Annual Work Programme (including, without limitation, any management services in connection with a Supply Network Event); and/or

(c) carried out in response to Unexpected Events.

Amendment Agreement (Fourth) means the amendment and restatement agreement dated 11 April 2022 ~~2024~~ between Wellington Water and Council, pursuant to which this agreement was amended and restated.

Amendment and Restatement Date means the “Effective Date”, as such term is defined in Amendment Agreement (Fourth).

Annual Work Programme means the programme prepared and agreed in accordance with clause 11, of all Management Services to be undertaken in a financial year including:

- (a) the detailed work programme;
- (b) timing of work;
- (c) any changes to Key Performance Indicator targets; and
- (d) any specific detailed Council requirements set out in Schedule 9.

Approved Regional Policy means a regional policy developed by Wellington Water and agreed by the Shareholding Councils, or:

- (a) where the regional policy does not relate to Bulk Water Supply, agreed by the Four Cities; or
- (b) where the regional policy relates solely to Bulk Water Supply, agreed by GWRC.

Asset Management Plans means those as described as a requirement in the LGA 2002 and approved by Council.

Bulk Water Supply means the provision of drinking water to the points of supply to each of the Four Cities using GWRC's bulk water network.

Capex Charge means the annual charge agreed with the Council in the Three Year Plan (based on agreed values determined in Council's annual planning process), to be utilised by Wellington Water for payments of capital expenditure due under Water Services capital works contracts that fall within the Capex Charge Scope.

Capex Charge Scope means the capital works costs covered by the Capex Charge as detailed in the Annual Work Programme.

Commencement Date is as set out in Schedule 1.

Companies Act means the Companies Act 1993.

Confidential Information means any information provided by Council or any of its Personnel to Wellington Water or any of its Personnel, or otherwise obtained by Wellington Water or any of its Personnel, whether obtained before or after execution of this agreement, in connection with Council, the Management Services or this agreement. It includes:

- (a) all confidential business information, documents, records, financial information, personal information under the Privacy Act 1993, reports, technical information and forecasts which relate to Council or its operations;
- (b) Council's Property;
- (c) Council's Intellectual Property; and
- (d) any information created under or arising out of the provision of Management Services under this agreement including information which Council could lawfully withhold under the Local Government Official Information and Meetings Act 1987.

It does not include:

- (a) information which is in or becomes part of the public domain, other than through a breach of this agreement of an obligation of confidence owed to Council or any of its Personnel; or
- (b) which Wellington Water can prove by contemporaneous written documentation was independently acquired or developed without breaching any of the obligations set out in this agreement.

Contingency Sum means the values that are not allocated to specific services, work or projects in the Annual Work Programme but that are included in the operational budget agreed with Council as part of the Three Year Plan for performance of the Annual Work Programme.

Council Policies means standards, policies and similar written documents in force for Council that relate to or govern the provision of Management Services or Water Services. The Council Policies provided at Commencement date are listed in Schedule 8.

Drainage Services means the collection, treatment and disposal of wastewater, and the disposal of stormwater drainage in the jurisdiction of Council.

Expiry Date is as set out in Schedule 1.

Financial Year means a twelve month period commencing on 1 July and ending on 30 June.

Four Cities means WCC, UHCC, HCC and PCC.

Governance Charge means the monthly charge for Wellington Water's governing expenses including directors' fees and professional indemnity insurance, audit fees and other consultancy fees relating to Wellington Water's governance.

GST means the goods and services tax levied under the Goods and Services Tax Act 1985.

HSE Act means the Health and Safety at Work Act 2015.

Intellectual Property includes copyrights, patents, trademarks, designs, brands, logos and circuit layouts, inter alia.

Key Performance Indicators (KPIs) means the standards agreed by Wellington Water and Council annually by which Wellington Water's performance under this agreement will be assessed, as set out in Wellington Water's Statement of Intent (prepared in accordance with the LGA 2002) and/or as otherwise agreed from time to time (including in the Three Year Plan), with agreed individual targets for Council.

LGA 2002 means the Local Government Act 2002.

Long Term Plan (LTP) means as described as a requirement in the LGA 2002.

Loss means any loss including any liability, cost, expense (including legal costs on a full indemnity basis), claim, proceeding, action, demand or damage.

Management Charge means the annual charge agreed with the Council in the Three Year Plan in the relevant year for:

- (a) Wellington Water's internal costs of providing the Management Services (in respect of both operational and capital activities), in accordance with the Annual Work Programme;
- (b) complying with applicable law in connection with the performance of the Management Services; and
- (c) the Governance Charge,

as further described in the Management Charge Scope.

Management Charge Scope means the scope of management costs covered by the Management Charge, as set out in Schedule 4.

Management Services means both the internal and external supply of labour, personnel, professional and consultant services to the Council which are necessary or desirable to carry out on the Council's behalf the management of the Water Services as agreed in the Annual Work Programme and which may include, without limitation, those services listed in Schedule 2.

Mandatory Key Performance Indicators means the critical KPIs agreed from time to time as mandatory KPIs and set out in Wellington Water's Statement of Intent (prepared in accordance with the LGA 2002) and/or the Three Year Plan.

Network means all of the pipelines, treatment stations, reservoirs and other assets of the Council that are owned by it or used in the provision of Water Services to consumers of the Council, the collection, treatment and disposal of wastewater and stormwater drainage, and includes any additions or new assets added to the Network during the term of this contract.

Objectives means the objectives set out in clause 2.

One Budget Charges means the Management Charge, Opex Charge and Capex Charge.

Opex Charge means the annual charge agreed with the Council in the Three Year Plan for the relevant year (based on agreed values determined in Council's annual planning process), to be utilised by Wellington Water for payments of the operational costs due

under Water Services operations and maintenance contracts as further detailed in the Opex Charge Scope, and includes the Contingency Sum.

Opex Charge Scope means the scope of operational costs covered by the Opex Charge, as set out in Schedule 4.

Owner Obligation means each of the following obligations of Council as owner of a drinking water supply under the Water Services Act that are not an obligation on the operator of such drinking water supply:

- (a) registering a drinking water supply, and renewing the registration of the drinking water supply, in accordance with ss23 and 56 of the Water Services Act;
- (b) preparing and lodging a drinking water safety plan with the Regulator in relation to Council's drinking water supply, in accordance with s30 of the Water Services Act; and
- (c) notifying the Regulator of any change in the registered drinking water supply information provided under s54(2), in accordance with s56(3) of the Water Services Act.

Performance Measures means any other performance measures that are not Key Performance Indicators (however described) relating to Management Services included in the Council LTP, Annual Plan, Asset Management Plans, business plans or contracts.

Personnel means any director, officer, employee, agent, contractor or professional adviser of a party.

Property means all property of Council held by Wellington Water from time to time in connection with the performance of this agreement including, without limitation, documents, data and records relating to the Management Services and associated assets and infrastructure, and documents, data and records produced by Wellington Water in connection with providing the Management Services to Council.

Regulator means Taumata Arowai, in its capacity as water services regulator established by section 8 of the Taumata Arowai-the Water Services Regulator Act 2020.

Representative means each party's representative appointed under clause 5 and specified in Schedule 1.

Shareholding Councils means the councils that are shareholders in Wellington Water. At the Amendment and Restatement Date, these are WCC, HCC, UHCC, PCC, GWRC and SWDC.

SLA Report means the reporting as outlined in Schedule 3.

Statutory Powers means the statutory responsibilities, duties and powers given to Council by statute, and delegated to Wellington Water by Council under this agreement.

Supply Network Event means any requirement issued by the Regulator to Wellington Water or Council that the Council must take action under section 127(2) of the LGA 2002.

Three Year Plan means the three year plan prepared and agreed in accordance with clause 11, of Management Services to be undertaken in the three year period covered by the plan, including the Annual Work Programme and the One Budget Charges.

Unexpected Event means an event requiring management of Water Services that is not in the Annual Work Programme, being an event beyond the reasonable control of Wellington Water or the Council including acts of god, floods, storms, earthquakes, fires, power failures, riots, strikes, lockouts, war, terrorism or government action.

Unexpected Event Costs means costs due under Water Services operations and maintenance contracts to manage Unexpected Events.

Unexpected Event Reserve means the amount of any unspent Contingency Sum (up to the Unexpected Event Reserve Cap) retained by Wellington Water and available to pay for operational costs incurred by Wellington Water due to Unexpected Events.

Unexpected Event Reserve Cap means the sum set out in Schedule 4.

Water Services means Water Supply and Drainage Services, the maintenance and expansion of the Network, the planning for and provision of water conservation strategies to the public and such other deliverables in relation to the supply and maintenance of a sustainable, accessible and high quality Water Service that Council determines that it wishes to provide and as set out in its then current Long Term Plan.

Water Services Act means the Water Services Act 2021 once relevant parts, or all, of that Act is in force.

Water Supply means the provision of drinking water to the point of supply of each dwelling house and commercial or industrial premise to which drinking water is supplied, in the jurisdiction of Council.

Interpretation

- 26.2 In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:
- 26.2.1 headings are inserted for convenience only and do not affect the interpretation of this agreement;
 - 26.2.2 a reference in this agreement to a business day means a day on which banks are open for business generally in Wellington other than a Saturday or Sunday;
 - 26.2.3 if the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day;
 - 26.2.4 a reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - 26.2.5 words and expressions in this agreement that are defined in the LGA 2002

have the meaning given in that Act;

- 26.2.6 a reference in this agreement to any policy, plan, agreement or document is to that policy, plan, agreement or document as amended, noted, supplemented or replaced;
- 26.2.7 a reference to a clause, part, schedule or appendix is a reference to a clause, part, schedule or appendix of or to this agreement;
- 26.2.8 an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate, local authority or governmental agency;
- 26.2.9 where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 26.2.10 a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- 26.2.11 references to the word 'include' or 'including' are to be construed without limitation;
- 26.2.12 a reference to this agreement includes the agreement recorded in this agreement; and
- 26.2.13 schedules and appendices form part of this agreement.

Execution and date

Executed as an agreement:

Signed for and on behalf of
Council by:

[Chief Executive]

Signed for and on behalf of
Wellington Water Limited in the presence
of:

[Chair]

Schedule 1

General information

Term of agreement (Clause 3)

Commencement date 1 November 2013

Expiry Date 30 June 2024

Council's Representative (Clause 5)

Name Siobhan Procter

Position Chief Infrastructure Officer

Contact details
Email: siobhan.procter@wcc.govt.nz
Address: 113 The Terrace, Wellington
Postal: PO Box 2199, Wellington

Wellington Water's Representative (Clause 5)

Name Colin Crampton

Position Chief Executive

Contact details
Phone: 04 912 4488
Mobile: 027 492 4419
Email: colin.crampton@wellingtonwater.co.nz
Address: Level 4, IBM House
25 Victoria Street, Petone
Postal: Private Bag 39 804
Wellington Mail Centre, Petone

Notices (Council) (Clause 24)

Address 113 The Terrace, Wellington

Email Address siobhan.procter@wcc.govt.nz

Attention Siobhan Procter

Notices (Wellington Water) (Clause 24)

Address Level 4, IBM House
25 Victoria Street
Petone

Email Address

colin.crampton@wellingtonwater.co.nz

Attention

Colin Crampton

Schedule 2

Management Services

(Clause 26.1)

- 1 The Management Services include (without limitation) the following tasks and activities:
 - 1.1 carrying out the functions, duties and responsibilities of the principal's representative and engineer's representative (where applicable) under all contracts for Water Services works to which Council is party;
 - 1.2 carrying out all the functions, duties and responsibilities of the principal under all contracts for Water Services works to which Wellington Water is party;
 - 1.3 project managing all contracts relating to Water Services, including overseeing the provision of all works and services by contractors and consultants in accordance with the contract and managing contractor and consultant performance in accordance with recognised benchmarks;
 - 1.4 monitoring, reporting on and administering all financial and operational aspects of contracts relating to Water Services;
 - 1.5 any services as set out in clause 4A.2 (Obligations);
 - 1.6 monitoring and managing Council's obligations under the HSE Act in respect of the Management Services, the assets and infrastructure used to provide Water Services and all works to or affecting such assets and infrastructure, to the extent there are any, and ensuring Wellington Water and/or Council do not breach their obligations under the HSE Act;
 - 1.7 providing expert advice in respect of Management Services in conjunction with consultants and other experts engaged by Council or by consultants engaged by Wellington Water or by Wellington Water on Council's behalf;
 - 1.8 arranging the provision of Water Services works in accordance with the approved Annual Work Programme, Council's Annual Plans and Long Term Plan, and approved Asset Management Plans;
 - 1.9 managing on Council's behalf its contract with the Wellington Regional Council for the supply of bulk water (on the same basis as prior to Commencement Date);
 - 1.10 providing costing advice to Council for the purposes of Council's charges for the provision of Water Services and related matters, including (without limitation) water rates and costs, trade waste charges, consent and permit fees, and user charges;
 - 1.11 provide representation at wholesale and retail water supply negotiations and meetings;

- 1.12 preparing for Council draft Asset Management Plans, business plans and the draft Annual Work Programme for assets and infrastructure used to provide Water Services, all in accordance with the requirements of this agreement, the LGA 2002 and industry best practice or Council's practice if that exceeds industry best practice;
- 1.13 managing on Council's behalf the wastewater treatment plant owned by Council;
- 1.14 assisting Council to prepare budgets, financial statements and forecasts, and any other information required in a LTP, Annual Plan, Annual Report or any other document relating to the provision of the Management Services by Wellington Water. All budgets are to be prepared in accordance with instructions given from time to time;
- 1.15 assisting Council (in the manner agreed between the Council and Wellington Water) to undertake asset valuations in respect of the Council's three waters assets;
- 1.16 assisting and co-operating with all audits of Water Services assets or infrastructure;
- 1.17 providing Council with timely, accurate and quality data so that Council can keep its information systems up to date in respect of water assets and infrastructure;
- 1.18 monitoring the insurance cover required and held by Council in respect of Water Services and assets, prepare any required infrastructure insurance fund update and advising Council of any deficiency or insurance cover;
- 1.19 advising Council on its trade waste functions;
- 1.20 identifying and advising Council of all circumstances where a prosecution or claim for damage relating to water, waste water, sewage, trade waste, Water Services, or assets and infrastructure used to provide Water Services could be brought against Council or by Council, and providing all information and assistance for such prosecutions and claims;
- 1.21 responding to requests from Council for information required by it to administer any law, including (without limitation) the Resource Management Act 1991 and the Building Act 2004;
- 1.22 responding, within five business days or the response times set by Council's system, whichever is the lesser, to public and customer enquiries and requests for service in relation to Water Services, including meeting such persons where appropriate;
- 1.23 managing all routine, operational and work programme related communications, marketing and community engagement. For the avoidance of doubt, any non-routine communications, marketing, community engagement or use of Council brand, will be carried out in collaboration and with approval of Council;

- 1.24 advising and assisting Council in identifying and quantifying the value of third party damage caused to Councils three water networks;
- 1.25 assuring compliance with Council's responsibilities under the Civil Defence and Emergency Management Act (CDEM Act) with respect to water and wastewater as a lifeline utility. This will include assisting with and responding to emergencies involving Water Services and the provision of an afterhours service outside of standard office hours;
- 1.26 providing services to assist meeting Council's community and stakeholder consultation obligations, including with mana whenua, in relation to matters involving Water Services;
- 1.27 co-ordinating with other units of Council or with other parties to ensure that programmed work involving Water Services is planned around other relevant infrastructure work and around other planned events (for example festivals, sporting events or other special events);
- 1.28 assisting Council to prepare and maintain its various plans in relation to the Water Services, including but not limited to its LTP, District Plan, Emergency Response and Recovery Plans, Risk Management Plans (strategic and operational), Code of Engineering Practice, Business Continuity Plan and Environmental Plan;
- 1.29 undertaking any other emergency and civil defence planning in relation to Council's Water Services, as agreed with Council;
- 1.30 continuously monitoring the appropriateness and effectiveness of bylaws and policies relating to Water Services, suggesting improvements and assisting Council draft bylaw amendments and policy papers;
- 1.31 attending and participating in Council meetings, and meetings with Council officers, contractors, consultants and/or the public, including preparing reports and briefings for such meetings where reasonably required;
- 1.32 preparing for Council's approval a report which complies with section 125 of the LGA 2002;
- 1.33 in conjunction with Council, managing legal issues and services relating to Water Services, other than those related to prosecutions and claims for damage which Council will manage;
- 1.34 assisting Council to maintain and update its asset register;
- 1.35 obtaining resource consents required for Water Services;
- 1.36 preparing detailed current and future Water Services work programmes;
- 1.37 providing a water meter reading service and meter information to Council Finance for invoicing;
- 1.38 maintaining Council's proactive water supply leak detection programme;
- 1.39 administering Council's garden watering restrictions;

- 1.40 promoting water conservation and education.
- 1.41 undertaking any other water conservation and environmental sustainability planning in relation to Council's Water Services, as agreed with Council;
- 1.42 planning and advice, including the provision of Asset Management Plans in respect of the Network and Water Services;
- 1.43 providing the necessary inputs to the Council's Annual Plan and Long Term Plan so as to enable the Council to make appropriate decisions as to work necessary on an annual and long term basis to maintain, renew and as necessary expand the Network so as to be able to provide Water Services on an affordable, sustainable basis to a standard determined by Council;
- 1.44 managing the carrying out of all necessary operating and renewal work on the Network as agreed in the Annual Work Programme and Council's Annual Plans and Long Term Plan;
- 1.45 managing the carrying out of all capital works on and for the expansion of the Network as agreed in the Annual Work Programme and Council's Annual Plans and Long Term Plan;
- 1.46 providing all strategic and policy advice reasonably necessary to ensure that the Water Services are delivered by Council on an affordable and sustainable basis;
- 1.47 managing the application of resource consents necessary to ensure Water Services delivery;
- 1.48 any activities that would have been reasonably anticipated as constituting part of the Water Services offering by both parties at the Commencement date; and
- 1.49 any other services as agreed between the parties, subject to clause 4.6.

2 The Management Services do not include:

- 2.1 any activity relating to billing and the setting of water charges, apart from the providing of costing advice and the like as described above;
- 2.2 the approval of Council policies or strategies, Asset Management Plans, Statements of Intent, budgets, Annual Plans and LTPs; and
- 2.3 any service which reasonably, or as outlined in this agreement, remains with Council.

Schedule 3

Service Level Agreement (SLA) Reports (Clauses 10.1 and 10.3)

Monthly and quarterly reporting (including financial reports) as agreed between Council and Wellington Water

The quarterly SLA reports shall be structured as follows:

- 1 Introduction
- 2 Quarterly Meeting Action Log
- 3 Highlights
- 4 Key Performance Indicators Reporting
- 5 Agreed Performance Metrics
- 6 Long Term Plan Water Indicators
- 7 Agreed Customer Performance Indicators

And any other quarterly SLA reporting requirements arising from Schedule 9.

Schedule 4

One Budget Charge details

(Clauses 11 and 26.1)

Opex Charge Scope

The Opex Charge covers controllable costs incurred by Wellington Water as further described in the detailed operational controllable cost budget agreed with Council as part of the Three Year Plan. Controllable costs include, for example, charges for repairs and maintenance of Water Supply assets, costs of consumables such as chemicals and consultants and contractors' charges.

The following costs are outside the Opex Charge Scope:

- Council's internal costs relating to Water Supply, such as allocations, financing and depreciation
- Costs identified as remaining with Council pending expiration of existing contractual terms and/or which may be transferred to Wellington Water at a later date.

Management Charge Scope

The Management Charge covers management costs incurred by Wellington Water as further described in the detailed management cost budget agreed with Council as part of the Three Year Plan. Management costs include, for example, Council's proportion of Wellington Water employees' salaries, lease payments and other operating expenses for Wellington Water's office (including IT and telecommunications costs), insurance premiums and vehicle expenses. The Management Charge also includes the Governance Charge.

Unexpected Event Reserve Cap

The Unexpected Event Reserve Cap is 5% of the Opex Charge for the current Financial Year.

Schedule 5

Partnering (Clause 21)

Partnering Philosophy

- 1 Partnering encourages the development of relationships of trust, co-operation, open communication and team work.

Definition

- 2 Partnering is a commitment between two or more organisations for the purpose of achieving specific business objectives by maximising the effectiveness of co-operation.

Expected Results

- 3 Results that partnering is expected to produce include:
 - 3.1 less adversarial relationships;
 - 3.2 improved problem solving;
 - 3.3 improved planning;
 - 3.4 improved responsiveness;
 - 3.5 increased openness;
 - 3.6 fewer errors;
 - 3.7 improved efficiency;
 - 3.8 improved quality;
 - 3.9 reduction in service charges; and
 - 3.10 potential for savings through innovation.

Dispute Prevention

- 4 Dispute prevention is recognised as the best dispute resolution. Partnering relationships of trust, open communication and processes for effective issue resolution can minimise the risk of issues escalating into disputes.
- 5 It is important however, that issues of conflict should not be 'brushed under the carpet', but rather, dealt with at the time the conflict occurs to avoid frustration and the threat to the continuation of the agreement.

Type of Relationship

- 6 Partnering relationships can be different for each contractual situation.
- 7 Partnering does not over-ride the agreement, but provides a 'way of working' that is mutually beneficial. If partnering fails, then the parties can still resort to contractual remedies.

Key elements of partnering

A ***Commitment***

8 Commitment to partnering must come from the top management of each stakeholder. This leadership must be visible, supportive and ongoing.

B ***Equity***

9 All stakeholders' goals must be considered in reaching mutual goals and there is a commitment to meeting each stakeholder's requirements by searching for solutions to these goals.

C ***Trust***

10 Successful partnering relies on relationships of trust.

D ***Mutual Objectives***

11 Partnering takes into account the objectives of the parties set out in clause 2 which reflect the parties' requirements for a successful contract.

E ***Timely Responsiveness***

12 Rapid issue resolution should minimise the number of issues that escalate into dispute. Partnering aims at problems being solved at the lowest possible level and the earliest possible time. Agreed processes can be established to ensure this occurs.

F ***Frank Discussion***

13 Partnering helps the identification of each party's position by creating an environment where frank discussion is appropriate and legitimate. This can happen without precipitating confrontation.

G ***Risks Associated with Partnering***

14 It is important to distinguish partnering from partnership. Both involve relationships of trust, long-term commitment and joint goals. Partnering is not a partnership or joint venture.

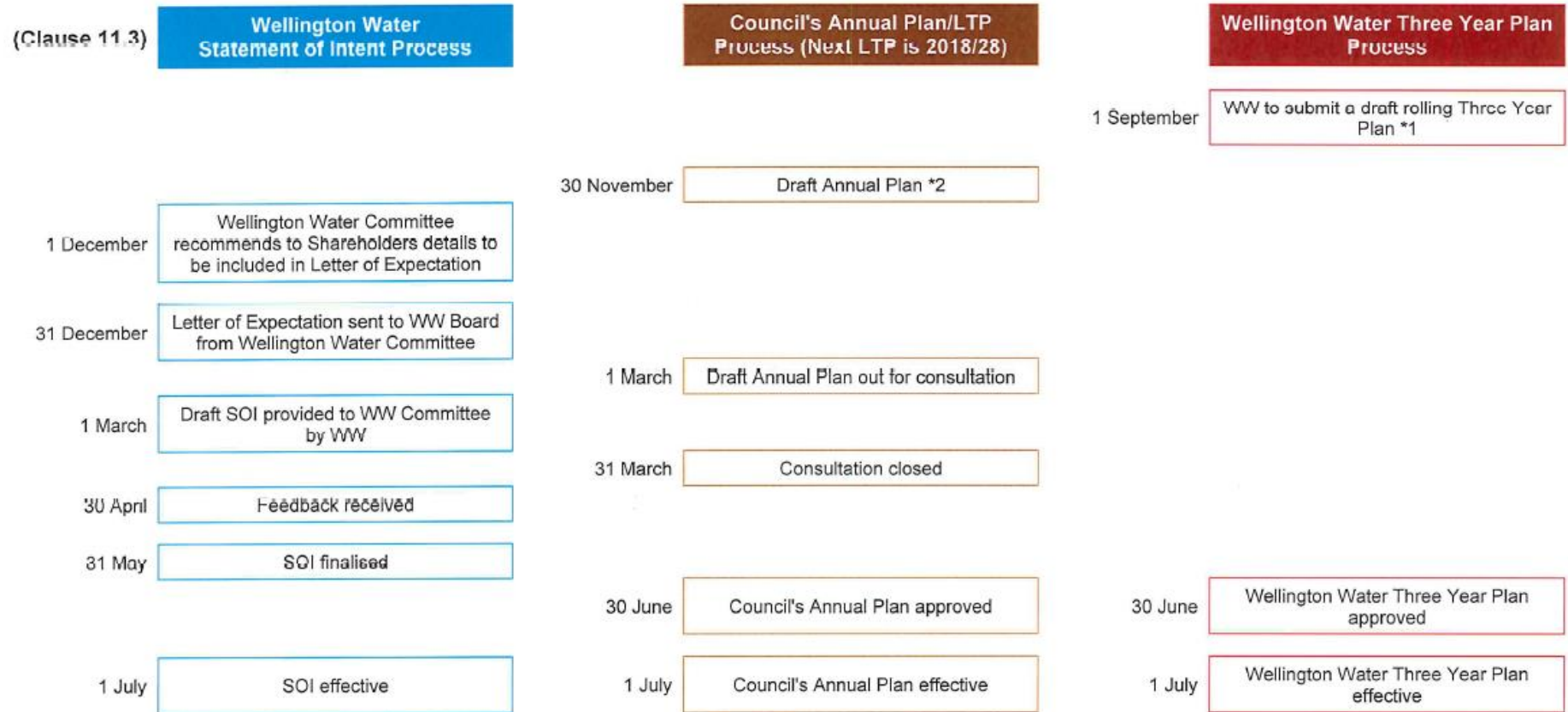
15 Partnering does not mean being soft and all parties to the relationship need to be vigilant for indications of potential dispute and seek resolution of problems before they escalate to dispute. If this occurs effectively, then the need to resort to contractual remedies is minimised.

Summary

16 Partnering is a 'way of working' which is based upon mutual trust, and recognition that working together achieves better results than a confrontational, strictly contractual relationship.

Schedule 6

**Three Year Plan approval process
(Clause 11.3) Three Year Plan approval process**



*1 Including a full draft Annual Work Programme for the next Financial Year and a forecast high level programme for the two following Financial Years.

*2 Council prepares Annual Plan including information supplied by Wellington Water in its draft Three Year Plan.

Schedule 7

Not Used

Schedule 8

Applicable Council Policies (Clause 4.21)

Wellington City Council Policies

- 1 To be confirmed by Council at a later date.

Schedule 9

Additional Annual Work Programme Information Required (Clause 26.1)

The draft Annual Work Programme will also include:

- 1 A 12-month detailed work programme listing at the sub-project level, including all anticipated operational project, capital project, planning and design, asset management planning, reporting, policy, emergency planning and water conservation work streams;
- 2 A budget at the sub-project level for the above work programme;
- 3 The quarter each sub-project will be delivered in;
- 4 A work programme listing (including budgets) for the two subsequent years;
- 5 A board certification (to be updated annually) outlining the board's comfort with the internal financial management controls process at Wellington Water in relation to invoicing Council where Wellington Water is the principal to contracts and an outline of that controls process; and

A listing of the Key Performance Indicators, with proposed targets for the following year and two subsequent years, taking into account the relevant draft budget.

FOURTH VARIATION AGREEMENT IN RESPECT OF AGREEMENT FOR PROVISION OF MANAGEMENT SERVICES RELATING TO WATER SERVICES

PORIRUA CITY COUNCIL

WELLINGTON WATER LIMITED

 **Simpson Grierson**

Barristers & Solicitors
Auckland, Wellington & Christchurch
New Zealand
www.simpsongrierson.com

PARTIES

1. **PORIRUA CITY COUNCIL** of 16 Cobham Court, Porirua, 5011, New Zealand (**Council**)
2. **WELLINGTON WATER LIMITED** (company number 1337122) of 25 Victoria Street, Petone, Lower Hutt, 5012, New Zealand (**Wellington Water**)

BACKGROUND

- A. Council and Wellington Water entered into a service agreement dated 1 November 2013 for the provision of management services relating to water services, which was varied by an agreement dated 25 November 2015 (**First Variation Agreement**) to allow Wellington Water to be principal to the contract for arrangements it enters into in carrying out the water Services for Council, was subsequently varied by an agreement (**Second Variation Agreement**) to update certain provisions and implement the one budget proposal, and was subsequently varied by an agreement dated 29 June 2021 (**Third Variation Agreement**) under which the expiry date was extended to 30 June 2024 (**Services Agreement**).
- B. Council and Wellington Water have agreed to vary the terms of the Services Agreement to, amongst other things, incorporate provisions addressing the regulation of drinking water, wastewater and stormwater pursuant to the Water Services Act 2021 and the potential transition to a new arrangement for the delivery of three waters services in New Zealand on the terms set out in this agreement (**Fourth Variation Agreement**).

THIS AGREEMENT RECORDS THAT:**1. DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions:** In this Fourth Variation Agreement, unless the context indicates otherwise, words and expressions defined in the Services Agreement have the same meaning when used in this Fourth Variation Agreement.
- 1.2 **Interpretation:** In this Fourth Variation Agreement, unless the context indicates otherwise, the interpretation provisions of the Services Agreement apply as if they were set out in this Fourth Variation Agreement.

2. EFFECTIVE DATE, AMENDMENT AND CONFIRMATION

- 2.1 **Effective Date:** The parties agree that the variations to the Services Agreement set out in this Fourth Variation Agreement have effect on and from the date of this agreement (**Effective Date**).
- 2.2 **Amendment:** With effect from the Effective Date, the Services Agreement is amended and restated in the form set out in the Schedule to this Fourth Variation Agreement and references in the Services Agreement to “this agreement” shall be references to the Services Agreement as amended and restated by this Fourth Variation Agreement.

2.3 Confirmation: Each of the parties confirms and acknowledges that, except as expressly agreed in this Fourth Variation Agreement, its obligations and covenants under, and the provisions of, the Services Agreement continue and remain in full force and effect.

3. GENERAL

3.1 Assignment: A party may not assign any of its rights or obligations under this Fourth Variation Agreement without the prior written consent of the other party.

3.2 Counterparts: This Fourth Variation Agreement may be signed in counterparts. All executed counterparts will together constitute one document.

3.3 Copies: Any copy of this Fourth Variation Agreement that is received via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this agreement) may be relied on by any party as though it were an original copy of this Fourth Variation Agreement. This Fourth Variation Agreement may be entered into on the basis of an exchange of PDF or other document reproduction format.

3.4 Further Acts: Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Fourth Variation Agreement and all transactions incidental to it.

3.5 Severability: If a clause or part of a clause of this Fourth Variation Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Fourth Variation Agreement, but the rest of this Fourth Variation Agreement is not affected.

3.6 Variation: No variation of this Fourth Variation Agreement will be of any force or effect unless it is in writing and signed by the parties to this Fourth Variation Agreement and is in accordance with clause 4.7 of the Services Agreement.

3.7 Waiver: The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Fourth Variation Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

3.8 Governing Law and Jurisdiction: This Fourth Variation Agreement is governed by the laws of New Zealand.

EXECUTED

SIGNED for and on behalf of **Porirua City Council** by:



Signature of authorised signatory



Name of authorised signatory

ANDREW DALZIEL

SIGNED for and on behalf of **Wellington Water Limited** by:

Signature of authorised signatory

Name of authorised signatory

EXECUTED

SIGNED for and on behalf of **Porirua City Council** by:

Signature of authorised signatory

Name of authorised signatory

SIGNED for and on behalf of **Wellington Water Limited** by:



Signature of authorised signatory

Colin Crampton

Name of authorised signatory

SCHEDULE
AMENDED AND RESTATED SERVICES AGREEMENT

**Contract for Provision of Management
Services Relating to Water Services**
Porirua City Council
Wellington Water Limited

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Agreement dated 1 November 2013, as amended and restated on
11 April 2022 ~~2021~~

Parties

Porirua City Council of 16 Cobham Court, Porirua (**Council**)

Wellington Water Limited of 25 Victoria Street, Petone, Wellington (**Wellington Water**)

Background

- A Wellington Water was established in 2004 by Wellington City Council and Hutt City Council to co-operatively manage the delivery of Management Services to councils in the Wellington Region.
- B Wellington Water is jointly owned by Hutt City Council (**HCC**), Upper Hutt City Council (**UHCC**), Porirua City Council (**PCC**), Wellington City Council (**WCC**), Wellington Regional Council (**GWRC**) and South Wairarapa District Council (**SWDC**).
- C Wellington Water is a council-controlled trading organisation and a local government organisation under the Local Government Act 2002, and a company under the Companies Act 1993.
- D This agreement sets out the terms under which Wellington Water will provide the Management Services to, and exercise the Statutory Powers on behalf of, Council from the Commencement Date.

Operative provisions

1 Deliverables for Council communities

- 1.1 Council has in its Long Term Plan (**LTP**) committed to certain deliverables for the Council's community. In general terms, these deliverables relate to the health, safety and development of the community, and environmental sustainability.
- 1.2 Separately:
 - 1.2.1 Wellington Water is an operator of a drinking water supply pursuant to the performance of the Bulk Water Supply Services, a drinking water supplier, stormwater network operator and a waster network operator in respect of the Network; and
 - 1.2.2 Council is an owner of a drinking water supply, a drinking water supplier, and a stormwater network operator and wastewater network operator in respect of the Network.
- 1.3 The standard of Water Services affects the achievement of certain deliverables in Council's LTP and Annual Plans, and the ability of the Council to comply with the Water Services Act. Council has contracted Wellington Water to provide Management Services

in respect of Council's function in providing the Water Services because it believes it will better assist the achievement of these deliverables and at the same time provide cost and resource efficiencies.

- 1.4 Council requires Wellington Water to at all times manage the delivery of Management Services and operate its business in a way that will enable Council to achieve its LTP deliverables and performance measures and to discharge and/or assist the Council in discharging each of the Council's obligations under the Water Services Act.

2 Objectives

- 2.1 The parties will co-operate to achieve the following objectives with respect to the provision of the Management Services:

- 2.1.1 Delivery of Management Services for Council that are affordable, sustainable, accessible, and of the quality agreed in Council's LTP.
- 2.1.2 Delivery of Management Services for Council in a manner that meets or exceeds the agreed Key Performance Indicators and Performance Measures.
- 2.1.3 Compliance with Council's statutory, contractual and other obligations in respect of its provision of Water Services.
- 2.1.4 Compliance with the Health and Safety at Work Act 2015 and maintenance of health and safety plans for all operational and capital project activities.
- 2.1.5 Emergency management and response planning on behalf of Council, Wellington Water's other shareholders, and other organisations and services.
- 2.1.6 Continuous improvement in the delivery of the agreed LTP service level for Water Services.
- 2.1.7 That Wellington Water is familiar with and abides by all relevant Council Policies, subject to clause 4.20.
- 2.1.8 The prompt, constructive and fair resolution of all issues between the parties.
- 2.1.9 That Council retains direct ownership of the Network in its district, including assets and infrastructure built and purchased and asset information obtained during the term of this agreement or in existence prior to the Commencement Date of this agreement, or within the existence of this agreement.
- 2.1.10 That the Network of Council and the networks of other Shareholding Councils in the Wellington region are managed on a co-ordinated basis.

3 Term

- 3.1 This agreement starts on the Commencement Date set out in Schedule 1 and will remain in force until the Expiry Date set out in Schedule 1, unless terminated earlier in accordance with this agreement.

4 The Management Services and Statutory Powers

Appointment and Powers

- 4.1 Council appoints Wellington Water to provide the Management Services to it and on its behalf. Wellington Water accepts this appointment.
- 4.2 Council authorises Wellington Water to perform on its behalf such acts, and gives Wellington Water such powers and authority, as are necessary to enable Wellington Water to provide the Management Services, including (without limitation) the powers specified in this agreement provided that Wellington Water shall:
- 4.2.1 Have no statutory powers other than those given by statute or expressly by Council in this agreement or by separate formal delegation;
 - 4.2.2 Comply with the directions and conditions specified in every delegation, authority and instrument of appointment given to Wellington Water by Council;
 - 4.2.3 Comply with any limitation on a power or delegation given by Council to Wellington Water, provided that Council will ensure that its delegations to Wellington Water enable Wellington Water's performance of the Management Services (including being principal to the contract under clause 8.4) in accordance with the Three Year Plan without further recourse to Council on a contract-by-contract basis except as agreed otherwise in relation to a particular project or service;
 - 4.2.4 Have no power to delegate any of its functions or powers other than in accordance with this agreement or a delegation, authority or instrument of appointment given to Wellington Water by Council; and
 - 4.2.5 Utilise all delegated functions or powers reasonably and prudently for their proper purpose.

Provision of Management Services

- 4.3 Wellington Water will at all times provide Management Services in accordance with this agreement. At all times during the term of this agreement, Wellington Water will provide the Management Services for Council:
- 4.3.1 in a proper, timely, cost effective and professional manner;
 - 4.3.2 exercising all due care, skill and judgement, and in accordance with accepted professional and business practices and standards, including (without limitation) to the standard set out in Council's Asset Management Plans;
 - 4.3.3 in a manner designed to achieve the Objectives;
 - 4.3.4 in the best interests of Council, recognising the obligations Council has to its ratepayers, citizens and stakeholders;
 - 4.3.5 in a manner that does not reflect adversely on Council;

- 4.3.6 in the same priority as for other Shareholding Councils for which Wellington Water provides management services (except in an emergency affecting one or more, but not all Shareholding Councils, when priority may be given to the Shareholding Council or Shareholding Councils affected by the emergency); and
- 4.3.7 in accordance with any instructions and directions given by Council's Representative (which must be consistent with the intent and terms of this agreement), including the powers or delegations given by Council.

Variations to Management Services

- 4.4 Council may from time to time need to vary the Management Services provided by Wellington Water. In these circumstances Council will outline the proposed variation (including the need and outcomes sought) in writing.
- 4.5 Council and Wellington Water can then partner (refer Schedule 5 to determine the most effective and efficient method of achieving the outcome sought).
- 4.6 If the variation results in a change in the Management Services provided or costs incurred, Wellington Water will adjust the One Budget Charges as agreed with Council.

Variations to this Contract

- 4.7 This agreement may not be varied, apart from the specific Council information required in Schedules 1, 2, 4, 8, and 9, without the prior written approval of all Shareholding Councils. This clause is for the benefit of and intended to be enforceable by the other Shareholding Councils under the Contract and Commercial Law Act 2017.

Performance Measurement and KPIs

- 4.8 Wellington Water's performance will be measured via the agreed Key Performance Indicators.
- 4.9 Wellington Water will report on other Council performance measures as agreed from time to time, but these will not form the basis of Wellington Water's performance measurement. Other Council LTP performance measures may be used to measure Wellington Water's performance, but only after these measures are agreed with Wellington Water.

Failure to perform Management Services

- 4.10 If at any time Wellington Water fails to perform any Management Services, or believes it is unlikely to be able to deliver any part of the Management Services for Council in accordance with the terms of this agreement, Wellington Water must immediately notify Council of the failure or belief in writing, and outline the steps considered necessary to remedy the situation.
- 4.11 Council and Wellington Water can then partner (refer Schedule 5) to determine the most effective and efficient method of remedying the situation.
- 4.12 If Wellington Water fails to remedy the situation as agreed, and within a period which is reasonable in the circumstances taking into account any material risk to public health or safety or material threat to property or the environment, Council may, after consulting

Wellington Water, take, or direct Wellington Water to take, any action Council considers necessary to ensure the Management Services are properly delivered and performed, and to minimise any loss or damage that might be suffered by Council or any other person as a result of Wellington Water's failure. Such action may include redirecting Management Services to a third party, the cost of which is to be met by Wellington Water.

- 4.13 Where any failure by Wellington Water to perform any Management Service materially and adversely impacts the provision of any Water Service that is essential to public health or safety or has or that threatens to damage property or the environment (or may reasonably have with the passage of time such impact or consequences) the Council may arrange for the provision of those Management Services and clauses 4.10 and 4.11 shall not apply.

Exercise of Statutory Powers

- 4.14 Council by this agreement appoints the Chief Executive Officer of Wellington Water (**CEO**) as its officer and gives the CEO the following powers to exercise on the Council's behalf:
- 4.14.1 the general powers of entry given to a local authority by section 171 of the LGA 2002;
 - 4.14.2 the powers given to a local authority in an emergency or where there is danger, by section 173 of the LGA 2002, provided Wellington Water notifies Council of the event as soon as possible; and
 - 4.14.3 the powers in relation to construction of works on private land given to a local authority by section 181 of the LGA 2002.
- 4.15 Council (acting through its Chief Executive) shall delegate to Wellington Water and Wellington Water Personnel such further Statutory Powers as are necessary to enable Wellington Water to provide the Management Services.
- 4.16 The CEO may, subject to the terms of any delegation, delegate any of the powers set out in clause 4.14 and 4.17 to Wellington Water Personnel, other than the power to further delegate the power.
- 4.17 Council may, by separate written delegation, delegate additional powers to the CEO.
- 4.18 Council may from time to time issue initial or additional sealed warrants to Wellington Water Personnel identified by Wellington Water as suitable to hold a warrant as are required to enable Wellington Water to provide the Management Services.

Compliance with laws

- 4.19 At all times during the term of this agreement Wellington Water must, in respect of operating its business, providing the Management Services and exercising the Statutory Powers:
- 4.19.1 hold all authorisations, permits and licences required under any law; and
 - 4.19.2 comply with the requirements of all applicable laws of any kind.

Compliance with policies and directions

- 4.20 Wellington Water will develop Approved Regional Policies wherever practicable. Approved Regional Policies will supersede the relevant Council policy.
- 4.21 Subject to clause 4.22, when providing the Management Services and exercising the Statutory Powers for Council, Wellington Water must, as a minimum, comply with:
- 4.21.1 Approved Regional Policies; or
- 4.21.2 where no Approved Regional Policy is in place, either:
- (a) those Council Policies listed in Schedule 8 as varied from time to time and notified to Wellington Water; or
 - (b) Wellington Water's policies as agreed with Council from time to time.
- 4.22 Without limiting Wellington Water's duties and obligations under this agreement, Council may, after consulting Wellington Water, give Wellington Water by written notice such directions as Council considers reasonably necessary to:
- 4.22.1 ensure that Council complies with its obligations under any law, bylaw, any document or Council Policy adopted by it, or any contract or arrangement to which it is a party; or
- 4.22.2 achieve efficiency or co-ordination with any Council business or activity,
- provided that no consultation is required where a situation or event exists that is or may become a nuisance or danger to public health, or that threatens to damage property or the environment.
- 4.23 If:
- 4.23.1 a variation to an Approved Regional Policy, a Council Policy or an agreed Wellington Water policy; or
- 4.23.2 any direction provided by Council,
- results in a change in the Management Services provided or costs incurred by Wellington Water, Wellington Water will adjust the One Budget Charges as agreed with Council.

Protection of information systems

- 4.24 If Wellington Water is given access to a Council information technology system to enable Wellington Water to provide the Management Services, Wellington Water must:
- 4.24.1 only use the system to provide the Management Services;
- 4.24.2 take all reasonable care in using the system, including all hardware, software and applications and observe all relevant licence agreements, Council Policies, security procedures and work practices;

- 4.24.3 not interfere with or disrupt or cause any damage to the system;
- 4.24.4 ensure that the system is protected from unauthorised access or use, or misuse, damage or destruction by any person;
- 4.24.5 ensure the integrity of all data and information held on the system is not compromised; and
- 4.24.6 follow the policies and procedures of the system to maintain the accuracy of data and information held within the system.

Continuous improvement and cost reduction initiatives

- 4.25 Council seeks to continuously improve processes and reduce costs in respect of the Water Services. Wellington Water must:
 - 4.25.1 initiate and contribute to improvement processes on an ongoing basis; and
 - 4.25.2 continuously use its best efforts to reduce Council's costs in respect of its Water Services.

4A Water Services Act

Water Services Act

- 4A.1 The Council and Wellington Water acknowledge that for the purposes of the Water Services Act:
 - 4A.1.1 Wellington Water is:
 - (a) an operator of a drinking water supply pursuant to the performance of the Bulk Water Supply Services, and is a drinking water supplier;
 - (b) a stormwater network operator in respect of the Network; and
 - (c) a wastewater network operator in respect of the Network;
 - 4A.1.2 Council is:
 - (a) an owner of a drinking water supply, and is a drinking water supplier;
 - (b) a stormwater network operator in respect of the Network; and
 - (c) a wastewater network operator in respect of the Network.

Obligations

- 4A.2 Without limiting any other provision of this agreement but subject to clauses 4A.3 and 4A.4 below, Wellington Water will:
 - 4A.2.1 assist the Council to comply with its obligations under the Water Services Act in each of the capacities set out in clause 4A.1.2; and

4A.2.2 provide to Council in a timely manner all documentation, information, assistance and/or co-operation as may be reasonably necessary in order for the Council to comply with each Owner Obligation,

and the provision of such services will constitute Management Services for the purposes of this agreement.

Information

4A.3 Where Wellington Water requires Council to provide any information held by the Council (or any information that is held by a third party but which the Council is entitled to disclose to Wellington Water) in order for Wellington Water to comply with its obligations under this agreement (Required Information), then Wellington Water will, as soon as reasonably practicable after becoming aware that it requires such Required Information, request that Required Information from the Council in writing.

4A.4 As soon as reasonably practicable following receipt of a request for Required Information, Council will deliver (or procure the delivery of) such Required Information as is reasonably available to it. Any such Required Information delivered by the Council to Wellington Water will constitute Confidential Information for the purposes of this agreement.

Directions and compliance orders

4A.5 Where Wellington Water (acting reasonably) considers that compliance by it with any direction and/or compliance order issued to Wellington Water pursuant to the Water Services constitutes an:

4A.5.1 Unexpected Event, then clauses 11.14 to 11.15 will apply; and

4A.5.2 Additional Service, then clauses 11.16 to 11.18 will apply.

4A.6 Where a conflict arises between any valid direction given to Wellington Water by the Regulator and any direction of the Council, Council Policy or Approved Regional Policy, the direction of the Regulator will prevail.

5 Representatives

Representatives

5.1 Each party appoints the Representative named in Schedule 1 as its Representative under this agreement. The Representatives are responsible for the day to day administration of this agreement on behalf of the party appointing them. In the case of Wellington Water, the Representative is also responsible for the day to day delivery of the Management Services and the supervision of all persons employed or engaged by Wellington Water in providing the Management Services.

5.2 The Representatives must be available and able to be contacted during normal business hours. A party must notify the other party immediately should its Representative be removed or replaced, together with the contact details of its new Representative, or of any change to its Representative's contact details.

- 5.3 Each party is responsible for the acts, omissions and defaults of its Representative. Any direction, instruction, notice, approval or other communication made or given to a Representative will be deemed to have been made by or given to the party appointing that person.

6 Employees and Consultants

Employees and Consultants

- 6.1 Wellington Water must engage Personnel of good character and with the necessary skills, expertise, qualifications and training to carry out the Management Services. Wellington Water must ensure that its Personnel perform the Management Services with due care, skill and judgement, and in an efficient, professional and cost effective manner.
- 6.2 Wellington Water will require its Personnel to comply with Council Policies, Approved Regional Policies and instructions pursuant to clause 4.3.7 when performing the Management Services for Council, subject to clause 4.21, and must:
- 6.2.1 take all reasonable steps to ensure that Personnel comply with the applicable instructions, Approved Regional Policies, Council Policies or Wellington Water's policies (as applicable), and otherwise acts in a manner consistent with Wellington Water's duties and obligations under this agreement;
 - 6.2.2 if it becomes aware that any Personnel has breached those instructions, Approved Regional Policies, Council Policies or Wellington Water's policies (as applicable), take all appropriate remedial steps and, in the case of a serious breach, forthwith advise the Council of the breach and the remedial steps taken; and
 - 6.2.3 take appropriate action against Personnel who fail to follow, or breach, and instruction, Council Policy, Approved Regional Policy or a Wellington Water policy or procedure when performing the Management Services.
- 6.3 Where a conflict occurs between a Council Policy and an Approved Regional Policy, the Approved Regional Policy will prevail.

7 Assets used to provide the Management Services and access to Water Services assets

- 7.1 Wellington Water must ensure that at all times it has sufficient and serviceable assets in order to operate efficiently and to meet its obligations under this agreement.
- 7.2 In respect of all assets accessed or used by Wellington Water in the provision of Management Services under this contract, Wellington Water must:
- 7.2.1 safeguard the assets from damage, loss and destruction; and
 - 7.2.2 keep the assets in good condition and repair (fair wear and tear excepted).
- 7.3 To the extent of carrying out Management Services, Wellington Water (or a nominated Wellington Water contractor) is entitled to access Council Water Services assets, property or infrastructure in order to discharge those Management Services.

- 7.4 Wellington Water has no power or authority to acquire or own Water Services assets or infrastructure used or to be used to provide the Water Services. All Water Services assets, property and infrastructure (whether or not in existence at the Commencement Date) used to provide the Water Services are to be owned solely by one or more Shareholding Councils.
- 7.5 The parties acknowledge that Wellington Water may acquire, lease and/or own assets used in its day to day operations in its capacity as provider of water services management services, including office space, furniture, vehicles and equipment (including IT equipment and software, tools and other technical equipment).

8 Contracts

Existing contracts

- 8.1 Where, on the Commencement Date, Council is party to a contract for works, services or supply of assets relating to Water Services:
- 8.1.1 the contract will remain with Council; and
 - 8.1.2 Wellington Water will, from the Commencement Date, manage the contract on Council's behalf to the extent that it was managed by Council prior to the Commencement Date, unless the parties (including third party contractor where required) agree to assign the contract to Wellington Water.
- 8.2 The only exceptions to this are:
- 8.2.1 the WCC contract for the provision of Wastewater treatment and facility operations services pursuant to the Design Build Operate Contract for Wastewater Treatment Project dated 23 February 1995 (the Moa Point treatment plant contract); and
 - 8.2.2 the HCC/UHCC contract for the operation of the Hutt Valley trunk wastewater system and Seaview wastewater treatment plant,

where the parties will continue to manage the contracts on the same basis as prior to the Commencement Date.

Appointment of Wellington Water as principal's representative

- 8.3 So that Wellington Water may manage contracts referred to in clause 8.1 on behalf of Council, Council has or will appoint such Wellington Water Personnel as Council's representative and/or the engineer to the contract under every such contract. Council will give the required notice under each such contract to effect the appointment, and will at the same time copy that notice to Wellington Water. Wellington Water will appoint an alternative person Council's representative if Council, acting reasonably, requests this of Wellington Water.

Future contracts

- 8.4 Wellington Water will become the principal to all future contracts for Water Services, subject to clauses 8.5 through 8.12 and unless otherwise agreed in writing by the parties.

- 8.5 The parties acknowledge their intention that as existing contracts for operations and maintenance of Water Services and related assets expire or terminate, Wellington Water will use its best endeavours to obtain future operations and maintenance services for Council in a manner that delivers the best possible value (in terms of quality and cost) to Council including, where appropriate, by entering into procurement arrangements which benefit both the Council and one or more other Shareholding Councils.
- 8.6 Wellington Water will procure, negotiate and enter into all future contracts for Water Services in a manner:
- 8.6.1 consistent with the applicable Annual Work Programme and performance measures and approvals in relevant plans and budgets, all applicable Council Policies and/or Approved Regional Policies and using good public sector procurement practices; and
 - 8.6.2 not inconsistent with Councils then current Annual Plan.
- 8.7 Wellington Water will deliver to Council:
- 8.7.1 an original of each new executed contract relating to Water Services to which Council is a principal or pursuant to which Council has rights and obligations, together with originals of all documents recording variations to such contracts. Wellington Water must retain a copy of all such contracts and any variation documents; and
 - 8.7.2 on Council's request, a copy of each new executed contract relating to Water Services to which Wellington Water is a principal together with copies of all documents recording variations to such contracts.
- 8.8 Wellington Water requires prior written approval by Council before it can sign a works or construction contract that is not substantively based on either NZS3910: 2013 or NZS3915: 2005 (or any replacement or additional New Zealand Standard form construction contract) with appropriate amendments or any standard form template approved by the Shareholding Councils for use by Wellington Water.
- 8.9 The Council will pay Wellington Water any amount payable by Wellington Water as principal to a third party contract pursuant to this clause 8 as a result of the termination by Council of this agreement or Council no longer requiring Wellington Water to provide the Management Services and Wellington Water will:
- 8.9.1 use its best endeavours to reduce the amount of the payment required of it;
 - 8.9.2 if requested by Council, co-operate with Council in a joint endeavour to reduce the amount of the payment; and
 - 8.9.3 transfer the contract to Council as principal and Council will assume the contract.
- 8.10 Wellington Water shall ensure that each contract entered into pursuant to this agreement where Wellington Water is the Principal contains no prohibition on the transfer of such contract from Wellington Water to Council.

- 8.11 Any Water Services asset created pursuant to a contract for capital work entered into by Wellington Water will be owned by the Council or, where applicable, those Shareholding Councils which have jointly requested Wellington Water to procure the capital works in accordance with arrangements made between Wellington Water and the Shareholding Councils in relation to that asset.
- 8.12 Any contract entered into by Wellington Water as principal pursuant to this clause 8 shall provide that any new asset shall vest in the Council on Practical Completion or handover of the asset pursuant to that contract. As between Wellington Water and Council it is agreed that any interest in any such asset vested in Wellington Water pursuant to a contract or at law shall vest in Council on Practical Completion or handover of the asset.
- 8.13 To the extent permitted by law the parties agree that this agreement is not intended and is not to be construed as a Construction Contract pursuant to the Construction Contracts Act 2002.

9 Resource Consents

- 9.1 Council will use its best efforts to transfer to Wellington Water all resource consents relating to Water Services assets and operations managed by Wellington Water on behalf of Council and owned by Council.
- 9.2 Until such time as resource consents are transferred to Wellington Water pursuant to clause 9.1 above, Wellington Water will continue to act on behalf of Council, as if the resource consent had been transferred.
- 9.3 Wellington Water will maintain a direct relationship with the consent authority. For resource consents in Wellington Water's name, the Council asset owner will ensure that Wellington Water's consent is obtained prior to the Council asset owner communicating with the consent authority. Such consent shall not be unreasonably withheld or delayed.
- 9.4 Wellington Water will keep Council informed in relation to discussions with the consent authority. In line with clause 25.7, during discussions with the consent authority Wellington Water may not make any commitment or obligation on expenditure or other matter that may create the impression of a commitment by Council, without Council's prior written approval.

10 Reports, information, reviews and records

Reports

- 10.1 Wellington Water shall deliver reports to Council in relation to the Management Services Wellington Water provides. The reports shall contain the information set out in Schedule 3 and other information Council may reasonably require to be included from time to time.

Local Government Act 2002 Reporting

- 10.2 Wellington Water shall provide Council with reports to meet Council's reporting cycle, or at other such intervals as Council may specify to meet the requirements of the LGA 2002. This will include, but is not limited to, reports to support Council Bylaw reviews, and policy and strategy reviews.

Service Level Agreement Performance Report (“SLA Report”)

- 10.3 Wellington Water shall deliver an SLA Report covering the information set out in Schedule 3 to Council in relation to the Management Services Wellington Water provides on a quarterly basis, to be delivered by the 20th day of the month following quarter end.

Activity and Operations Reports

- 10.4 Wellington Water shall provide all other reports as outlined in the agreed Annual Work Programme (AWP).

Budgeting and Financial Reports

- 10.5 Wellington Water shall provide all information required in a timely manner to meet Council's annual financial planning and financial reporting cycles.

Information and Audit

- 10.6 Wellington Water shall promptly provide such information relating to the Water Services and/or the Management Services as Council shall reasonably request:
- 10.6.1 where such information relates to a matter that is of material interest to an elected member or the community;
 - 10.6.2 where the information relates to a matter that constitutes a legal, financial or reputational risk or liability to the Council or could reasonably give rise to any such risk or liability;
 - 10.6.3 where the information is reasonably required to enable the Council to fulfil its obligations under any contract with a third party;
 - 10.6.4 where the information is reasonably required to enable the Council to fulfil its obligations and/or carry out its functions under any law or legislative provision; and

Council will pay all of Wellington Water's costs and expenses incurred in fulfilling any such request.

Council audits

- 10.7 Provided that clauses 3.19 to 3.21 of the Shareholders' Agreement entered into between the Shareholding Councils are complied with, Council may reasonably, and at its own cost, monitor and audit Wellington Water's performance in the delivery of the Management Services from time to time. An audit may take the form of spot checks and/or a more formal audit. The objective of such audit shall be to ascertain the level of compliance by Wellington Water with the requirements of this agreement, with a particular focus on the quality of the Management Services and compliance with legislation, consents and standards.
- 10.8 Council will give the board of Wellington Water reasonable notice if a formal audit is to be undertaken and will consider feedback provided by the board on scope, timing or requisite reviewer expertise.

- 10.9 Wellington Water shall co-operate with Council and its auditors to provide access to such information, records, premises, Wellington Water personnel and subcontractors as shall be reasonably necessary to facilitate such audits.
- 10.10 In addition to the reports to be delivered under clause 10.1, Council may from time to time and at Council's cost, require Wellington Water to provide it with information concerning any aspect of the Management Services Wellington Water provides, acting reasonably. Wellington Water must endeavour to provide the information as soon as practicable or within a timeframe agreed with Council.

Reviews

- 10.11 The parties will meet to review this agreement at a time to be agreed, but no later than the third anniversary of the Commencement Date, and every third year after that. The purpose of the review will be to determine the extent to which:
- 10.11.1 the provisions of this agreement are being complied with and are functioning adequately from a practical perspective;
 - 10.11.2 the Performance Measures and the Key Performance Indicators are appropriate; and
 - 10.11.3 any revision of the provisions of this agreement is necessary or desirable.

Records

- 10.12 Wellington Water must keep and maintain full records and documentation in relation to the Management Services and this agreement in accordance with the Public Records Act 2005, the Local Government Official Information and Meetings Act 1987, the Building Act 2004, the Water Services Act and any applicable standards or policies. Wellington Water must keep copies of these records in hard copy and in electronic form and must deliver a full set of both to Council on termination or expiry of this agreement.
- 10.13 Wellington Water must comply with clause 10.12 during the term of this agreement and for 7 years after the agreement set out in this agreement ends.
- 10.14 On request by Council, Wellington Water must make all documents and records relating to the Management Services available to Council for inspection by Council and/or its Personnel and, if required, copying.
- 10.15 The following records are to be provided to Council when available:
- 10.15.1 'as built' records and asset information,
 - 10.15.2 asset management system data,
 - 10.15.3 Project Information Memoranda information,
 - 10.15.4 Land Information Memorandum information,
 - 10.15.5 Building compliance information, and
 - 10.15.6 such other records as reasonably required by Council from time to time.

- 10.16 All asset data, records and documents referred to in clauses 10.12 to 10.15 must be kept and delivered (as applicable) in a form that is compatible with Council's information system and in accordance with a timeframe to be advised by Council from time to time.

11 Three Year Plan, Annual Work Programme, One Budget Charges and Additional Services

Three Year Plan and Annual Work Programme

- 11.1 By 1 September each year, or by another date agreed with Council, Wellington Water will provide to Council a draft rolling Three Year Plan, for the period from 1 July to 30 June of any one year.
- 11.2 The draft Three Year Plan will detail:
- 11.2.1 for the next Financial Year commencing 1 July;
- (a) the full draft Annual Work Programme;
- (b) the One Budget Charges for the next Financial Year commencing 1 July (and, from the Financial Year commencing 1 July 2019 following confirmation of Council's 2018-21 LTP, such One Budget Charges will not be less than the One Budget Charges forecasted for that Financial Year in the previous year's Three Year Plan, unless agreed otherwise);
- (c) any proposed amendments to the Key Performance Indicators;
- 11.2.2 any amendments to the Opex Charge Scope, Management Charge Scope, Contingency Sum or the Unexpected Event Reserve Cap; and
- 11.2.3 for the following two Financial Years, the forecast high level Annual Work Programme and the forecast One Budget Charges.
- 11.3 Each year, Wellington Water and Council will agree a final Three Year Plan based on the draft provided under clause 11.1 and in accordance with the process and timeframes set out in Schedule 6. The final Three Year Plan will be approved by the Wellington Water Board and agreed in writing by the Chief Executives or delegated representatives of both Wellington Water and Council by 30 June each year, excluding any carry-forwards still to be agreed at that point.
- 11.4 Once agreed, the Three Year Plan may only be altered in terms of programme content and budget during the course of the Financial Year by written agreement of Wellington Water and Council.

One Budget Charges

- 11.5 Council will pay Wellington Water the One Budget Charges for each Financial Year as follows:
- 11.5.1 the Management Charge will be paid in twelve equal monthly instalments;
- 11.5.2 the Opex Charge will be paid in twelve equal monthly instalments; and

- 11.5.3 the Capex Charge will be paid in monthly instalments of such sums as are agreed in the Three Year Plan, or as otherwise agreed from time to time, to finance the performance of Annual Work Programme.
- 11.6 Wellington Water will invoice Council (in advance) for each monthly instalment of One Budget Charges by the twenty fifth (25) day of the preceding month. Each invoice must separately identify the Management Charge, Opex Charge and Capex Charge.
- 11.7 Council must pay all valid GST invoices from Wellington Water for the One Budget Charges by the 10th business day of the month to which the invoice relates.
- 11.8 If the Three Year Plan is not agreed by 30 June for the following Financial Year, until such time as the Three Year Plan is agreed, the One Budget Charges will be based on the amount forecast for that year in the Three Year Plan adopted the previous Financial Year. Once the Three Year Plan is agreed, the One Budget Charges will be recalculated and the updated Three Year Plan (including the One Budget Charges) will be applied retrospectively from the start of the Financial Year.

Wellington Water to operate within One Budget Charges

- 11.9 Subject to clauses 11.4 and 11.15, Wellington Water must:
- 11.9.1 manage its operations within the agreed Management Charge; and
- 11.9.2 carry out the Annual Work Programme within the Opex Charge and the Capex Charge,
- 11.10 Wellington Water may, in its discretion and with its Board's approval, amend the allocation of funds between the Management Charge and the Opex Charge provided that the total sum of the Management Charge and the Opex Charge does not change.

Contingency Sum and treatment of overs and unders in expenditure

- 11.11 The parties acknowledge that the Opex Charge includes a Contingency Sum and agree that the Contingency Sum may be used by Wellington Water, at its discretion but subject to the reporting requirements in clause 10, during the Financial Year to manage its operations and/or fund Unexpected Events.
- 11.12 The parties acknowledge that there may be overs and/or unders in relation to expenditure of the Opex Charge and the Capex Charge against the Annual Work Programme and the following applies:
- 11.12.1 subject to clause 11.13, overs and/or unders in relation to expenditure of the Opex Charge do not require Wellington Water to repay any part of the One Budget Charges or entitle Wellington Water to increase the One Budget Charges.
- 11.12.2 the treatment of any overs and/or unders in relation to expenditure of the Capex Charge against the Annual Work Programme will be agreed by the parties as part of their regular review of expenditure and any agreed wash- up process.

11.13 At the end of each Financial Year, the unspent portion of the Contingency Sum (if any) will be:

11.13.1 transferred to the Unexpected Event Reserve; and

11.13.2 to the extent that the Unexpected Event Reserve exceeds the Unexpected Event Reserve Cap, repaid to Council.

Unexpected Events and the Unexpected Event Reserve

11.14 The parties acknowledge that

11.14.1 the Management Services require Wellington Water to manage Unexpected Events from time to time;

11.14.2 that Management Services required to respond to Unexpected Events are deemed to be Additional Services;

11.14.3 despite clauses 11.16 and 11.17, Wellington Water may undertake Additional Services in response to Unexpected Events where it is impracticable for Council to instruct or authorise Wellington Water, providing that Council may subsequently, by written notice:

(a) instruct Wellington Water to cease such response; or

(b) require further Unexpected Events Costs to be agreed with Council in accordance with clause 11.17; and

11.14.4 that Unexpected Events Costs will be paid in accordance with clause 11.15.

11.15 Unexpected Events Costs incurred by Wellington Water will be paid, in the order given:

11.15.1 from the Unexpected Event Reserve to the extent that such funds are available; then

11.15.2 from the Contingency Sum, if such sum is available; then

11.15.3 to the extent that the amount is not available from the above sources, Council will ensure that sufficient funds are made available to Wellington Water to cover such Unexpected Events Costs.

Additional Services and contracts not covered by One Budget Charges

11.16 The parties acknowledge that, from time to time the parties may agree that Wellington Water will undertake Management Services that are Additional Services and, without limitation:

11.16.1 Council may ask Wellington Water to carry out, or propose, Additional Services; and/or

11.16.2 Subject to clause 11.14.3:

- (a) Wellington Water will notify Council if it considers that a direction from Council, or other circumstances, require it to carry out Additional Services; and
- (b) Council will, as soon as reasonably practicable after receiving notice required by 11.16.2(a), notify Wellington Water whether or not it considers the direction or other circumstances to be Additional Services.

11.17 Where Council has asked Wellington Water to carry out Additional Services under clause 11.16.1, or has notified Wellington Water under clause 11.16.2(b) that it considers a direction or other circumstances to be Additional Services:

11.17.1 Before the Additional Services commence (except in the case of an Unexpected Event where, for clarity, clause 11.14.3 applies) Wellington Water will advise Council as appropriate in the circumstances, either:

- (a) the value of the Additional Services, their programme and their impact (if any) on the Annual Work Programme; or
- (b) the mechanism under which the value of the Additional Services and the impact (if any) on the Annual Work Programme will be derived; or
- (c) a proposed budget for the Additional Services that must not be exceeded without further agreement between the parties.

11.17.2 Following receipt of Wellington Water's advice under clause 11.17.1, Council will agree, acting reasonably, with Wellington Water a value, a mechanism for valuing, or a budget (as applicable) for the Additional Services.

11.17.3 If the parties are unable to agree under clause 11.17.1, the matter will be treated as a dispute and resolved in accordance with clause 22.

11.18 Subject to agreement having been reached under clause 11.17, Wellington Water will invoice the Council for Additional Services (in the form of a valid GST invoice and separately to invoices for the One Budget Charges) and:

11.18.1 subject to clause 11.18.2, such invoices must be paid by Council no later than the 20th of the month following the invoice date.

11.18.2 Where Wellington Water is the principal under a contract, Council must pay all valid GST invoices for capital works charges within seven (7) business days of receiving an invoice from Wellington Water.

11.19 Where, as part of the Management Services or Additional Services, Wellington Water manages a contract between Council and a third party (where Council is Principal), Wellington Water must:

11.19.1 ensure that invoices from the third party where appropriate are addressed to Council care of Wellington Water; and

- 11.19.2 when satisfied that an invoice is in order for Council to pay, send an approval (as agreed between the parties) to Council to that effect together with the invoice.
- 11.20 An invoice from a third party will only be in order for Council to pay if:
- 11.20.1 it is a valid GST invoice;
 - 11.20.2 all obligations of the third party that the invoice relates to have been met in accordance with the contract between Council and the third party;
 - 11.20.3 the invoice is for no more than the amount allowed under the contract for meeting those obligations; and
 - 11.20.4 there are no circumstances that entitle Council to, or suggest Council should as prudent business practice, dispute the invoice or withhold payment pursuant to the contract provisions.
- 11.21 Where, as part of the Management Services, Wellington Water manages a contract (where Council is Principal) whereby the third party provides services to Council and another Shareholding Council, Wellington Water must:
- 11.21.1 ensure the third party accurately accounts for and invoices separately the services it provides to Council; and
 - 11.21.2 comply with clauses 11.19 and 11.20.
 - 11.21.3 Payments made by Council in relation to an invoice from Wellington Water for work undertaken on the provision of Water Services for Council must be paid promptly to the relevant supplier of that work.

Late payments

- 11.22 Where, as a result of any payment invoiced under clause 11 not being paid by the due date, Wellington Water is required to draw down on its credit facilities, the interest cost arising thereby will be charged to the Council or Shareholding Councils (as applicable).

GST

- 11.23 If any payment under this agreement is subject to GST, the amount payable is to be increased by the amount of the GST.

Disputed Invoices

- 11.24 Council will promptly pay all amounts payable by it to Wellington Water under this agreement and will not intentionally withhold or threaten to withhold any payment due to Wellington Water, notwithstanding any dispute between Council and Wellington Water, whether as to the performance of the Management Services, the amount of the invoice or otherwise.
- 11.25 On request by Council, Wellington Water will promptly provide Council with such information and analysis in connection with the calculation of any amount invoiced to Council by Wellington Water as Council may reasonably request.

12 Intellectual Property

Ownership of intellectual property

- 12.1 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the performance of the Management Services for Council will vest in, and belong to, Council on creation. Council grants Wellington Water a revocable, non-transferable and royalty free licence to exercise all Council intellectual property rights in its Intellectual Property, for the purposes of providing the Management Services to Council. Wellington Water's licence from Council terminates when this agreement terminates.
- 12.2 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the performance of the Management Services generally and not for a particular Council will vest in, and belong to, Wellington Water on creation. Wellington Water grants Council a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-license) to exercise all Wellington Water's intellectual property rights in its Intellectual Property.
- 12.3 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the efforts of a third party in connection with the performance of a contract relating to Water Services between Council and that third party will, as between Council and Wellington Water, vest in, and belong to, Council. If Council obtains from a third party Intellectual Property relating to the Management Services, Council will endeavour to obtain a royalty free licence for Wellington Water to use that Intellectual Property to the extent necessary for Wellington Water to meet its obligations to Council under this agreement.

Wellington Water's material

- 12.4 If any material, matter or thing (including software, documentation or data) is owned by Wellington Water and such material, matter or thing is incorporated in or attached to any Intellectual Property owned by Council (whether pursuant to clause 12.1 or otherwise), Wellington Water grants Council a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-license) to exercise all intellectual property rights in such material, matter or thing for the purpose of accessing and using the Intellectual Property owned by Council as referred to in this clause.

No infringement

- 12.5 Wellington Water must not infringe the intellectual property rights of Council or a third party in connection with this agreement.

13 Operation and management of Wellington Water

- 13.1 Without limiting the obligations and duties of Wellington Water or its directors, Wellington Water:
- 13.1.1 must comply with the objectives in section 59 of the LGA 2002, including to be a good employer, to exhibit a sense of social and environmental responsibility and to conduct its affairs in accordance with sound business practice;

- 13.1.2 must make all decisions in accordance with its statement of corporate intent and its constitution in accordance with section 60 of the LGA 2002;
- 13.1.3 must maintain operative business continuity plans, emergency response plans, and alternative site arrangements for the Water Services and the Management Services;
- 13.1.4 must maintain operative and health and safety plans for all Water Services, Management Services, operational activities and capital projects; and
- 13.1.5 must comply with all relevant legislation.

14 Confidentiality

Obligations of confidence

- 14.1 Where Wellington Water receives Confidential Information from Council under this agreement or otherwise in connection with the Management Services, Wellington Water must:
 - 14.1.1 keep the Confidential Information confidential;
 - 14.1.2 not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of this agreement;
 - 14.1.3 not, without Council's written consent, disclose Confidential Information to any person other than its personnel or Council's personnel who need the information for the purposes of this agreement; and
 - 14.1.4 establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

Further permitted use and disclosure

- 14.2 Notwithstanding clause 14.1, Wellington Water may use or disclose Confidential Information to the extent necessary to:
 - 14.2.1 comply with any law, binding directive of a regulator or a court order; or
 - 14.2.2 obtain professional advice in relation to matters arising under or in connection with this agreement.
- 14.3 Where Wellington Water believes it is required to disclose Council's Confidential Information pursuant to the Local Government Official Information and Meetings Act 1987, Wellington Water must notify and consult with Council prior to any disclosure of the information and, where appropriate, Wellington Water will refer the request for Confidential Information to Council and Council will take responsibility for the request.

Exclusions

- 14.4 Clause 14.1 does not apply to Confidential Information:

- 14.4.1 which was known to Wellington Water at the time of disclosure, unless such knowledge arose through the breach of an obligation of confidence; or
- 14.4.2 which Wellington Water acquires from a third party (other than Council personnel) where that third party was entitled to disclose it.

Responsibility for Personnel

- 14.5 Wellington Water must ensure that its Personnel do not do, or omit to do anything, which if done or omitted to be done by Wellington Water, would breach this clause 14.

Undertakings from Personnel

- 14.6 Council may at any time require any Personnel of Wellington Water engaged in the performance of obligations under this agreement to give written undertakings in a form prepared by Council relating to the non-disclosure of the Confidential Information and Wellington Water must promptly arrange for all such undertakings to be given.

Notification of unauthorised use

- 14.7 Wellington Water must immediately notify Council of any potential, suspected or actual unauthorised use, copying or disclosure of Council's Confidential Information.

Return of Confidential Information

- 14.8 Wellington Water must immediately on demand or on completion or termination of this agreement, return to Council any documents in its possession, power or control containing Confidential Information. Wellington Water must not retain copies of any Council Confidential Information in any form.

Obligations to continue after agreement ends

- 14.9 All obligations of confidence set out in this agreement continue in full force and effect after the agreement set out in this agreement ends.

15 Warranties

General warranties

- 15.1 Each party represents and warrants to the other on a continuing basis that:
 - 15.1.1 it has full corporate power to enter into and give effect to this agreement and to complete the transactions contemplated by this agreement;
 - 15.1.2 it has taken all necessary action to authorise the execution, delivery and performance of this agreement;
 - 15.1.3 at the date of this agreement, the execution, delivery and performance of this agreement by it does not contravene any contractual, legal or other obligations that apply to it; and
 - 15.1.4 on execution of this agreement, its obligations under this agreement will be valid, binding and enforceable.

Performance of Management Services

15.2 Wellington Water represents and warrants to Council on a continuing basis that:

15.2.1 Wellington Water holds all licences, permits, consents and authorisations required under any law in relation to the provision of the Management Services and will continue to do so at all times during the term of this agreement;

15.2.2 Wellington Water will use its best endeavours to meet or exceed both the Performance Measures and the KPIs.

16 Liability

Limited liability

16.1 Subject to clause 16.2, Wellington Water will not be liable in damages to Council, nor will Council be liable in damages to Wellington Water, for any claims, actions, liabilities, loss, costs or expenses whatsoever arising directly or indirectly out of any damage or loss arising from any breach of this agreement by Wellington Water or Council (as the case may be), or from any negligence, act or omission of it or its Personnel.

16.2 Despite clause 16.1:

16.2.1 a party is liable to pay all amounts properly payable by that party to another party pursuant to this agreement;

16.2.2 Wellington Water must undertake any actions necessary to protect Council's interests, including any follow up action required in situations of possible or actual loss (economic or otherwise) to Council; and

16.2.3 if Wellington Water recovers compensation from a third party (including an insurer) in respect of an occurrence that Wellington Water would, in the absence of clause 17.1, be liable to Council for, Wellington Water will be liable to pay to Council the compensation recovered by Wellington Water, less Wellington Water's reasonable costs.

Third party claims

16.3 In respect of each claim made, or action taken, against Wellington Water by a third party (other than Wellington Water's Personnel) which Wellington Water may incur in, or which may arise from, it carrying out its duties and obligations to Council under this agreement, Council will pay the amount of:

16.3.1 Wellington Water's liability to the third party; and

16.3.2 Wellington Water's losses, costs and expenses,

to the extent that Wellington Water cannot recover these amounts under its insurance (including the amount of any excess) or from a third party.

16.4 Where a claim to which clause 16.3 may apply is made against Wellington Water, Wellington Water must:

- 16.4.1 forthwith advise Council of the claim; and
- 16.4.2 comply with any directions given at any time by Council to Wellington Water in relation to the claim to protect Council's interests including follow up action required in situations of possible or actual loss (economic or otherwise).
- 16.5 Council is authorised by Wellington Water to notify other Shareholding Councils of any such third party claim.
- 16.6 If Council has paid a liability of Wellington Water pursuant to clause 16.3 and Wellington Water recovers compensation under its insurance or from a third party in respect of the occurrence giving rise to the liability, Wellington Water will pay to Council the compensation recovered by Wellington Water, but not exceeding the amount paid by Council, less Wellington Water's reasonable costs.
- 16.7 Clause 16 refers to claims, actions, liabilities, losses, costs or expenses whatsoever arising directly or indirectly out of damage or loss of any activity undertaken by Wellington Water in the provision of Management Services without limitation irrespective of whether the Management Services consist of capital works, maintenance, operations, activities or provision of advice.

17 Insurance

Insurance

- 17.1 While Wellington Water is providing services (whether to Council or third parties), Wellington Water must maintain:
 - 17.1.1 public liability insurance for an amount not less than \$20 million in respect of any claim;
 - 17.1.2 professional indemnity insurance for an amount not less than \$5 million in respect of any claim by a third party;
 - 17.1.3 motor vehicle insurance for an amount not less than \$2 million in respect of any claim by a third party;
 - 17.1.4 general insurance for repair and replacement of all items used by Wellington Water to provide the Management Services that are lost or damaged; and
 - 17.1.5 statutory liability insurance for an amount not less than \$2 million in respect of any claim.
- 17.2 Council must maintain insurance of Water Services assets the subject of the Management Services as a council would reasonably procure which may include such self-insured portion as the Council shall elect.
- 17.3 Subject to the termination transition arrangements in clause 20, Wellington Water's professional indemnity cover should be maintained for a period of 6 years after the expiry or termination of this agreement.

Insurer and terms

- 17.4 Each policy maintained in accordance with this clause 17 must be with a reputable insurer and be on terms commonly acceptable in the current insurance market.

Protection of insurance

- 17.5 Each party must comply with and observe the terms of all insurance policies referred to in clauses 17.1 and 17.2 and must not do anything which could result in any policy being rendered void or voidable. Each party must also comply with the terms of any notification or management process for a claim under a policy referred to in clauses 17.1 and 17.2.

Evidence of insurance

- 17.6 Each party must deliver to the other party evidence satisfactory to the other party that it has a particular insurance policy and that the policy is current. This should be delivered to each party's representative under this agreement as soon as possible following a request from the other party to do so.

18 Termination

- 18.1 Council may give Wellington Water written notice immediately terminating this agreement if Wellington Water ceases to carry on business, is about to become insolvent, or has a liquidator appointed to it or a receiver appointed for all or any of its assets.
- 18.2 Council may terminate this agreement on not less than twelve (12) weeks written notice to Wellington Water if:
- 18.2.1 Wellington Water is in material breach of this agreement; and
 - 18.2.2 the breach is capable of remedy; and
 - 18.2.3 Wellington Water has not remedied the breach within sixty (60) days after receiving notice requiring it to do so.
- 18.3 Council may terminate this agreement on not less than six (6) months written notice to Wellington Water if Wellington Water fails to achieve a Mandatory Key Performance Indicator in any three consecutive years.
- 18.4 Either party may terminate this agreement with effect as at 30 June in any year provided it gives written notice of termination to the other party no later than 30 June the previous year and the party giving notice has the written agreement of five (5) of the six (6) Shareholding Councils.
- 18.5 Council may terminate this agreement with effect from any given date provided it gives written notice of termination to Wellington Water and to the other Shareholding Councils no later than 36 months previous to that date.

Three Waters Structural Reform

- 18A.1 Council and Wellington Water acknowledge that the Crown (through the Department of Internal Affairs) has progressed a national programme for the transformation of local

government three waters service delivery arrangements (**Crown Reform Proposal**), which would see the creation, by statute, of four new water service delivery entities that would be responsible for the ownership of all assets associated with, and the delivery, supply and management of, drinking water, stormwater and wastewater.

18A.2 Each of Council and Wellington Water acknowledges that if the Crown implements the Crown Reform Proposal, then it may be necessary to transition and migrate some or all of the Management Services, Bulk Water Supply Services, Network and/or any other matter contemplated by this agreement to one or more service delivery entities established as part of the Crown Reform Proposal. To the extent that any such transition or migration is required in connection with the Crown Reform Proposal, then each of Wellington Water and the Council will:

18A.2.1 act in good faith to:

- (a) jointly develop and agree a transition plan, setting out the respective tasks to be accomplished by each party in connection with an orderly transition to the arrangements as set out under the Crown Reform Proposal and a schedule for the completion of the tasks;
- (b) agree any amendments to the Management Services as may be necessary in connection with the transition to the arrangements as set out under the Crown Reform Proposal,

in each case on the basis that unless otherwise required pursuant to the Crown Reform Proposal, Wellington Water will continue to deliver the Management Services in accordance with the terms of this agreement and all applicable laws (until such time as these arrangements are terminated by the Crown Reform Proposal); and

18A.2.2 perform their respective tasks under the transition plan developed under clause 18A.2.1.

18A.3 The parties acknowledge that the Crown may request that Wellington Water assists with the transition to any Crown Reform Proposal, including by way of establishing a transition unit within Wellington Water and/or transferring or seconding personnel to a new agency (Transition Services). Following any such request, Wellington Water will use commercially reasonable endeavours to procure funding from the Crown for all or part of the costs of any new employees, seconded employees or transferred employees that Wellington Water is required to engage or provide in connection with the Transition Services, provided that any costs or expenses that Wellington Water incurs in connection with any such Transition Services and which it is not able to recover from the Crown will constitute Management Charges for the purposes of this agreement.

18A.4 Wellington Water confirms that it will provide the Transition Services, if any, in accordance with good industry practice and in a manner that minimises the costs and expenses of those Transition Services to the extent reasonably practicable.

18A.5 If the Crown requests that Wellington Water seconds and/or transfers any Wellington Water employees to a new agency in connection with the Crown Reform Proposal, then where Wellington Water considers (acting reasonably) that the secondment or transfer of

such employee may adversely impact the performance of the Management Services, then:

- 18A.5.1 Wellington Water will notify the Council, including such detail as may be reasonably necessary for the Council to assess the potential impact to the Management Services and/or costs arising out of the transfer or secondment of such employee; and
 - 18A.5.2 Wellington Water will consult with each Shareholding Council (including the Council) in respect of any such secondment or transfer (including the terms thereof) prior to approving any such secondment or transfer.
- 18A.6 The parties acknowledge that clauses 19 and 20 of this agreement shall be without prejudice to any termination, transition and/or migration arrangements in respect of the Management Services, Bulk Water Supply Services, the Network and/or any other matter contemplated by this agreement pursuant to statute or other legislative instrument in connection with the Crown Reform Proposal.

19 Obligations at end of agreement

Return of property

- 19.1 When the agreement set out in this agreement ends, whether by expiration of the term or on earlier termination:
- 19.1.1 all sums outstanding or incurred in relation to this agreement prior to the Expiry Date or termination must be immediately paid;
 - 19.1.2 Council may instruct Wellington Water to:
 - (a) continue providing all or part of the Management Services while termination transition takes place under clause 20, at a reasonable cost based on, and no more than, the charges then payable under this agreement;
 - (b) deliver all or any part of the Property to an address nominated by Council;
 - (c) make all or any part of the Property available for collection, at the premises of Wellington Water at an agreed time;
 - (d) permit Council's Personnel to have access to Wellington Water's premises for the purposes of removing all or any part of the Property;
 - (e) reasonably assist Council or its new service provider to install Council's equipment and any other equipment procured by Council in connection with the termination transition;
 - (f) retain or destroy all or any part of the Property; and/or
 - (g) proceed with termination transition under clause 20 in relation to the relevant Service(s).

- 19.2 Wellington Water must immediately comply with any instructions given by Council pursuant to clause 19.1.2.
- 19.3 Council will pay Wellington Water's reasonable costs and expenses incurred in complying with clause 19.1 insofar as such compliance requires the performance of:
- 19.3.1 services in addition to the Management Services;
 - 19.3.2 the Management Services after the expiration of termination of this agreement.

Consequences of termination

- 19.4 If the agreement set out in this agreement expires or is terminated for any reason:
- 19.4.1 each party retains its rights under this agreement and at law in respect of any breach of this agreement by the other party;
 - 19.4.2 Wellington Water will not be entitled to any other payment or any compensation as a result of termination, subject to clause 19.3; and
 - 19.4.3 the parties will agree in good faith whether any part of the One Budget Charges received by Wellington Water (and that have not been spent or irrevocably committed as part of the Management Services) should be repaid to Council.

Clauses survive expiration or termination of agreement

- 19.5 This clause and the following clauses will survive the expiration or termination (for whatever reason) of this agreement:
- 19.5.1 clauses 10.1 through 10.12 (Reports, information, reviews and records);
 - 19.5.2 clause 12 (Intellectual Property);
 - 19.5.3 clause 14(Confidentiality);
 - 19.5.4 clause 16 (Liability);
 - 19.5.5 clause 19 (Obligations at end of agreement);
 - 19.5.6 clause 20 (Termination transition);
 - 19.5.7 clause 22 (Dispute resolution); and
 - 19.5.8 any other clauses that make provision for continued operation.

20 Termination transition

- 20.1 Wellington Water acknowledges and agrees that both prior to and following the expiry or termination of the agreement set out in this agreement, Council must be able to maintain continuity of services whilst finding a new service provider for the ongoing provision of the Management Services, or resume providing the Management Services itself.

- 20.2 Wellington Water will comply with Council's reasonable directions to effect an orderly transition and migration of the Management Services from Wellington Water to the new service provider in accordance with the following procedures:
- 20.2.1 Wellington Water and Council will promptly and jointly develop and agree a transition plan, setting out the respective tasks to be accomplished by each party in connection with an orderly transition and a schedule for the completion of the tasks;
 - 20.2.2 Wellington Water and Council will perform their respective tasks under the transition plan developed under clause 20.2.1;
 - 20.2.3 Wellington Water and Council will discuss the transfer of any Wellington Water employees that Wellington Water identifies as being surplus to its requirements or who Council requests to be transferred;
 - 20.2.4 Wellington Water will transfer to Council any assets originally transferred to Wellington Water by Council and which are still held by Wellington Water and have not been paid for, and any other assets which Wellington Water identifies are surplus to its requirements and which Council requests to be transferred;
 - 20.2.5 Wellington Water will, upon request, provide Council with detailed specifications for any equipment which Council or any new service provider will require to properly perform the Management Services;
 - 20.2.6 where it is reasonably necessary to do so in order to maintain continuity of the Management Services, Wellington Water will deliver to Council all data (in electronic form compatible with Council's information system) which is being used by Wellington Water in connection with the Management Services;
 - 20.2.7 Wellington Water will provide any training reasonably requested by Council for its employees or employees of the new service provider who will have responsibility for the Management Services following termination transition; and
 - 20.2.8 Wellington Water will provide all information relating to the Management Services reasonably requested by Council by written notice.
- 20.3 Unless this agreement has been terminated by Council due to a breach of the agreement by Wellington Water that has not been remedied in accordance with clause 18.2, Council will pay Wellington Water its reasonable costs and expenses in complying with clause 20.2 insofar as such compliance requires:
- 20.3.1 the performance of services which are in addition to the Management Services.
 - 20.3.2 performance of the Management Services after the expiration or termination of this agreement.

21 Partnering

- 21.1 Wellington Water and Council agree that where practicable their relationship under this agreement will be characterised by the 'partnering' style of relationship as set out in Schedule 5 and in accordance with the following:

- 21.1.1 Partnering is a method of operating a contractual relationship to promote prompt and constructive communication and a problem solving approach between the parties. Partnering has three primary objectives:
- (a) ensuring that the contract operates smoothly;
 - (b) to promote value adding to both the provision of the Management Services and each party's separate interests; and
 - (c) to facilitate the avoidance of disputes;
- 21.1.2 the parties will implement partnering in this agreement in accordance with the style of partnering set out in Schedule 5.
- 21.1.3 the use of partnering techniques and the adoption of the style of partnering set out in Schedule 5 does not in any way imply any fiduciary obligations, obligation of good faith, partnership and/or joint venture between the parties; and
- 21.1.4 the partnering information set out in Schedule 5 is subordinate to the provisions of this agreement and shall not be considered as overriding, amending or waiving any contractual rights or obligations.

22 Dispute resolution

Meeting to attempt to resolve disputes

- 22.1 If a dispute arises under this agreement, a party to the dispute may at any time give written notice to the other party to the dispute requesting that a meeting take place to seek to resolve the dispute. The Representatives of the parties to the dispute must meet within ten business days of the giving of the notice and endeavour to resolve the dispute in good faith.
- 22.2 If such meeting does not take place or if five business days after the meeting the dispute remains unresolved, the dispute must be referred to the Chief Executives of the parties who must negotiate in good faith to resolve the dispute. If after five business days of the dispute being referred to the Chief Executive the dispute remains unresolved, a party to the dispute may refer it to the mediation of a single mediator.
- 22.3 The referral to mediation shall be commenced by one party to the dispute serving written notice (a Mediation Notice) on the other party requiring the dispute to be referred to a mediator to be appointed by the parties. Failing agreement within five business days after, and exclusive of, the date of service of the Mediation Notice, the mediator shall be appointed at the request of either party by the chairperson or any other office holder for the time being of LEADR NZ (Leading Edge Alternative Dispute Resolvers), or the nominee of such chairperson or other office holder. The guidelines that govern the mediation shall be set by the parties. Failing agreement within five business days after the appointment of the mediator, either party may request the mediator to set the guidelines (whether or not in conjunction with such party) that govern the mediation proceedings.
- 22.4 The parties acknowledge that the purpose of exchange of information or documents or the making of any offer of settlement pursuant to clauses 22.2 and 22.3 is to attempt to

settle the dispute between the parties. Neither party may use any information, documents or offer obtained solely by reasons of clauses 22.2 and 22.3 for any purpose other than in an attempt to settle the dispute in the context of negotiation and mediation.

- 22.5 Subject to any right any party may have to apply to a court for any interim or preliminary relief in respect of the dispute, completion or termination of the mediation shall be a condition precedent to the arbitration of the dispute or any part of it.
- 22.6 If the parties are unable to resolve the dispute by mediation within ten business days of the establishment of the mediation guidelines, the dispute shall be referred to and finally resolved by arbitration by a sole arbitrator under the Arbitration Act 1996. The arbitral proceedings shall be commenced by one party serving written notice (an **Arbitration Notice**) on the other and requiring the dispute to be referred to arbitration. The arbitrator shall be appointed by the parties, or failing agreement within five business days after, and exclusive of, the date of service of the Arbitration Notice, shall be appointed at the request of either party by the president or vice-president for the time being of the New Zealand Law Society or the nominee of such president or vice-president. The arbitration shall be conducted as soon as possible at Wellington, New Zealand. Clauses 3 and 6 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under this agreement. All other clauses in the Second Schedule shall not apply.
- 22.7 Each party shall bear its own costs, expenses and fees incurred pursuant to clauses 22.2, 22.3 and 22.6 and shall equally share the mediator's and arbitrator's fees and expenses.
- 22.8 Every party to a dispute shall act promptly with respect to the appointment of any mediator or arbitrator and in respect of all other matters and proceedings relating to the mediation and arbitration.
- 22.9 The parties to a dispute will be bound by any decision or award of the arbitrator made in accordance with the Arbitration Act 1996, subject to the rights of appeal provided by that Act.

Performance of obligations

- 22.10 During a dispute, the parties to it must continue to perform their respective obligations under this agreement.

Interlocutory relief and right to terminate

- 22.11 Clauses 22.1 to 22.10 do not restrict or limit the right of either party to obtain interlocutory relief, or to immediately terminate this agreement where this agreement provides such a right.

23 Priority

- 23.1 In the event of any inconsistency, this agreement must be interpreted in accordance with the following order of priority:

23.1.1 the terms and conditions set out in the body of this agreement; then

23.1.2 the Schedules; and then

- 23.1.3 any other documents or information incorporated by reference into this agreement.

24 Notices

Giving notices

- 24.1 Any notice, consent, information, application or request that must or may be given or made to a party under this agreement is only given or made if it is in writing and sent in one of the following ways:

24.1.1 delivered or posted to that party at its address set out in Schedule 1; or

24.1.2 emailed to that party at the email address set out in Schedule 1.

Change of address or email

- 24.2 If a party gives the other party three business days' notice of a change of its postal address or email address, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address or email address.

Time notice is given

- 24.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

24.3.1 if it is delivered, when it is left at the relevant address;

24.3.2 if it is sent by post, two business days after it is posted; or

24.3.3 if it is sent by email, one business day after it is sent.

- 24.4 If any notice, consent, information, application or request is delivered or received on a day that is not a business day, or if on a business day, after 5 pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

25 Miscellaneous

Approvals and consent

- 25.1 Except as otherwise set out in this agreement, an approval or consent to be given under this agreement may not be unreasonably withheld, and may be given subject to reasonable conditions.

Assignment

- 25.2 A party may not assign any of its rights or obligations under this agreement without the prior written consent of the other party.

Costs

- 25.3 Except as otherwise set out in this agreement, each party must pay its own costs in relation to preparing, negotiating and executing this agreement and any document related to this agreement.

Execution of separate agreements

- 25.4 This agreement is properly executed if each party executes either this agreement or an identical agreement. In the latter case, this agreement takes effect when the separately executed agreements are exchanged between the parties.

Further acts

- 25.5 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

No agency or partnership

- 25.6 The relationship between the parties is that of principal and contractor. Wellington Water must not represent itself as an agent or representative of Council except where required to perform the Management Services in accordance with this agreement.

No authority to act

- 25.7 No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this agreement or by express written agreement between the parties.

Severability

- 25.8 If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

Survival of indemnities

- 25.9 Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination of this agreement.

Variation

- 25.10 No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement and is in accordance with clause 4.7.

Waiver

- 25.11 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A

written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

26 Definitions and interpretation

Definitions

26.1 In this agreement the following definitions apply:

drinking water, drinking water supplier, drinking water supply, operator, owner, stormwater network, stormwater network operator, wastewater network, wastewater network operator have the meanings given to them in the Water Services Act.

Additional Services means management services:

- (a) included within the Three Year Plan or Annual Work Programme, but not covered by the Management Charge Scope, Opex Charge Scope or Capex Scope (as applicable);
- (b) not included in the agreed Annual Work Programme (including, without limitation, any management services in connection with a Supply Network Event); and/or
- (c) carried out in response to Unexpected Events.

Amendment Agreement (Fourth) means the amendment and restatement agreement dated 11 April 2022 ~~2024~~ between Wellington Water and Council, pursuant to which this agreement was amended and restated.

Amendment and Restatement Date means the “Effective Date”, as such term is defined in Amendment Agreement (Fourth).

Annual Work Programme means the programme prepared and agreed in accordance with clause 11, of all Management Services to be undertaken in a financial year including:

- (a) the detailed work programme;
- (b) timing of work;
- (c) any changes to Key Performance Indicator targets; and
- (d) any specific detailed Council requirements set out in Schedule 9.

Approved Regional Policy means a regional policy developed by Wellington Water and agreed by the Shareholding Councils, or:

- (a) where the regional policy does not relate to Bulk Water Supply, agreed by the Four Cities; or

- (b) where the regional policy relates solely to Bulk Water Supply, agreed by GWRC.

Asset Management Plans means those as described as a requirement in the LGA 2002 and approved by Council.

Bulk Water Supply means the provision of drinking to the points of supply to each of the Four Cities using GWRC's bulk water network.

Capex Charge means the annual charge agreed with the Council in the Three Year Plan (based on agreed values determined in Council's annual planning process), to be utilised by Wellington Water for payments of capital expenditure due under Water Services capital works contracts that fall within the Capex Charge Scope.

Capex Charge Scope means the capital works costs covered by the Capex Charge as detailed in the Annual Work Programme.

Commencement Date is as set out in Schedule 1.

Companies Act means the Companies Act 1993.

Confidential Information means any information provided by Council or any of its Personnel to Wellington Water or any of its Personnel, or otherwise obtained by Wellington Water or any of its Personnel, whether obtained before or after execution of this agreement, in connection with Council, the Management Services or this agreement. It includes:

- (a) all confidential business information, documents, records, financial information, personal information under the Privacy Act 1993, reports, technical information and forecasts which relate to Council or its operations;
- (b) Council's Property;
- (c) Council's Intellectual Property; and
- (d) any information created under or arising out of the provision of

Management Services under this agreement including information which Council could lawfully withhold under the Local Government Official Information and Meetings Act 1987.

It does not include:

- (a) information which is in or becomes part of the public domain, other than through a breach of this agreement of an obligation of confidence owed to Council or any of its Personnel; or
- (b) which Wellington Water can prove by contemporaneous written documentation was independently acquired or developed without breaching any of the obligations set out in this agreement.

Contingency Sum means the values that are not allocated to specific services, work or projects in the Annual Work Programme but that are included in the operational budget

agreed with Council as part of the Three Year Plan for performance of the Annual Work Programme.

Council Policies means standards, policies and similar written documents in force for Council that relate to or govern the provision of Management Services or Water Services. The Council Policies provided at Commencement date are listed in Schedule 8.

Drainage Services means the collection, treatment and disposal of wastewater, and the disposal of stormwater drainage in the jurisdiction of Council.

Expiry Date is as set out in Schedule 1.

Financial Year means a twelve month period commencing on 1 July and ending on 30 June.

Four Cities means WCC, UHCC, HCC and PCC.

Governance Charge means the monthly charge for Wellington Water's governing expenses including directors' fees and professional indemnity insurance, audit fees and other consultancy fees relating to Wellington Water's governance.

GST means the goods and services tax levied under the Goods and Services Tax Act 1985.

HSE Act means the Health and Safety at Work Act 2015.

Intellectual Property includes copyrights, patents, trademarks, designs, brands, logos and circuit layouts, inter alia.

Key Performance Indicators (KPIs) means the standards agreed by Wellington Water and Council annually by which Wellington Water's performance under this agreement will be assessed, as set out in Wellington Water's Statement of Intent (prepared in accordance with the LGA 2002) and/or as otherwise agreed from time to time (including in the Three Year Plan), with agreed individual targets for Council.

LGA 2002 means the Local Government Act 2002.

Long Term Plan (LTP) means as described as a requirement in the LGA 2002.

Loss means any loss including any liability, cost, expense (including legal costs on a full indemnity basis), claim, proceeding, action, demand or damage.

Management Charge means the annual charge agreed with the Council in the Three Year Plan in the relevant year for:

- (a) Wellington Water's internal costs of providing the Management Services (in respect of both operational and capital activities), in accordance with the Annual Work Programme;
- (b) complying with applicable law in connection with the performance of the Management Services; and
- (c) the Governance Charge,

as further described in the Management Charge Scope.

Management Charge Scope means the scope of management costs covered by the Management Charge, as set out in Schedule 4.

Management Services means both the internal and external supply of labour, personnel, professional and consultant services to the Council which are necessary or desirable to carry out on the Council's behalf the management of the Water Services as agreed in the Annual Work Programme and which may include, without limitation, those services listed in Schedule 2.

Mandatory Key Performance Indicators means the critical KPIs agreed from time to time as mandatory KPIs and set out in Wellington Water's Statement of Intent (prepared in accordance with the LGA 2002) and/or the Three Year Plan.

Network means all of the pipelines, treatment stations, reservoirs and other assets of the Council that are owned by it or used in the provision of Water Services to consumers of the Council, the collection, treatment and disposal of wastewater and stormwater drainage, and includes any additions or new assets added to the Network during the term of this contract.

Objectives means the objectives set out in clause 2.

One Budget Charges means the Management Charge, Opex Charge and Capex Charge.

Opex Charge means the annual charge agreed with the Council in the Three Year Plan for the relevant year (based on agreed values determined in Council's annual planning process), to be utilised by Wellington Water for payments of the operational costs due under Water Services operations and maintenance contracts as further detailed in the Opex Charge Scope, and includes the Contingency Sum.

Opex Charge Scope means the scope of operational costs covered by the Opex Charge, as set out in Schedule 4.

Owner Obligation means each of the following obligations of Council as owner of a drinking water supply under the Water Services Act that are not an obligation on the operator of such drinking water supply:

- (a) registering a drinking water supply, and renewing the registration of the drinking water supply, in accordance with ss23 and 56 of the Water Services Act;
- (b) preparing and lodging a drinking water safety plan with the Regulator in relation to Council's drinking water supply, in accordance with s30 of the Water Services Act; and
- (c) notifying the Regulator of any change in the registered drinking water supply information provided under s54(2), in accordance with s56(3) of the Water Services Act.

Performance Measures means any other performance measures that are not Key Performance Indicators (however described) relating to Management Services included in the Council LTP, Annual Plan, Asset Management Plans, business plans or contracts.

Personnel means any director, officer, employee, agent, contractor or professional adviser of a party.

Property means all property of Council held by Wellington Water from time to time in connection with the performance of this agreement including, without limitation, documents, data and records relating to the Management Services and associated assets and infrastructure, and documents, data and records produced by Wellington Water in connection with providing the Management Services to Council.

Regulator means Taumata Arowai, in its capacity as water services regulator established by section 8 of the Taumata Arowai-the Water Services Regulator Act 2020.

Representative means each party's representative appointed under clause 5 and specified in Schedule 1.

Shareholding Councils means the councils that are shareholders in Wellington Water. At Amendment and Restatement Date, these are GWRC, WCC, HCC, UHCC, PCC and SWDC.

SLA Report means the reporting as outlined in Schedule 3.

Statutory Powers means the statutory responsibilities, duties and powers given to Council by statute, and delegated to Wellington Water by Council under this agreement.

Supply Network Event means any requirement issued by the Regulator to Wellington Water or Council that the Council must take action under section 127(2) of the LGA 2002.

Three Year Plan means the three year plan prepared and agreed in accordance with clause 11, of Management Services to be undertaken in the three year period covered by the plan, including the Annual Work Programme and the One Budget Charges.

Unexpected Event means an event requiring management of Water Services that is not in the Annual Work Programme, being an event beyond the reasonable control of Wellington Water or the Council including acts of god, floods, storms, earthquakes, fires, power failures, riots, strikes, lockouts, war, terrorism or government action.

Unexpected Event Costs means costs due under Water Services operations and maintenance contracts to manage Unexpected Events.

Unexpected Event Reserve means the amount of any unspent Contingency Sum (up to the Unexpected Event Reserve Cap) retained by Wellington Water and available to pay for operational costs incurred by Wellington Water due to Unexpected Events.

Unexpected Event Reserve Cap means the sum set out in Schedule 4.

Water Services means Water Supply and Drainage Services, the maintenance and expansion of the Network, the planning for and provision of water conservation strategies to the public and such other deliverables in relation to the supply and maintenance of a sustainable, accessible and high quality Water Service that Council determines that it wishes to provide and as set out in its then current Long Term Plan.

Water Services Act means the Water Services Act 2021 once relevant parts, or all, of that Act is in force.

Water Supply means the provision of drinking water to the point of supply of each dwelling house and commercial or industrial premise to which drinking water is supplied, in the jurisdiction of Council.

Interpretation

- 26.2 In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:
- 26.2.1 headings are inserted for convenience only and do not affect the interpretation of this agreement;
 - 26.2.2 a reference in this agreement to a business day means a day on which banks are open for business generally in Wellington other than a Saturday or Sunday;
 - 26.2.3 if the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day;
 - 26.2.4 a reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - 26.2.5 words and expressions in this agreement that are defined in the LGA 2002 have the meaning given in that Act;
 - 26.2.6 a reference in this agreement to any policy, plan, agreement or document is to that policy, plan, agreement or document as amended, noted, supplemented or replaced;
 - 26.2.7 a reference to a clause, part, schedule or appendix is a reference to a clause, part, schedule or appendix of or to this agreement;
 - 26.2.8 an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate, local authority or governmental agency;
 - 26.2.9 where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - 26.2.10 a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
 - 26.2.11 references to the word 'include' or 'including' are to be construed without limitation;

26.2.12 a reference to this agreement includes the agreement recorded in this agreement; and

26.2.13 schedules and appendices form part of this agreement.

Execution and date

Executed as an agreement:

Signed for and on behalf of
Council by:

[Chief Executive]

[Authorised signatory]

Signed for and on behalf of
Wellington Water Limited in the presence
of:

[Chief Executive]

[Authorised signatory]

Witness signature:

Witness name:

Occupation:

Address:

Schedule 1

General information

Term of agreement

(Clause 3)

Commencement date 1 November 2013

Expiry Date 30 June 2024

Council's Representative

(Clause 5)

Name Andrew Dalziel

Position General Manager Infrastructure/Deputy Chief Executive

Contact details Phone: 04 237 1619
Mobile:
Email: andrew.dalziel@porirucity.govt.nz
Address: 16 Cobham Court,
Porirua City Centre
Porirua 5022

Wellington Water's Representative

Name Colin Crampton

Position Chief Executive

Contact details Phone: 04 912 4488
Mobile: 027 492 4419
Email: colin.crampton@wellingtonwater.co.nz
Address: Level 4, IBM House
25 Victoria Street, Petone
Postal: Private Bag 39 804
Wellington Mail Centre, Petone

Notices (Council)

(Clause 24)

Address 16 Cobham Court, Porirua 5022

Email Address andrew.dalziel@porirucity.govt.nz

Attention Andrew Dalziel

Notices (Wellington Water)

(Clause 24)

Address

Level 4, IBM House
25 Victoria Street
Petone

Email Address

colin.crampton@wellingtonwater.co.nz

Attention

Colin Crampton

Schedule 2

Management Services

(Clause 26.1)

- 1 The Management Services include (without limitation) the following tasks and activities:
 - 1.1 carrying out the functions, duties and responsibilities of the principal's representative and engineer's representative (where applicable) under all contracts for Water Services works to which Council is party;
 - 1.2 carrying out all the functions, duties and responsibilities of the principal under all contracts for Water Services works to which Wellington Water is party;
 - 1.3 project managing all contracts relating to Water Services, including overseeing the provision of all works and services by contractors and consultants in accordance with the contract and managing contractor and consultant performance in accordance with recognised benchmarks;
 - 1.4 monitoring, reporting on and administering all financial and operational aspects of contracts relating to Water Services;
 - 1.5 any services as set out in clause 4A.2 (*Obligations*);
 - 1.6 monitoring and managing Council's obligations under the HSE Act in respect of the Management Services, the assets and infrastructure used to provide Water Services and all works to or affecting such assets and infrastructure, to the extent there are any, and ensuring Wellington Water and/or Council do not breach their obligations under the HSE Act;
 - 1.7 providing expert advice in respect of Management Services in conjunction with consultants and other experts engaged by Council or by consultants engaged by Wellington Water or by Wellington Water on Council's behalf;
 - 1.8 arranging the provision of Water Services works in accordance with the approved Annual Work Programme, Council's Annual Plans and Long Term Plan, and approved Asset Management Plans;
 - 1.9 managing on Council's behalf its contract with the Wellington Regional Council for the supply of bulk water (on the same basis as prior to Commencement Date);
 - 1.10 providing costing advice to Council for the purposes of Council's charges for the provision of Water Services and related matters, including (without limitation) water rates and costs, trade waste charges, consent and permit fees, and user charges;
 - 1.11 provide representation at wholesale and retail water supply negotiations and meetings;

- 1.12 preparing for Council draft Asset Management Plans, business plans and the draft Annual Work Programme for assets and infrastructure used to provide Water Services, all in accordance with the requirements of this agreement, the LGA 2002 and industry best practice or Council's practice if that exceeds industry best practice;
- 1.13 managing on Council's behalf the wastewater treatment plant owned by Council;
- 1.14 assisting Council to prepare budgets, financial statements and forecasts, and any other information required in a LTP, Annual Plan, Annual Report or any other document relating to the provision of the Management Services by Wellington Water. All budgets are to be prepared in accordance with instructions given from time to time;
- 1.15 assisting Council (in the manner agreed between the Council and Wellington Water) to undertake asset valuations in respect of the Council's three waters assets;
- 1.16 assisting and co-operating with all audits of Water Services assets or infrastructure;
- 1.17 providing Council with timely, accurate and quality data so that Council can keep its information systems up to date in respect of water assets and infrastructure;
- 1.18 monitoring the insurance cover required and held by Council in respect of Water Services and assets, prepare any required infrastructure insurance fund update and advising Council of any deficiency or insurance cover;
- 1.19 advising Council on its trade waste functions;
- 1.20 identifying and advising Council of all circumstances where a prosecution or claim for damage relating to water, waste water, sewage, trade waste, Water Services, or assets and infrastructure used to provide Water Services could be brought against Council or by Council, and providing all information and assistance for such prosecutions and claims;
- 1.21 responding to requests from Council for information required by it to administer any law, including (without limitation) the Resource Management Act 1991 and the Building Act 2004;
- 1.22 responding, within five business days or the response times set by Council's system, whichever is the lesser, to public and customer enquiries and requests for service in relation to Water Services, including meeting such persons where appropriate;
- 1.23 managing all routine, operational and work programme related communications, marketing and community engagement. For the avoidance of doubt, any non-routine communications, marketing, community engagement or use of Council brand, will be carried out in collaboration and with approval of Council;

- 1.24 advising and assisting Council in identifying and quantifying the value of third party damage caused to Councils three water networks;
- 1.25 assuring compliance with Council's responsibilities under the Civil Defence and Emergency Management Act (CDEM Act) with respect to water and wastewater as a lifeline utility. This will include assisting with and responding to emergencies involving Water Services and the provision of an afterhours service outside of standard office hours;
- 1.26 providing services to assist meeting Council's community and stakeholder consultation obligations, including with mana whenua, in relation to matters involving Water Services;
- 1.27 co-ordinating with other units of Council or with other parties to ensure that programmed work involving Water Services is planned around other relevant infrastructure work and around other planned events (for example festivals, sporting events or other special events);
- 1.28 assisting Council to prepare and maintain its various plans in relation to the Water Services, including but not limited to its LTP, District Plan, Emergency Response and Recovery Plans, Risk Management Plans (strategic and operational), Code of Engineering Practice, Business Continuity Plan and Environmental Plan;
- 1.29 undertaking any other emergency and civil defence planning in relation to Council's Water Services, as agreed with Council;
- 1.30 continuously monitoring the appropriateness and effectiveness of bylaws and policies relating to Water Services, suggesting improvements and assisting Council draft bylaw amendments and policy papers;
- 1.31 attending and participating in Council meetings, and meetings with Council officers, contractors, consultants and/or the public, including preparing reports and briefings for such meetings where reasonably required;
- 1.32 preparing for Council's approval a report which complies with section 125 of the LGA 2002;
- 1.33 in conjunction with Council, managing legal issues and services relating to Water Services, other than those related to prosecutions and claims for damage which Council will manage;
- 1.34 assisting Council to maintain and update its asset register;
- 1.35 obtaining resource consents required for Water Services;
- 1.36 preparing detailed current and future Water Services work programmes;
- 1.37 providing a water meter reading service and meter information to Council Finance for invoicing;
- 1.38 maintaining Council's proactive water supply leak detection programme;
- 1.39 administering Council's garden watering restrictions;

- 1.40 promoting water conservation and education.
- 1.41 undertaking any other water conservation and environmental sustainability planning in relation to Council's Water Services, as agreed with Council;
- 1.42 planning and advice, including the provision of Asset Management Plans in respect of the Network and Water Services;
- 1.43 providing the necessary inputs to the Council's Annual Plan and Long Term Plan so as to enable the Council to make appropriate decisions as to work necessary on an annual and long term basis to maintain, renew and as necessary expand the Network so as to be able to provide Water Services on an affordable, sustainable basis to a standard determined by Council;
- 1.44 managing the carrying out of all necessary operating and renewal work on the Network as agreed in the Annual Work Programme and Council's Annual Plans and Long Term Plan;
- 1.45 managing the carrying out of all capital works on and for the expansion of the Network as agreed in the Annual Work Programme and Council's Annual Plans and Long Term Plan;
- 1.46 providing all strategic and policy advice reasonably necessary to ensure that the Water Services are delivered by Council on an affordable and sustainable basis;
- 1.47 managing the application of resource consents necessary to ensure Water Services delivery;
- 1.48 any activities that would have been reasonably anticipated as constituting part of the Water Services offering by both parties at the Commencement date; and
- 1.49 any other services as agreed between the parties, subject to clause 4.6.

2 The Management Services do not include:

- 2.1 any activity relating to billing and the setting of water charges, apart from the providing of costing advice and the like as described above;
- 2.2 the approval of Council policies or strategies, Asset Management Plans, Statements of Intent, budgets, Annual Plans and LTPs; and
- 2.3 any service which reasonably, or as outlined in this agreement, remains with Council.

Schedule 3

Service Level Agreement (SLA) Reports (Clauses 10.1 and 10.3)

Monthly and quarterly reporting (including financial reports) as agreed between Council and Wellington Water

The quarterly SLA reports shall be structured as follows:

- 1 Introduction
- 2 Quarterly Meeting Action Log
- 3 Highlights
- 4 Key Performance Indicators Reporting
- 5 Agreed Performance Metrics
- 6 Long Term Plan Water Indicators
- 7 Agreed Customer Performance Indicators

And any other quarterly SLA reporting requirements arising from Schedule 9.

Schedule 4

One Budget Charge details

(Clauses 11 and 26.1)

Opex Charge Scope

The Opex Charge covers controllable costs incurred by Wellington Water as further described in the detailed operational controllable cost budget agreed with Council as part of the Three Year Plan. Controllable costs include, for example, charges for repairs and maintenance of Water Supply assets, costs of consumables such as chemicals and consultants and contractors' charges.

The following costs are outside the Opex Charge Scope:

- Council's internal costs relating to Water Supply, such as allocations, financing and depreciation
- Costs identified as remaining with Council pending expiration of existing contractual terms and/or which may be transferred to Wellington Water at a later date.

Management Charge Scope

The Management Charge covers management costs incurred by Wellington Water as further described in the detailed management cost budget agreed with Council as part of the Three Year Plan. Management costs include, for example, Council's proportion of Wellington Water employees' salaries, lease payments and other operating expenses for Wellington Water's office (including IT and telecommunications costs), insurance premiums and vehicle expenses. The Management Charge also includes the Governance Charge.

Unexpected Event Reserve Cap

The Unexpected Event Reserve Cap is 5% of the Opex Charge for the current Financial Year.

Schedule 5

Partnering (Clause 21)

Partnering Philosophy

- 1 Partnering encourages the development of relationships of trust, co-operation, open communication and team work.

Definition

- 2 Partnering is a commitment between two or more organisations for the purpose of achieving specific business objectives by maximising the effectiveness of co-operation.

Expected Results

- 3 Results that partnering is expected to produce include:
 - 3.1 less adversarial relationships;
 - 3.2 improved problem solving;
 - 3.3 improved planning;
 - 3.4 improved responsiveness;
 - 3.5 increased openness;
 - 3.6 fewer errors;
 - 3.7 improved efficiency;
 - 3.8 improved quality;
 - 3.9 reduction in service charges; and
 - 3.10 potential for savings through innovation.

Dispute Prevention

- 4 Dispute prevention is recognised as the best dispute resolution. Partnering relationships of trust, open communication and processes for effective issue resolution can minimise the risk of issues escalating into disputes.
- 5 It is important however, that issues of conflict should not be 'brushed under the carpet', but rather, dealt with at the time the conflict occurs to avoid frustration and the threat to the continuation of the agreement.

Type of Relationship

- 6 Partnering relationships can be different for each contractual situation.
- 7 Partnering does not over-ride the agreement, but provides a 'way of working' that is mutually beneficial. If partnering fails, then the parties can still resort to contractual remedies.

Key elements of partnering

A Commitment

- 8 Commitment to partnering must come from the top management of each stakeholder. This leadership must be visible, supportive and ongoing.

B Equity

- 9 All stakeholders' goals must be considered in reaching mutual goals and there is a commitment to meeting each stakeholder's requirements by searching for solutions to these goals.

C Trust

- 10 Successful partnering relies on relationships of trust.

D Mutual Objectives

- 11 Partnering takes into account the objectives of the parties set out in clause 2 which reflect the parties' requirements for a successful contract.

E Timely Responsiveness

- 12 Rapid issue resolution should minimise the number of issues that escalate into dispute. Partnering aims at problems being solved at the lowest possible level and the earliest possible time. Agreed processes can be established to ensure this occurs.

F Frank Discussion

- 13 Partnering helps the identification of each party's position by creating an environment where frank discussion is appropriate and legitimate. This can happen without precipitating confrontation.

G Risks Associated with Partnering

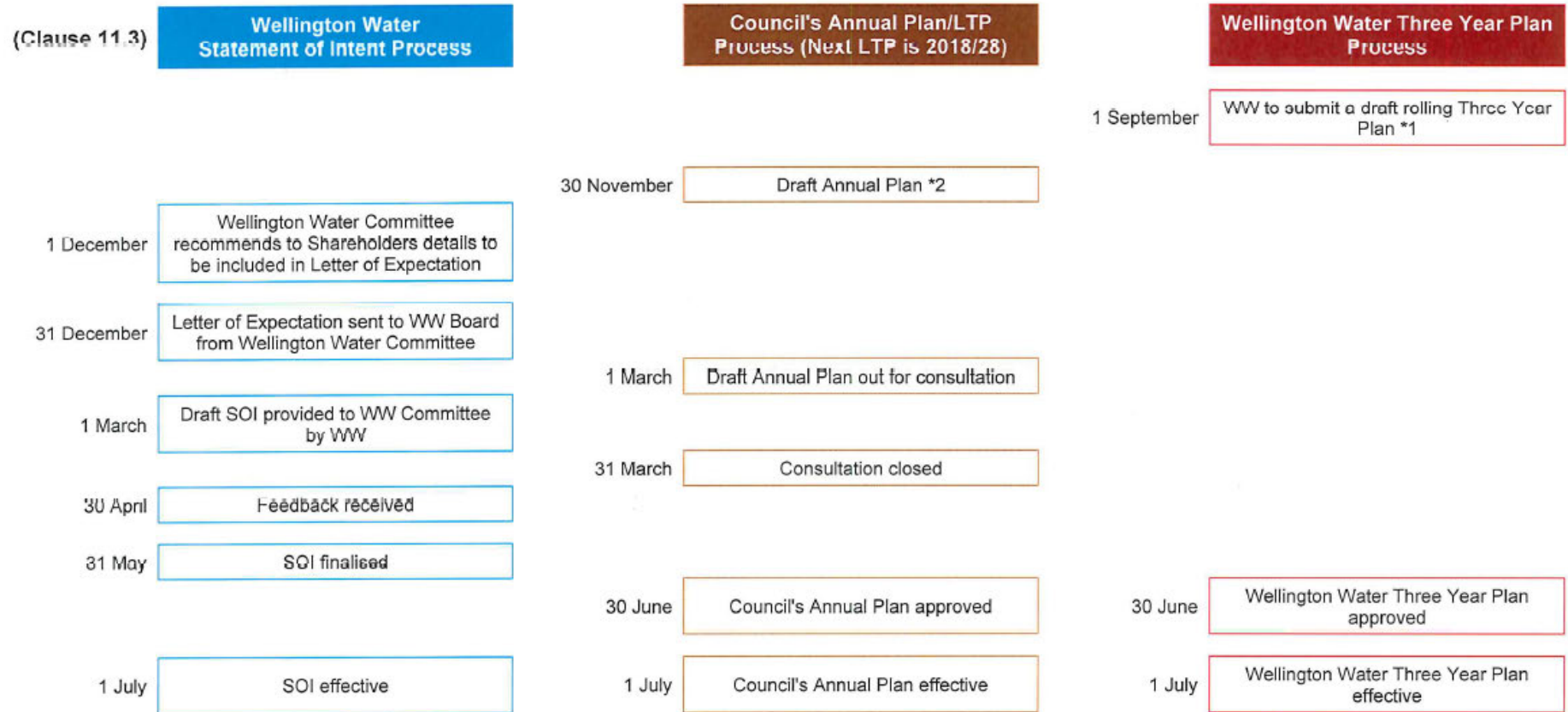
- 14 It is important to distinguish partnering from partnership. Both involve relationships of trust, long-term commitment and joint goals. Partnering is not a partnership or joint venture.
- 15 Partnering does not mean being soft and all parties to the relationship need to be vigilant for indications of potential dispute and seek resolution of problems before they escalate to dispute. If this occurs effectively, then the need to resort to contractual remedies is minimised.

Summary

- 16 Partnering is a 'way of working' which is based upon mutual trust, and recognition that working together achieves better results than a confrontational, strictly contractual relationship.

Schedule 6

**Three Year Plan approval process
(Clause 11.3) Three Year Plan approval process**



*1 Including a full draft Annual Work Programme for the next Financial Year and a forecast high level programme for the two following Financial Years.

*2 Council prepares Annual Plan including information supplied by Wellington Water in its draft Three Year Plan.

Schedule 7

Not Used

Schedule 8

Applicable Council Policies (Clause 4.21)

Porirua City Council Policies

- 1 General Bylaw - Part 17: Water Supply
- 2 General Bylaw - Part 20: Trade Waste
- 3 General Bylaw - Part 25: Wastewater
- 4 Regional Standard for Water Services
- 5 Policy on Development and Financial Contributions
- 6 Code of Land Development and Subdivision Engineering
- 7 Porirua Development Framework

Schedule 9

Additional Annual Work Programme Information Required (Clause 26.1)

No additional information required.

THIRD VARIATION AGREEMENT IN RESPECT OF AGREEMENT FOR PROVISION OF MANAGEMENT SERVICES RELATING TO WATER SERVICES

WELLINGTON REGIONAL COUNCIL

WELLINGTON WATER LIMITED

 **Simpson Grierson**

Barristers & Solicitors
Auckland, Wellington & Christchurch
New Zealand
www.simpsongrierson.com

PARTIES

1. **WELLINGTON REGIONAL COUNCIL** of 100 Cuba Street, Te Aro, 6011, Wellington (**Council**)
2. **WELLINGTON WATER LIMITED** (company number 1337122) of 25 Victoria Street, Petone, Lower Hutt, 5012, New Zealand (**Wellington Water**)

BACKGROUND

- A. Council and Wellington Water entered into a service agreement dated 16 September 2014 for the provision of management services relating to bulk water supply until 2024, which was varied by an agreement dated 2 October 2015 (**First Variation Agreement**) to allow Wellington Water to be principal to the contract for arrangements it enters into in carrying out the Water Services for Council and was subsequently varied by an agreement (**Second Variation Agreement**) to update certain provisions and implement the one budget proposal (**Services Agreement**).
- B. Council and Wellington Water have agreed to vary the terms of the Services Agreement to, amongst other things, incorporate provisions addressing the regulation of drinking water, wastewater and stormwater pursuant to the Water Services Act 2021 and the potential transition to a new arrangement for the delivery of three waters services in New Zealand on the terms set out in this agreement (**Third Variation Agreement**).

THIS AGREEMENT RECORDS THAT:**1. DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions:** In this Third Variation Agreement, unless the context indicates otherwise, words and expressions defined in the Services Agreement have the same meaning when used in this Third Variation Agreement.
- 1.2 **Interpretation:** In this Third Variation Agreement, unless the context indicates otherwise, the interpretation provisions of the Services Agreement apply as if they were set out in this Third Variation Agreement.

2. EFFECTIVE DATE, AMENDMENT AND CONFIRMATION

- 2.1 **Effective Date:** The parties agree that the variations to the Services Agreement set out in this Third Variation Agreement have effect on and from the date of this agreement (**Effective Date**).
- 2.2 **Amendment:** With effect from the Effective Date, the Services Agreement is amended and restated in the form set out in the Schedule to this Third Variation Agreement and references in the Services Agreement to “this agreement” shall be references to the Services Agreement as amended and restated by this Third Variation Agreement.

2.3 Confirmation: Each of the parties confirms and acknowledges that, except as expressly agreed in this Third Variation Agreement, its obligations and covenants under, and the provisions of, the Services Agreement continue and remain in full force and effect.

3. GENERAL

3.1 Assignment: A party may not assign any of its rights or obligations under this Third Variation Agreement without the prior written consent of the other party.

3.2 Counterparts: This Third Variation Agreement may be signed in counterparts. All executed counterparts will together constitute one document.

3.3 Copies: Any copy of this Third Variation Agreement that is received via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this agreement) may be relied on by any party as though it were an original copy of this Third Variation Agreement. This Third Variation Agreement may be entered into on the basis of an exchange of PDF or other document reproduction format.

3.4 Further Acts: Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this Third Variation Agreement and all transactions incidental to it.

3.5 Severability: If a clause or part of a clause of this Third Variation Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Third Variation Agreement, but the rest of this Third Variation Agreement is not affected.

3.6 Variation: No variation of this Third Variation Agreement will be of any force or effect unless it is in writing and signed by the parties to this Third Variation Agreement and is in accordance with clause 4.7 of the Services Agreement.

3.7 Waiver: The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Third Variation Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

3.8 Governing Law and Jurisdiction: This Third Variation Agreement is governed by the laws of New Zealand.

EXECUTED

SIGNED for and on behalf of **Wellington Regional Council** by:



Signature of authorised signatory

Nigel Corry

Name of authorised signatory

SIGNED for and on behalf of **Wellington Water Limited** by:

Signature of authorised signatory

Name of authorised signatory

EXECUTED

SIGNED for and on behalf of **Wellington Regional Council** by:

Signature of authorised signatory

Name of authorised signatory

SIGNED for and on behalf of **Wellington Water Limited** by:



Signature of authorised signatory

Colin Crampton

Name of authorised signatory

SCHEDULE
AMENDED AND RESTATED SERVICES AGREEMENT

**Contract for Provision of Management
Services Relating to Water Services**
Wellington Regional Council
Wellington Water Limited

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**Agreement dated 16 September 2014, as amended and restated on
11 April 2022 ~~2021~~**

Parties

Wellington Regional Council of 100 Cuba St, Te Aro, Wellington (**Council**)

Wellington Water Limited of 25 Victoria Street, Petone, Wellington (**Wellington Water**)

Background

- A Wellington Water was established in 2004 by Wellington City Council (**WCC**) and Hutt City Council (**HCC**) to co-operatively manage the delivery of Management Services to councils in the Wellington Region.
- B Wellington Water is now jointly owned by HCC, Upper Hutt City Council (**UHCC**), Porirua City Council (**PCC**), WCC, South Wairarapa District Council (**SWDC**) and Council.
- C Wellington Water is a council-controlled trading organisation and a local government organisation under the Local Government Act 2002, and a company under the Companies Act 1993.
- D This agreement sets out the terms under which Wellington Water will provide the Management Services to, and exercise the Statutory Powers on behalf of, Council from the Commencement Date.

Operative Provisions

1 Deliverables for Council communities

- 1.1 Council has in its Long Term Plan (**LTP**) committed to certain deliverables for the Council's community. In general terms, these deliverables relate to the health, safety and development of the community, and environmental sustainability.
- 1.2 Separately:
 - 1.2.1 Wellington Water is an operator of a drinking water supply pursuant to the performance of the Bulk Water Supply Services, a drinking water supplier and stormwater network operator in respect of the Network; and
 - 1.2.2 Council is an owner of a drinking water supply, a drinking water supplier and a stormwater network operator in respect of the Network.
- 1.3 The standard of Bulk Water Supply Services affects the achievement of certain deliverables in Council's LTP and Annual Plans, and the ability of the Council to comply with the Water Services Act. Council has contracted Wellington Water to provide Management Services in respect of Council's function in providing the Bulk Water Supply Services because it believes it will better assist the achievement of these deliverables and at the same time provide cost and resource efficiencies.

- 1.4 Council requires Wellington Water to at all times manage the delivery of Management Services and operate its business in a way that will enable Council to achieve its LTP deliverables and performance measures and to discharge and/or assist the Council in discharging each of the Council's obligations under the Water Services Act.

2 Objectives

- 2.1 The parties will co-operate to achieve the following objectives with respect to the provision of the Management Services:
- 2.1.1 Delivery of Management Services for Council that are affordable, sustainable, accessible, and of the quality agreed in Council's LTP.
 - 2.1.2 Delivery of Management Services for Council in a manner that meets or exceeds the agreed Key Performance Indicators and Performance Measures.
 - 2.1.3 Compliance with Council's statutory, contractual and other obligations in respect of its provision of Bulk Water Supply Services.
 - 2.1.4 Compliance with the Health and Safety at Work Act 2015 and maintenance of health and safety plans for all operational and capital project activities.
 - 2.1.5 Emergency management and response planning on behalf of Council, other Shareholding Councils, and other organisations and services.
 - 2.1.6 Continuous improvement in the delivery of the agreed LTP service level for Bulk Water Supply Services.
 - 2.1.7 That Wellington Water is familiar with and abides by all relevant Council Policies, subject to clause 4.20.
 - 2.1.8 The prompt, constructive and fair resolution of all issues between the parties.
 - 2.1.9 That Council retains direct ownership of the Network, including assets and infrastructure built and purchased and asset information obtained during the term of this agreement or in existence prior to the Commencement Date of this agreement, or within the existence of this agreement.
 - 2.1.10 That the Network of Council and the networks of other Shareholding Councils in the Wellington region are managed on a co-ordinated basis.

3 Term

- 3.1 This agreement starts on the Commencement Date set out in Schedule 1 and will remain in force until the Expiry Date set out in Schedule 1, unless terminated earlier in accordance with this agreement.

4 The Management Services and Statutory Powers

Appointment and Powers

- 4.1 Council appoints Wellington Water to provide the Management Services to it and on its behalf. Wellington Water accepts this appointment.
- 4.2 Council authorises Wellington Water to perform on its behalf such acts, and gives Wellington Water such powers and authority, as are necessary to enable Wellington Water to provide the Management Services, including (without limitation) the powers specified in this agreement provided that Wellington Water shall:

- 4.2.1 Have no statutory powers other than those given by statute or expressly by Council in this agreement or by separate formal delegation;
- 4.2.2 Comply with the directions and conditions specified in every delegation, authority and instrument of appointment given to Wellington Water by Council;
- 4.2.3 Comply with any limitation on a power or delegation given by Council to Wellington Water, provided that Council will ensure that its delegations to Wellington Water enable Wellington Water's performance of the Management Services (including being principal to the contract under clause 8.3) in accordance with the Three Year Plan without further recourse to Council on a contract-by-contract basis except as agreed otherwise in relation to a particular project or service;
- 4.2.4 Have no power to delegate any of its functions or powers other than in accordance with this agreement or a delegation, authority or instrument of appointment given to Wellington Water by Council; and
- 4.2.5 Utilise all delegated functions or powers reasonably and prudently for their proper purpose.

Provision of Management Services

- 4.3 Wellington Water will at all times provide Management Services in accordance with this agreement. At all times during the term of this agreement, Wellington Water will provide the Management Services for Council:
 - 4.3.1 in a proper, timely, cost effective and professional manner;
 - 4.3.2 exercising all due care, skill and judgement, and in accordance with accepted professional and business practices and standards, including (without limitation) to the standard set out in Council's Asset Management Plans;
 - 4.3.3 in a manner designed to achieve the Objectives;
 - 4.3.4 in the best interests of Council, recognising the obligations Council has to the Four Cities, ratepayers, citizens and stakeholders;
 - 4.3.5 in a manner that does not reflect adversely on Council;
 - 4.3.6 in the same priority as for other Shareholding Councils for which Wellington Water provides management services (except in an emergency affecting one or more, but not all Shareholding Councils, when priority may be given to the Shareholding Council or Shareholding Councils affected by the emergency); and
 - 4.3.7 in accordance with any instructions and directions given by Council's Representative (which must be consistent with the intent and terms of this agreement), including the powers or delegations given by Council.

Variations to Management Services

- 4.4 Council may from time to time need to vary the Management Services provided by Wellington Water. In these circumstances Council will outline the proposed variation (including the need and outcomes sought) in writing.
- 4.5 Council and Wellington Water can then partner (refer Schedule 5) to determine the most effective and efficient method of achieving the outcome sought.
- 4.6 If the variation results in a change in the Management Services provided or costs incurred, Wellington Water will adjust the One Budget Charges as agreed with Council.

Variations to this Contract

- 4.7 Before any variations to this agreement are made, apart from the specific Council information required in Schedule 1, Schedule 2, Schedule 4, Schedule 8, and Schedule 9, all of the Shareholding Councils will be notified of the proposed variation. This clause is for the benefit of and intended to be enforceable by the other Shareholding Councils under the Contract and Commercial Law Act 2017.

Performance Measurement and KPIs

- 4.8 Wellington Water's performance will be measured via the agreed Key Performance Indicators.
- 4.9 Wellington Water will report on other Council performance measures as agreed from time to time, but these will not form the basis of Wellington Water's performance measurement unless agreed otherwise. Other Council LTP performance measures may be used to measure Wellington Water's performance, but only after these measures are agreed with Wellington Water.

Failure to perform Management Services

- 4.10 If at any time Wellington Water fails to perform any Management Services, or believes it is unlikely to be able to deliver any part of the Management Services for Council in accordance with the terms of this agreement, Wellington Water must immediately notify Council of the failure or belief in writing, and outline the steps considered necessary to remedy the situation.
- 4.11 Council and Wellington Water can then partner (refer Schedule 5) to determine the most effective and efficient method of remedying the situation.
- 4.12 If Wellington Water fails to remedy the situation as agreed, and within a period which is reasonable in the circumstances taking into account any material risk to public health or safety or material threat to property or the environment, Council may, after consulting Wellington Water, take, or direct Wellington Water to take, any action Council considers necessary to ensure the Management Services are properly delivered and performed, and to minimise any loss or damage that might be suffered by Council or any other person as a result of Wellington Water's failure. Such action may include redirecting Management Services to a third party, the cost of which is to be met by Wellington Water.
- 4.13 Where any failure by Wellington Water to perform any Management Service materially and adversely impacts the provision of any Water Service that is essential to public health or safety or has or that threatens to damage property or the environment (or may reasonably have with the passage of time such impact or consequences) the Council may arrange for the provision of those Management Services and clauses 4.10 and 4.11 shall not apply.

Exercise of Statutory Powers

- 4.14 Council by this agreement appoints the Chief Executive Officer of Wellington Water (**CEO**) as its officer and gives the CEO the following powers to exercise on the Council's behalf:
- 4.14.1 the general powers of entry given to a local authority by section 171 of the LGA 2002;
 - 4.14.2 the powers given to a local authority in an emergency or where there is danger, by section 173 of the LGA 2002, provided Wellington Water notifies Council of the event as soon as possible; and
 - 4.14.3 the powers in relation to construction of works on private land given to a local authority by section 181 of the LGA 2002.
- 4.15 Council (acting through its Chief Executive) shall delegate to Wellington Water and Wellington Water Personnel such further statutory powers as are necessary to enable Wellington Water to provide the Management Services.

- 4.16 The CEO may, subject to the terms of any delegation, delegate any of the powers set out in clause 4.14 and 4.17 to Wellington Water Personnel, other than the power to further delegate the power.
- 4.17 Council may, by separate written delegation, delegate additional powers to the CEO.
- 4.18 Council may from time to time issue initial or additional sealed warrants to Wellington Water Personnel identified by Wellington Water as suitable to hold a warrant as are required to enable Wellington Water to provide the Management Services.

Compliance with laws

- 4.19 At all times during the term of this agreement Wellington Water must, in respect of operating its business, providing the Management Services and exercising the Statutory Powers:
 - 4.19.1 hold all authorisations, permits and licences required under any law; and
 - 4.19.2 comply with the requirements of all applicable laws of any kind.

Compliance with policies and directions

- 4.20 Wellington Water will develop Approved Regional Policies wherever practicable. Approved Regional Policies will supersede the relevant Council policy.
- 4.21 Subject to clause 4.22, when providing the Management Services and exercising the Statutory Powers for Council, Wellington Water must, as a minimum, comply with:
 - 4.21.1 Approved Regional Policies; or
 - 4.21.2 where no Approved Regional Policy is in place, either:
 - (a) those Council Policies listed in Schedule 8 as varied from time to time and notified to Wellington Water; or
 - (b) Wellington Water's policies as agreed with Council from time to time.
- 4.22 Without limiting Wellington Water's duties and obligations under this agreement, Council may, after consulting Wellington Water, give Wellington Water by written notice such directions as Council considers reasonably necessary to:
 - 4.22.1 ensure that Council complies with its obligations under any law, bylaw, any document or Council Policy adopted by it, or any contract or arrangement to which it is a party; or
 - 4.22.2 achieve efficiency or co-ordination with any Council business or activity,

provided that no consultation is required where a situation or event exists that is or may become a nuisance or danger to public health, or that threatens to damage property or the environment.
- 4.23 If:
 - 4.23.1 a variation to an Approved Regional Policy, a Council Policy or an agreed Wellington Water policy; or
 - 4.23.2 any direction provided by Council,

results in a change in the Management Services provided or costs incurred by Wellington Water, Wellington Water will adjust the One Budget Charges as agreed with Council.

Protection of information systems

- 4.24 If Wellington Water is given access to a Council information technology system to enable Wellington Water to provide the Management Services, Wellington Water must:
- 4.24.1 only use the system to provide the Management Services;
 - 4.24.2 take all reasonable care in using the system, including all hardware, software and applications and observe all relevant licence agreements, Council Policies, security procedures and work practices;
 - 4.24.3 not interfere with or disrupt or cause any damage to the system;
 - 4.24.4 ensure that the system is protected from unauthorised access or use, or misuse, damage or destruction by any person;
 - 4.24.5 ensure the integrity of all data and information held on the system is not compromised; and
 - 4.24.6 follow the policies and procedures of the system to maintain the accuracy of data and information held within the system.

Continuous improvement and cost reduction initiatives

- 4.25 Council seeks to continuously improve processes and reduce costs in respect of the Bulk Water Supply Services. Wellington Water must:
- 4.25.1 initiate and contribute to improvement processes on an ongoing basis; and
 - 4.25.2 continuously use its best efforts to reduce Council's costs in respect of its Bulk Water Supply Services.
- 4.26 Not used.

Health and Safety

- 4.27 During the term of this agreement, Wellington Water will maintain the capability to comply with all relevant health and safety legislation and regulations in force from time to time **(HS laws)**.
- 4.28 Wellington Water and Council agree that, where workers are owed duties under HS laws by Council, but such workers are:
- 4.28.1 employed by Wellington Water;
 - 4.28.2 contracted by Wellington Water; or
 - 4.28.3 employed by a contractor to Wellington Water,
- the health and safety of such workers will be ensured by the Wellington Water complying with the health and safety provisions of this agreement and HS laws.
- 4.29 The parties agree that where there is a substantive amendment to HS laws they will consult regarding the clauses in this agreement relating to health and safety to determine whether amendments are reasonably required to enable each party to meet its obligations under the amended HS laws.
- 4.30 Wellington Water will:
- 4.30.1 comply with all of its obligations under HS laws;

- 4.30.2 apply best industry knowledge to the management of its health and safety obligations under this agreement;
- 4.30.3 ensure any decision to purchase new equipment and/or machinery on behalf of Council, or which is to be used in the delivery of Bulk Water Supply Services, has taken into account health and safety considerations and ensures that the goods are fit for purpose;
- 4.30.4 ensure it operates Council's assets in a safe manner and in accordance with Council's Asset Management Plans;
- 4.30.5 ensure:
 - (a) any hazards or incidents involving Council assets are reported to Council in accordance with the reporting schedule outlined in the Annual Work Programme; and
 - (b) corrective actions are taken to eliminate, isolate or minimise the risk of harm caused by the hazard or incident.
- 4.31 Upon reasonable request, Wellington Water will promptly provide Council with information to demonstrate its compliance with its obligations under the health and safety provisions of this agreement and HS laws.
- 4.32 Wellington Water will notify Council immediately after any of the following occurs as they relate to the provision of Bulk Water Supply Services to Council:
 - 4.32.1 any accident, incident or situation that, under HS laws, must be notified to a regulator;
 - 4.32.2 any regulatory step taken against Wellington Water under HS laws in response to any accident, incident or situation; and
 - 4.32.3 any hazard is identified which is likely to require a large expenditure to eliminate, isolate or minimise the risk of harm caused by the hazard.
- 4.33 Wellington Water will give Council a copy of any report which Wellington Water is required to make to a public authority on any health and safety accident, incident or situation which is associated with the provision of Bulk Water Supply Services to Council.

4A Water Services Act

Water Services Act

- 4A.1 The Council and Wellington Water acknowledge that for the purposes of the Water Services Act:
 - 4A.1.1 Wellington Water is:
 - (a) an operator of a drinking water supply pursuant to the performance of the Bulk Water Supply Services, and is a drinking water supplier; and
 - (b) a stormwater network operator in respect of the Network.
 - 4A.1.2 Council is:
 - (a) an owner of a drinking water supply, and is a drinking water supplier; and
 - (b) a stormwater network operator in respect of the Network.

Obligations

4A.2 Without limiting any other provision of this agreement but subject to clauses 4A.3 and 4A.4 below, Wellington Water will:

4A.2.1 assist the Council to comply with its obligations under the Water Services Act in each of the capacities set out in clause 4A.1.2; and

4A.2.2 provide to Council in a timely manner all documentation, information, assistance and/or co-operation as may be reasonably necessary in order for the Council to comply with each Owner Obligation,

and the provision of such services will constitute Management Services for the purposes of this agreement.

Information

4A.3 Where, for the purposes of complying with its obligations under this agreement in connection with the Water Services Act, Wellington Water requires from the Council any information held by the Council (or any information that is held by a third party but which the Council is entitled to disclose to Wellington Water) that the Council does not provide to Wellington Water under any separate agreement, arrangement or understanding then existing between the parties, Wellington Water will notify the Council, and each of the Council and Wellington Water will meet to discuss (acting reasonably) the basis on which that information may be provided to Wellington Water (including, where applicable, any amounts to be paid by Wellington Water to Council for such information).

Directions and compliance orders

4A.4 Where Wellington Water (acting reasonably) considers that compliance by it with any direction and/or compliance order issued to Wellington Water pursuant to the Water Services Act constitutes an:

4A.4.1 Unexpected Event, then clauses 11.14 to 11.15 will apply; and

4A.4.2 Additional Service, then clauses 11.16 to 11.18 will apply.

4A.5 Where a conflict arises between any valid direction given to Wellington Water by the Regulator and any direction of the Council, Council Policy or Approved Regional Policy, the direction of the Regulator will prevail.

5 Representatives

Representatives

5.1 Each party appoints the Representative named in Schedule 1 as its Representative under this agreement. The Representatives are responsible for the day to day administration of this agreement on behalf of the party appointing them. In the case of Wellington Water, the Representative is also responsible for the day to day delivery of the Management Services and the supervision of all persons employed or engaged by Wellington Water in providing the Management Services.

5.2 The Representatives must be available and able to be contacted during normal business hours. A party must notify the other party immediately should its Representative be removed or replaced, together with the contact details of its new Representative, or of any change to its Representative's contact details.

5.3 Each party is responsible for the acts, omissions and defaults of its Representative. Any direction, instruction, notice, approval or other communication made by or given to a

Representative will be deemed to have been made by or given to the party appointing that person.

6 Employees and Consultants

Employees and Consultants

- 6.1 Wellington Water must engage Personnel of good character and with the necessary skills, expertise, qualifications and training to carry out the Management Services. Wellington Water must ensure that its Personnel perform the Management Services with due care, skill and judgement, and in an efficient, professional and cost effective manner.
- 6.2 Wellington Water will require its Personnel to comply with Council Policies, Approved Regional Policies and instructions pursuant to clause 4.3.7 when performing the Management Services for Council, subject to clause 4.19, and must:
 - 6.2.1 take all reasonable steps to ensure that Personnel comply with the applicable instructions, Approved Regional Policies, Council Policies or Wellington Water's policies (as applicable), and otherwise acts in a manner consistent with Wellington Water's duties and obligations under this agreement;
 - 6.2.2 if it becomes aware that any Personnel has breached those instructions, Approved Regional Policies, Council Policies or Wellington Water's policies (as applicable), take all appropriate remedial steps and, in the case of a serious breach, forthwith advise the Council of the breach and the remedial steps taken; and
 - 6.2.3 take appropriate action against Personnel who fail to follow, or breach, any instruction, Council Policy, Approved Regional Policy or a Wellington Water policy or procedure when performing the Management Services.
- 6.3 Where a conflict occurs between a Council Policy and an Approved Regional Policy, the Approved Regional Policy will prevail.

7 Assets used to provide the Management Services and access to Bulk Water Supply Services assets

- 7.1 Wellington Water must ensure that at all times it has sufficient and serviceable assets in order to operate efficiently and to meet its obligations under this agreement.
- 7.2 In respect of all assets accessed or used by Wellington Water in the provision of Management Services under this agreement, Wellington Water must:
 - 7.2.1 safeguard the assets from damage, loss and destruction; and
 - 7.2.2 keep the assets in good condition and repair (fair wear and tear excepted).
- 7.3 To the extent of carrying out Management Services, Wellington Water (or a nominated Wellington Water contractor) is entitled to access Council Bulk Water Supply Services assets, property or infrastructure in order to discharge those Management Services.
- 7.4 Wellington Water has no power or authority to acquire or own Bulk Water Supply Services assets or infrastructure used or to be used to provide the Bulk Water Supply Services. All Bulk Water Supply Services assets, property and infrastructure (whether or not in existence at the Commencement Date) used to provide the Bulk Water Supply Services are to be owned solely by one or more Shareholding Councils.
- 7.5 The parties acknowledge that Wellington Water may acquire, lease and/or own assets used in its day to day operations in its capacity as provider of water services management services,

including office space, furniture, vehicles and equipment (including IT equipment and software, tools and other technical equipment).

8 Contracts

Existing contracts

- 8.1 Where, on the Commencement Date, Council is party to a contract for works, services or supply of assets relating to Bulk Water Supply Services:
- 8.1.1 the contract will remain with Council; and
 - 8.1.2 Wellington Water will, from the Commencement Date, manage the contract on Council's behalf to the extent it was managed by Council prior to the Commencement Date, unless the parties (including the third party contractor where required) agree to assign the contract to Wellington Water.

Appointment of Wellington Water as principal's representative

- 8.2 So that Wellington Water may manage the contracts referred to in clause 8.1 on behalf of Council, Council has or will appoint such Wellington Water Personnel as Council's representative and/or the engineer to the contract under every such contract. Council will give the required notice under each such contract to effect the appointment, and will at the same time copy that notice to Wellington Water. Wellington Water will appoint an alternative person as Council's representative if Council, acting reasonably, requests this of Wellington Water.

Future contracts

- 8.3 Wellington Water will become the principal to all future contracts for Bulk Water Supply Services, subject to clauses 8.5 through 8.12 and unless otherwise agreed in writing by the parties.
- 8.4 The parties acknowledge their intention that as existing contracts for operations and maintenance of Bulk Water Supply Services and related assets expire or terminate, Wellington Water will use its best endeavours to obtain future operations and maintenance services for Council in a manner that delivers the best possible value (in terms of quality and cost) to Council including, where appropriate, by entering into procurement arrangements which benefit both Council and one or more other Shareholding Councils.
- 8.5 Wellington Water will procure, negotiate and enter into all future contracts for Bulk Water Supply Services in a manner consistent:
- 8.5.1 with the Councils' then current Annual Plan; and with the applicable Annual Work Programme and performance measures and approvals in relevant plants and budgets, all applicable Council Policies and/or Approved Regional Policies and using good public sector procurement practices.
- 8.6 Wellington Water will deliver to Council:
- 8.6.1 an original of each new executed contract relating to Bulk Water Supply Services to which Council is a principal or pursuant to which Council has rights or obligations, together with originals of all documents recording variations to such contracts. Wellington Water must retain a copy of all such contracts and any variation documents; and
 - 8.6.2 on Council's request, a copy of each new executed contract relating to Bulk Water Supply Services to which Wellington Water is a principal together with copies of all documents recording variations to such contracts.
- 8.7 Wellington Water requires prior written approval by Council before it can sign a works or construction contract that is not substantively based on either NZS3910: 2013 or NZS3915: 2005 (or any replacement or additional New Zealand Standard form construction contract) with

appropriate amendments or any standard form template approved by the Shareholding Councils for use by Wellington Water.

- 8.8 The Council will pay Wellington Water any amount payable by Wellington Water as principal to a third party contractor pursuant to clauses 8.1 or 8.3 as a result of the termination by Council of this Agreement or Council no longer requiring Wellington Water to provide the Management Services and Wellington Water will:
- 8.8.1 use its best endeavours to reduce the amount of the payment required of it;
 - 8.8.2 if requested by Council, co-operate with Council in a joint endeavour to reduce the amount of the payment; and
 - 8.8.3 transfer the contract to Council as principal and Council will assume the contract.
- 8.9 Wellington Water shall ensure that each contract entered into pursuant to this Agreement where Wellington Water is the Principal contains no prohibition on the transfer of such contract from Wellington Water to Council.
- 8.10 Any Bulk Water Supply Services asset created pursuant to a contract for capital work entered into by Wellington Water will be owned by the Council or, where applicable, those Shareholding Councils which have jointly requested Wellington Water to procure the capital works in accordance with arrangements made between Wellington Water and the Shareholding Councils in relation to that asset.
- 8.11 Any contract entered into by Wellington Water as principal pursuant to clauses 8.1 to 8.3 shall provide that the asset shall vest in the Council on Practical Completion or handover of the asset pursuant to that contract. As between Wellington Water and Council it is agreed that any interest in any such asset vest in Wellington Water pursuant to a contract or at law shall vest in Council on Practical Completion or handover of the asset.
- 8.12 To the extent permitted by law the parties agree that this Agreement is not intended and is not to be construed as a Construction Contract pursuant to the Construction Contracts Act 2002.

9 Resource Consents

- 9.1 Wellington Water will manage all Council's resource consents relating to Bulk Water Supply Services assets and operations managed by Wellington Water pursuant to this agreement, including those resource consents identified in Schedule 10.
- 9.2 To the extent that any of Council's resource consents are required to be transferred to Wellington Water to enable it to perform the Management Services, Council will use its best efforts to transfer such resource consents to Wellington Water and until such resource consents are transferred, Wellington Water will continue to act on behalf of Council, as if the resource consent had been transferred.
- 9.3 Wellington Water will maintain a direct relationship with the consent authority. For resource consents in Wellington Water's name, the Council asset owner will ensure that Wellington Water's approval is obtained prior to the Council asset owner communicating with the consent authority. Such approval shall not be unreasonably withheld or delayed.
- 9.4 Wellington Water will keep Council informed in relation to discussions with the consent authority. In line with clause 25.7, during discussions with the consent authority Wellington Water may not make any commitment or obligation on expenditure or other matter that may create the impression of a commitment by Council, without Council's prior written approval.

10 Reports, information, reviews and records

Reports

- 10.1 Wellington Water shall deliver reports to Council in relation to the Management Services Wellington Water provides. The reports shall contain the information set out in Schedule 3 and other information Council may reasonably require to be included from time to time.

Local Government Act 2002 Reporting

- 10.2 Wellington Water shall provide Council with reports to meet Council's reporting cycle, or at other such intervals as Council may specify to meet the requirements of the LGA 2002. This will include, but is not limited to, reports to support Council Bylaw reviews, and policy and strategy reviews.

Service Level Agreement Performance Report (“SLA Report”)

- 10.3 Wellington Water shall deliver an SLA Report covering the information set out in Schedule 3 to Council in relation to the Management Services Wellington Water provides on a quarterly basis, to be delivered by the 20th day of the month following quarter end.

Activity and Operations Reports

- 10.4 Wellington Water shall provide all other reports as outlined in the agreed Annual Work Programme (**AWP**).

Budgeting and Financial Reports

- 10.5 Wellington Water shall provide monthly financial reports and all other information required in a timely manner to meet Council's annual financial planning and financial reporting cycles in accordance with Council's timetable

Information and Audit

- 10.6 Wellington Water shall promptly provide such information relating to the Bulk Water Supply Services and/or the Management Services as Council shall reasonably request:
- 10.6.1 where such information relates to a matter that is of material interest to an elected member or the community;
 - 10.6.2 where the information relates to a matter that constitutes a legal, financial or reputational risk or liability to the Council or could reasonably give rise to any such risk or liability;
 - 10.6.3 where the information is reasonably required to enable the Council to fulfil its obligations under any contract with a third party;
 - 10.6.4 where the information is reasonably required to enable the Council to fulfil its obligations and/or carry out its functions under any law or legislative provision; and

Council will pay all of Wellington Water's costs and expenses incurred in fulfilling any such request.

Council audits

- 10.7 Council may reasonably, and at its own cost, monitor and audit Wellington Water's performance in the delivery of the Management Services from time to time. An audit may take the form of spot checks and/or a more formal audit. The objective of such audit shall be to ascertain the level of compliance by Wellington Water with the requirements of this agreement, with a particular focus on the quality of the Management Services and compliance with legislation, consents and standards.

- 10.8 Council will give the board of Wellington Water reasonable notice if a formal audit is to be undertaken and will consider feedback provided by the board on scope, timing or requisite reviewer expertise.
- 10.9 Wellington Water shall co-operate with Council and its auditors to provide access to such information, records, premises, Wellington Water personnel and subcontractors as shall be reasonably necessary to facilitate such audits.
- 10.10 In addition to the reports to be delivered under clause 10.1, Council may from time to time and at Council's cost, require Wellington Water to provide it with information concerning any aspect of the Management Services Wellington Water provides, acting reasonably. Wellington Water must endeavour to provide the information as soon as practicable or within a timeframe agreed with Council.

Reviews

- 10.11 The parties will meet to review this agreement at a time to be agreed, but no later than the third anniversary of the Commencement Date, and every third year after that. The purpose of the review will be to determine the extent to which:
 - 10.11.1 the provisions of this agreement are being complied with and are functioning adequately from a practical perspective;
 - 10.11.2 the Performance Measures and the Key Performance Indicators are appropriate; and
 - 10.11.3 any revision of the provisions of this agreement is necessary or desirable.

Records

- 10.12 Wellington Water must keep and maintain full records and documentation in relation to the Management Services and this agreement in accordance with the Public Records Act 2005, the Local Government Official Information and Meetings Act 1987, the Building Act 2004, the Water Services Act and any applicable standards or policies. Wellington Water must keep copies of these records in hard copy (where required by law) and in electronic form and must deliver a full set of both to Council on termination or expiry of this agreement.
- 10.13 Wellington Water must comply with clause 10.12 during the term of this agreement and for 7 years after the agreement set out in this agreement ends.
- 10.14 On request by Council, Wellington Water must make all documents and records relating to the Management Services available to Council for inspection by Council and/or its Personnel and, if required, copying.
- 10.15 The following records are to be provided to Council when available:
 - 10.15.1 'as built' records and asset information,
 - 10.15.2 asset management system data,
 - 10.15.3 Project Information Memoranda information,
 - 10.15.4 Land Information Memorandum information,
 - 10.15.5 Building compliance information, and
 - 10.15.6 such other records as reasonably required by Council from time to time
- 10.16 All asset data, records and documents referred to in clauses 10.12 to 10.15 must be kept and delivered (as applicable) in a form that is compatible with Council's information system and in accordance with a timeframe to be advised by Council from time to time.

11 Three Year Plan, Annual Work Programme, One Budget Charges and Additional Services

Three Year Plan and Annual Work Programme

- 11.1 By 1 September each year, or by another date agreed with Council, Wellington Water will provide to Council a draft rolling Three Year Plan, for the period from 1 July to 30 June of any one year.
- 11.2 The draft Three Year Plan will detail:
- 11.2.1 for the next Financial Year commencing 1 July;
 - (a) the full draft Annual Work Programme;
 - (b) the One Budget Charges for the next Financial Year commencing 1 July (and, from the Financial Year commencing 1 July 2019 following confirmation of Council's 2018-21 LTP, such One Budget Charges will not be less than the One Budget Charges forecasted for that Financial Year in the previous year's Three Year Plan, unless agreed otherwise);
 - (c) any proposed amendments to the Key Performance Indicators;
 - (d) any amendments to the Opex Charge Scope, Management Charge Scope, Contingency Sum or the Unexpected Event Reserve Cap; and
 - 11.2.2 for the following two Financial Years, the forecast high level Annual Work Programme and the forecast One Budget Charges.
- 11.3 Each year, Wellington Water and Council will agree a final Three Year Plan based on the draft provided under clause 11.1 and in accordance with the process and timeframes set out in Schedule 6. The final Three Year Plan will be approved by the Wellington Water Board and agreed in writing by the Chief Executives or delegated representatives of both Wellington Water and Council by 30 June each year, excluding any carry-forwards still to be agreed at that point.
- 11.4 Once agreed, the Three Year Plan may only be altered in terms of programme content and budget during the course of the Financial Year by written agreement of Wellington Water and Council.

One Budget Charges

- 11.5 Council will pay Wellington Water the One Budget Charges for each Financial Year as follows:
- 11.5.1 the Management Charge will be paid in twelve equal monthly instalments;
 - 11.5.2 the Opex Charge will be paid in twelve equal monthly instalments; and
 - 11.5.3 the Capex Charge will be paid in monthly instalments of such sums as are agreed in the Three Year Plan, or as otherwise agreed from time to time, to finance the performance of Annual Work Programme.
- 11.6 Wellington Water will invoice Council (in advance) for each monthly instalment of One Budget Charges by the twenty fifth (25) day of the preceding month. Each invoice must separately identify the Management Charge, Opex Charge and Capex Charge.
- 11.7 Council must pay all valid GST invoices from Wellington Water for the One Budget Charges by the 10th business day of the month to which the invoice relates.
- 11.8 If the Three Year Plan is not agreed by 30 June for the following Financial Year, until such time as the Three Year Plan is agreed, the One Budget Charges will be based on the amount forecast for that year in the Three Year Plan adopted the previous Financial Year. Once the Three Year

Plan is agreed, the One Budget Charges will be recalculated and the updated Three Year Plan (including the One Budget Charges) will be applied retrospectively from the start of the Financial Year.

Wellington Water to operate within One Budget Charges

11.9 Subject to clauses 11.4 and 11.15, Wellington Water must:

11.9.1 manage its operations within the agreed Management Charge; and

11.9.2 carry out the Annual Work Programme within the Opex Charge and the Capex Charge,

11.10 Wellington Water may, in its discretion and with its Board's approval, amend the allocation of funds between the Management Charge and the Opex Charge provided that the total sum of the Management Charge and the Opex Charge does not change.

Contingency Sum and treatment of overs and unders in expenditure

11.11 The parties acknowledge that the Opex Charge includes a Contingency Sum and agree that the Contingency Sum may be used by Wellington Water, at its discretion but subject to the reporting requirements in clause 10, during the Financial Year to manage its operations and/or fund Unexpected Events.

11.12 The parties acknowledge that there may be overs and/or unders in relation to expenditure of the Opex Charge and the Capex Charge against the Annual Work Programme and the following applies:

11.12.1 subject to clause 11.13, overs and/or unders in relation to expenditure of the Opex Charge do not require Wellington Water to repay any part of the One Budget Charges or entitle Wellington Water to increase the One Budget Charges.

11.12.2 the treatment of any overs and/or unders in relation to expenditure of the Capex Charge against the Annual Work Programme will be agreed by the parties as part of their regular review of expenditure and any agreed wash- up process.

11.13 At the end of each Financial Year, the unspent portion of the Contingency Sum (if any) will be:

11.13.1 transferred to the Unexpected Event Reserve; and

11.13.2 to the extent that the Unexpected Event Reserve exceeds the Unexpected Event Reserve Cap, repaid to Council.

Unexpected Events and the Unexpected Event Reserve

11.14 The parties acknowledge that

11.14.1 the Management Services require Wellington Water to manage Unexpected Events from time to time;

11.14.2 that Management Services required to respond to Unexpected Events are deemed to be Additional Services;

11.14.3 despite clauses 11.16 and 11.17, Wellington Water may undertake Additional Services in response to Unexpected Events where it is impracticable for Council to instruct or authorise Wellington Water, providing that Council may subsequently, by written notice:

(a) instruct Wellington Water to cease such response; or

- (b) require further Unexpected Events Costs to be agreed with Council in accordance with clause 11.17; and

11.14.4 that Unexpected Events Costs will be paid in accordance with clause 11.15.

11.15 Unexpected Events Costs incurred by Wellington Water will be paid, in the order given:

11.15.1 from the Unexpected Event Reserve to the extent that such funds are available; then

11.15.2 from the Contingency Sum, if such sum is available; then

11.15.3 to the extent that the amount is not available from the above sources, Council will ensure that sufficient funds are made available to Wellington Water to cover such Unexpected Events Costs.

Additional Services and contracts not covered by One Budget Charges

11.16 The parties acknowledge that, from time to time the parties may agree that Wellington Water will undertake Management Services that are Additional Services and, without limitation:

11.16.1 Council may ask Wellington Water to carry out, or propose, Additional Services; and/or

11.16.2 Subject to clause 11.14.3:

- (a) Wellington Water will notify Council if it considers that a direction from Council, or other circumstances, require it to carry out Additional Services; and
- (b) Council will, as soon as reasonably practicable after receiving notice required by 11.16.2(a), notify Wellington Water whether or not it considers the direction or other circumstances to be Additional Services.

11.17 Where Council has asked Wellington Water to carry out Additional Services under clause 11.16.1, or has notified Wellington Water under clause 11.16.2(b) that it considers a direction or other circumstances to be Additional Services:

11.17.1 Before the Additional Services commence (except in the case of an Unexpected Event where, for clarity, clause 11.14.3 applies) Wellington Water will advise Council as appropriate in the circumstances, either:

- (a) the value of the Additional Services, their programme and their impact (if any) on the Annual Work Programme; or
- (b) the mechanism under which the value of the Additional Services and the impact (if any) on the Annual Work Programme will be derived; or
- (c) a proposed budget for the Additional Services that must not be exceeded without further agreement between the parties.

11.17.2 Following receipt of Wellington Water's advice under clause 11.17.1, Council will agree, acting reasonably, with Wellington Water a value, a mechanism for valuing, or a budget (as applicable) for the Additional Services.

11.17.3 If the parties are unable to agree under clause 11.17.1, the matter will be treated as a dispute and resolved in accordance with clause 22.

11.18 Subject to agreement having been reached under clause 11.17, Wellington Water will invoice the Council for Additional Services (in the form of a valid GST invoice and separately to invoices for the One Budget Charges) and:

- 11.18.1 subject to clause 11.18.2, such invoices must be paid by Council no later than the 20th of the month following the invoice date.
- 11.18.2 Where Wellington Water is the principal under a contract, Council must pay all valid GST invoices for capital works charges within seven (7) business days of receiving an invoice from Wellington Water.
- 11.19 Where, as part of the Management Services or Additional Services, Wellington Water manages a contract between Council and a third party (where Council is Principal), Wellington Water must:
 - 11.19.1 ensure that invoices from the third party where appropriate are addressed to Council care of Wellington Water; and
 - 11.19.2 when satisfied that an invoice is in order for Council to pay, send an approval (as agreed between the parties) to Council to that effect together with the invoice.
- 11.20 An invoice from a third party will only be in order for Council to pay if:
 - 11.20.1 it is a valid GST invoice;
 - 11.20.2 all obligations of the third party that the invoice relates to have been met in accordance with the contract between Council and the third party;
 - 11.20.3 the invoice is for no more than the amount allowed under the contract for meeting those obligations; and
 - 11.20.4 there are no circumstances that entitle Council to, or suggest Council should as prudent business practice, dispute the invoice or withhold payment pursuant to the contract provisions.
- 11.21 Where, as part of the Management Services, Wellington Water manages a contract (where Council is Principal) whereby the third party provides services to Council and another Shareholding Council, Wellington Water must:
 - 11.21.1 ensure the third party accurately accounts for and invoices separately the services it provides to Council; and
 - 11.21.2 comply with clauses 11.19 and 11.20.
 - 11.21.3 Payments made by Council in relation to an invoice from Wellington Water for work undertaken on the provision of Water Services for Council must be paid promptly to the relevant supplier of that work.

Late payments

- 11.22 Where, as a result of any payment invoiced under clause 11 not being paid by the due date, Wellington Water is required to draw down on its credit facilities, the interest cost arising thereby will be charged to the Council or Shareholding Councils (as applicable).

GST

- 11.23 If any payment under this agreement is subject to GST, the amount payable is to be increased by the amount of the GST.

Disputed Invoices

- 11.24 Council will promptly pay all amounts payable by it to Wellington Water under this agreement and will not intentionally withhold or threaten to withhold any payment due to Wellington Water, notwithstanding any dispute between Council and Wellington Water, whether as to the performance of the Management Services, the amount of the invoice or otherwise.

- 11.25 On request by Council, Wellington Water will promptly provide Council with such information and analysis in connection with the calculation of any amount invoiced to Council by Wellington Water as Council may reasonably request.

12 Intellectual Property

Ownership of intellectual property

- 12.1 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the performance of the Management Services for Council will vest in, and belong to, Council on creation. Council grants Wellington Water a revocable, non-transferable and royalty free licence to exercise all Council intellectual property rights in its Intellectual Property, for the purposes of providing the Management Services to Council. Wellington Water's licence from Council terminates when this agreement terminates.
- 12.2 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the performance of the Management Services generally and not for a particular Council will vest in, and belong to, Wellington Water on creation. Wellington Water grants Council a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-license) to exercise all Wellington Water's intellectual property rights in its Intellectual Property.
- 12.3 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the efforts of a third party in connection with the performance of a contract relating to Bulk Water Supply Services between Council and that third party will, as between Council and Wellington Water, vest in, and belong to, Council. If Council obtains from a third party Intellectual Property relating to the Management Services, Council will endeavour to obtain a royalty free licence for Wellington Water to use that Intellectual Property to the extent necessary for Wellington Water to meet its obligations to Council under this agreement.

Wellington Water's material

- 12.4 If any material, matter or thing (including software, documentation or data) is owned by Wellington Water and such material, matter or thing is incorporated in or attached to any Intellectual Property owned by Council (whether pursuant to clause 12.1 or otherwise), Wellington Water grants Council a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-license) to exercise all intellectual property rights in such material, matter or thing for the purpose of accessing and using the Intellectual Property owned by Council as referred to in this clause.

No infringement

- 12.5 Wellington Water must not infringe the intellectual property rights of Council or a third party in connection with this agreement.

13 Operation and management of Wellington Water

- 13.1 Without limiting the obligations and duties of Wellington Water or its directors, Wellington Water:
- 13.1.1 must comply with the objectives in section 59 of the LGA 2002, including to be a good employer, to exhibit a sense of social and environmental responsibility and to conduct its affairs in accordance with sound business practice;
 - 13.1.2 must make all decisions in accordance with its statement of corporate intent and its constitution in accordance with section 60 of the LGA 2002;
 - 13.1.3 must maintain operative business continuity plans, emergency response plans, and alternative site arrangements for the Bulk Water Supply Services and the Management Services'
 - 13.1.4 must maintain operative and health and safety plans for all Bulk Water Supply Services, Management Services, operational activities and capital projects; and

13.1.5 must comply with all relevant legislation.

14 Confidentiality

Obligations of confidence

14.1 Where Wellington Water receives Confidential Information from Council under this agreement or otherwise in connection with the Management Services, Wellington Water must:

- 14.1.1 keep the Confidential Information confidential;
- 14.1.2 not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of this agreement;
- 14.1.3 not, without Council's written consent, disclose Confidential Information to any person other than its personnel or Council's personnel who need the information for the purposes of this agreement; and
- 14.1.4 establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

Further permitted use and disclosure

14.2 Notwithstanding clause 14.1, Wellington Water may use or disclose Confidential Information to the extent necessary to:

- 14.2.1 comply with any law, binding directive of a regulator or a court order; or
- 14.2.2 obtain professional advice in relation to matters arising under or in connection with this agreement.

14.3 Where Wellington Water believes it is required to disclose Council's Confidential Information pursuant to the Local Government Official Information and Meetings Act 1987, Wellington Water must notify and consult with Council prior to any disclosure of the information and, where appropriate, Wellington Water will refer the request for Confidential Information to Council and Council will take responsibility for the request.

Exclusions

14.4 Clause 14.1 does not apply to Confidential Information:

- 14.4.1 which was known to Wellington Water at the time of disclosure, unless such knowledge arose through the breach of an obligation of confidence; or
- 14.4.2 which Wellington Water acquires from a third party (other than Council personnel) where that third party was entitled to disclose it.

Responsibility for Personnel

14.5 Wellington Water must ensure that its Personnel do not do, or omit to do anything, which if done or omitted to be done by Wellington Water, would breach this clause 14.

Undertakings from Personnel

14.6 Council may at any time require any Personnel of Wellington Water engaged in the performance of obligations under this agreement to give written undertakings in a form prepared by Council relating to the non-disclosure of the Confidential Information and Wellington Water must promptly arrange for all such undertakings to be given.

Notification of unauthorised use

- 14.7 Wellington Water must immediately notify Council of any potential, suspected or actual unauthorised use, copying or disclosure of Council's Confidential Information.

Return of Confidential Information

- 14.8 Wellington Water must immediately on demand or on completion or termination of this agreement, return to Council any documents in its possession, power or control containing Confidential Information. Wellington Water must not retain copies of any Council Confidential Information in any form.

Obligations to continue after agreement ends

- 14.9 All obligations of confidence set out in this agreement continue in full force and effect after the agreement set out in this agreement ends.

15 Warranties

General warranties

- 15.1 Each party represents and warrants to the other on a continuing basis that:
- 15.1.1 it has full corporate power to enter into and give effect to this agreement and to complete the transactions contemplated by this agreement;
 - 15.1.2 it has taken all necessary action to authorise the execution, delivery and performance of this agreement;
 - 15.1.3 at the date of this agreement, the execution, delivery and performance of this agreement by it does not contravene any contractual, legal or other obligations that apply to it; and
 - 15.1.4 on execution of this agreement, its obligations under this agreement will be valid, binding and enforceable.

Performance of Management Services

- 15.2 Wellington Water represents and warrants to Council on a continuing basis that:
- 15.2.1 Wellington Water holds all licences, permits, consents and authorisations required under any law in relation to the provision of the Management Services and will continue to do so at all times during the term of this agreement;
 - 15.2.2 Wellington Water will use its best endeavours to meet or exceed both the Performance Measures and the KPIs.

16 Liability

Limited liability

- 16.1 Subject to clause 16.2, Wellington Water will not be liable in damages to Council, nor will Council be liable in damages to Wellington Water, for any claims, actions, liabilities, loss, costs or expenses whatsoever arising directly or indirectly out of any damage or loss arising from any breach of this agreement by Wellington Water or Council (as the case may be), or from any negligence, act or omission of it or its Personnel.
- 16.2 Despite clause 16.1:
- 16.2.1 a party is liable to pay all amounts properly payable by that party to another party pursuant to this agreement;

- 16.2.2 Wellington Water must undertake any actions necessary to protect Council's interests, including any follow up action required in situations of possible or actual loss (economic or otherwise) to Council; and
- 16.2.3 if Wellington Water recovers compensation from a third party (including an insurer) in respect of an occurrence that Wellington Water would, in the absence of clause 16.1, be liable to Council for, Wellington Water will be liable to pay to Council the compensation recovered by Wellington Water, less Wellington Water's reasonable costs.

Third party claims

- 16.3 In respect of each claim made, or action taken, against Wellington Water by a third party (other than Wellington Water's Personnel) which Wellington Water may incur in, or which may arise from, it carrying out its duties and obligations to Council under this agreement, Council will pay the amount of:
 - 16.3.1 Wellington Water's liability to the third party; and
 - 16.3.2 Wellington Water's losses, costs and expenses,to the extent that Wellington Water cannot recover these amounts under its insurance (including the amount of any excess) or from a third party.
- 16.4 Where a claim to which clause 16.3 may apply is made against Wellington Water, Wellington Water must:
 - 16.4.1 forthwith advise Council of the claim; and
 - 16.4.2 comply with any directions given at any time by Council to Wellington Water in relation to the claim to protect Council's interests including follow up action required in situations of possible or actual loss (economic or otherwise).
- 16.5 Council is authorised by Wellington Water to notify other Shareholding Councils of any such third party claim.
- 16.6 If Council has paid a liability of Wellington Water pursuant to clause 16.3 and Wellington Water recovers compensation under its insurance or from a third party in respect of the occurrence giving rise to the liability, Wellington Water will pay to Council the compensation recovered by Wellington Water, but not exceeding the amount paid by Council, less Wellington Water's reasonable costs.
- 16.7 Clause 16 refers to claims, actions, liabilities, losses, costs or expenses whatsoever arising directly or indirectly out of damage or loss of any activity undertaken by Wellington Water in the provision of Management Services without limitation irrespective of whether the Management Services consist of capital works, maintenance, operations, activities or provision of advice.

17 Insurance

Insurance

- 17.1 While Wellington Water is providing services (whether to Council or third parties), Wellington Water must maintain:
 - 17.1.1 public liability insurance for an amount not less than \$20 million in respect of any claim;
 - 17.1.2 professional indemnity insurance for an amount not less than \$5 million in respect of any claim by a third party;

- 17.1.3 motor vehicle insurance for an amount not less than \$2 million in respect of any claim by a third party;
 - 17.1.4 general insurance for repair and replacement of all items used by Wellington Water to provide the Management Services that are lost or damaged; and
 - 17.1.5 statutory liability insurance for an amount not less than \$2 million in respect of any claim.
- 17.2 Council must maintain insurance of Bulk Water Supply Services assets the subject of the Management Services as a council would reasonably procure which may include such self-insured portion as the Council shall elect.
- 17.3 Subject to the termination transition arrangements in clause 20, Wellington Water's professional indemnity cover should be maintained for a period of 6 years after the expiry or termination of this agreement.

Insurer and terms

- 17.4 Each policy maintained in accordance with this clause 17 must be with a reputable insurer and be on terms commonly acceptable in the current insurance market.

Protection of insurance

- 17.5 Each party must comply with and observe the terms of all insurance policies referred to in clauses 17.1 and 17.2 and must not do anything which could result in any policy being rendered void or voidable. Each party must also comply with the terms of any notification or management process for a claim under a policy referred to in clauses 17.1 and 17.2.

Evidence of insurance

- 17.6 Each party must deliver to the other party evidence satisfactory to the other party that it has a particular insurance policy and that the policy is current. This should be delivered to each party's representative under this agreement as soon as possible following renewal of any such policy.

18 Termination

- 18.1 Council may give Wellington Water written notice immediately terminating this agreement if Wellington Water ceases to carry on business, is about to become insolvent, or has a liquidator appointed to it or a receiver appointed for all or any of its assets.
- 18.2 Council may terminate this agreement on not less than twelve (12) weeks written notice to Wellington Water if:
- 18.2.1 Wellington Water is in material breach of this agreement; and
 - 18.2.2 the breach is capable of remedy; and
 - 18.2.3 Wellington Water has not remedied the breach within sixty (60) days after receiving notice requiring it to do so.
- 18.3 Council may terminate this agreement on not less than six (6) months written notice to Wellington Water if Wellington Water fails to achieve a Mandatory Key Performance Indicator in any three consecutive years.
- 18.4 Either party may terminate this agreement with effect as at 30 June in any year provided it gives written notice of termination to the other party no later than 30 June the previous year and the party giving notice has the written agreement of five (5) of the six (6) Shareholding Councils.
- 18.5 Council may terminate this agreement with effect from any given date provided it gives written notice of termination to Wellington Water and to the other Shareholding Councils no later than 36 months previous to that date.

Three Waters Structural Reform

- 18A.1 Council and Wellington Water acknowledge that the Crown (through the Department of Internal Affairs) has progressed a national programme for the transformation of local government three waters service delivery arrangements (**Crown Reform Proposal**), which would see the creation, by statute, of four new water service delivery entities that would be responsible for the ownership of all assets associated with, and the delivery, supply and management of, drinking water, stormwater and wastewater.
- 18A.2 Each of Council and Wellington Water acknowledges that if the Crown implements the Crown Reform Proposal, then it may be necessary to transition and migrate some or all of the Management Services, Bulk Water Supply Services, Network and/or any other matter contemplated by this agreement to one or more service delivery entities established as part of the Crown Reform Proposal. To the extent that any such transition or migration is required in connection with the Crown Reform Proposal, then each of Wellington Water and the Council will:
- 18A.2.1 act in good faith to:
- (a) jointly develop and agree a transition plan, setting out the respective tasks to be accomplished by each party in connection with an orderly transition to the arrangements as set out under the Crown Reform Proposal and a schedule for the completion of the tasks;
 - (b) agree any amendments to the Management Services as may be necessary in connection with the transition to the arrangements as set out under the Crown Reform Proposal,
- in each case on the basis that unless otherwise required pursuant to the Crown Reform Proposal, Wellington Water will continue to deliver the Management Services in accordance with the terms of this agreement and all applicable laws (until such time as these arrangements are terminated by the Crown Reform Proposal); and
- 18A.2.2 perform their respective tasks under the transition plan developed under clause 18A.2.1.
- 18A.3 The parties acknowledge that the Crown may request that Wellington Water assists with the transition to any Crown Reform Proposal, including by way of establishing a transition unit within Wellington Water and/or transferring or seconding personnel to a new agency (**Transition Services**). Following any such request, Wellington Water will use commercially reasonable endeavours to procure funding from the Crown for all or part of the costs of any new employees, seconded employees or transferred employees that Wellington Water is required to engage or provide in connection with the Transition Services, provided that any costs or expenses that Wellington Water incurs in connection with any such Transition Services and which it is not able to recover from the Crown will constitute Management Charges for the purposes of this agreement.
- 18A.4 Wellington Water confirms that it will provide the Transition Services, if any, in accordance with good industry practice and in a manner that minimises the costs and expenses of those Transition Services to the extent reasonably practicable.
- 18A.5 If the Crown requests that Wellington Water seconds and/or transfers any Wellington Water employees to a new agency in connection with the Crown Reform Proposal, then where Wellington Water considers (acting reasonably) that the secondment or transfer of such employee may adversely impact the performance of the Management Services, then:

- 18A.5.1 Wellington Water will notify the Council, including such detail as may be reasonably necessary for the Council to assess the potential impact to the Management Services and/or costs arising out of the transfer or secondment of such employee; and
- 18A.5.2 Wellington Water will consult with each Shareholding Council (including the Council) in respect of any such secondment or transfer (including the terms thereof) prior to approving any such secondment or transfer.
- 18A.6 The parties acknowledge that clauses 19 and 20 of this agreement shall be without prejudice to any termination, transition and/or migration arrangements in respect of the Management Services, Bulk Water Supply Services, the Network and/or any other matter contemplated by this agreement pursuant to statute or other legislative instrument in connection with the Crown Reform Proposal.

19 Obligations at end of agreement

Return of property

- 19.1 When the agreement set out in this agreement ends, whether by expiration of the term or on earlier termination:
- 19.1.1 all sums outstanding or incurred in relation to this agreement prior to the Expiry Date or termination must be immediately paid;
- 19.1.2 Council may instruct Wellington Water to:
- (a) continue providing all or part of the Management Services while termination transition takes place under clause 20, at a reasonable cost based on, and no more than, the charges then payable under this agreement;
 - (b) deliver all or any part of the Property to an address nominated by Council;
 - (c) make all or any part of the Property available for collection, at the premises of Wellington Water at an agreed time;
 - (d) permit Council's Personnel to have access to Wellington Water's premises for the purposes of removing all or any part of the Property;
 - (e) reasonably assist Council or its new service provider to install Council's equipment and any other equipment procured by Council in connection with the termination transition;
 - (f) retain or destroy all or any part of the Property; and/or
 - (g) proceed with termination transition under clause 20 in relation to the relevant Service(s).
- 19.2 Wellington Water must immediately comply with any instructions given by Council pursuant to clause 19.1.2.
- 19.3 Council will pay Wellington Water's reasonable costs and expenses incurred in complying with clause 19.1 insofar as such compliance requires the performance of:
- 19.3.1 services in addition to the Management Services;
- 19.3.2 the Management Services after the expiration of termination of this agreement.

Consequences of termination

- 19.4 If the agreement set out in this agreement expires or is terminated for any reason:
- 19.4.1 each party retains its rights under this agreement and at law in respect of any breach of this agreement by the other party; and
 - 19.4.2 Wellington Water will not be entitled to any other payment or any compensation as a result of termination, subject to clause 19.3; and
 - 19.4.3 the parties will agree in good faith whether any part of the One Budget Charges received by Wellington Water (and that have not been spent or irrevocably committed as part of the Management Services) should be repaid to Council.

Clauses survive expiration or termination of agreement

- 19.5 This clause and the following clauses will survive the expiration or termination (for whatever reason) of this agreement:
- 19.5.1 clauses 10.1 through 10.12 (Reports, information, reviews and records);
 - 19.5.2 clause 12 (Intellectual Property);
 - 19.5.3 clause 14 (Confidentiality);
 - 19.5.4 clause 16 (Liability);
 - 19.5.5 clause 19 (Obligations at end of agreement);
 - 19.5.6 clause 20 (Termination transition);
 - 19.5.7 clause 22 (Dispute resolution); and
 - 19.5.8 any other clauses that make provision for continued operation.

20 Termination transition

- 20.1 Wellington Water acknowledges and agrees that both prior to and following the expiry or termination of the agreement set out in this agreement, Council must be able to maintain continuity of services whilst finding a new service provider for the ongoing provision of the Management Services, or resume providing the Management Services itself.
- 20.2 Wellington Water will comply with Council's reasonable directions to effect an orderly transition and migration of the Management Services from Wellington Water to the new service provider in accordance with the following procedures:
- 20.2.1 Wellington Water and Council will promptly and jointly develop and agree a transition plan, setting out the respective tasks to be accomplished by each party in connection with an orderly transition and a schedule for the completion of the tasks;
 - 20.2.2 Wellington Water and Council will perform their respective tasks under the transition plan developed under clause 20.2.1;
 - 20.2.3 Wellington Water and Council will discuss the transfer of any Wellington Water employees that Wellington Water identifies as being surplus to its requirements or who Council requests to be transferred;
 - 20.2.4 Wellington Water will transfer to Council any assets originally transferred to Wellington Water by Council and which are still held by Wellington Water and have not been paid

for, and any other assets which Wellington Water identifies are surplus to its requirements and which Council requests to be transferred;

- 20.2.5 Wellington Water will, upon request, provide Council with detailed specifications for any equipment which Council or any new service provider will require to properly perform the Management Services;
 - 20.2.6 where it is reasonably necessary to do so in order to maintain continuity of the Management Services, Wellington Water will deliver to Council all data (in electronic form compatible with Council's information system) which is being used by Wellington Water in connection with the Management Services;
 - 20.2.7 Wellington Water will provide any training reasonably requested by Council for its employees or employees of the new service provider who will have responsibility for the Management Services following termination transition; and
 - 20.2.8 Wellington Water will provide all information relating to the Management Services reasonably requested by Council by written notice.
- 20.3 Unless this agreement has been terminated by Council due to a breach of the agreement by Wellington Water that has not been remedied in accordance with clause 18.2, Council will pay Wellington Water its reasonable costs and expenses in complying with clause 20.2 insofar as such compliance requires:
- 20.3.1 the performance of services which are in addition to the Management Services.
 - 20.3.2 performance of the Management Services after the expiration or termination of this agreement.

21 Partnering

- 21.1 Wellington Water and Council agree that where practicable their relationship under this agreement will be characterised by the 'partnering' style of relationship as set out in Schedule 5 and in accordance with the following:
- 21.1.1 **Partnering** is a method of operating a contractual relationship to promote prompt and constructive communication and a problem solving approach between the parties. Partnering has three primary objectives:
 - (a) ensuring that this agreement operates smoothly;
 - (b) to promote value adding to both the provision of the Management Services and each party's separate interests; and
 - (c) to facilitate the avoidance of disputes;
 - 21.1.2 the parties will implement partnering in this agreement in accordance with the style of partnering set out in Schedule 5.
 - 21.1.3 the use of partnering techniques and the adoption of the style of partnering set out in Schedule 5 does not in any way imply any fiduciary obligations, obligation of good faith, partnership and/or joint venture between the parties; and
 - 21.1.4 the partnering information set out in Schedule 5 is subordinate to the provisions of this agreement and shall not be considered as overriding, amending or waiving any contractual rights or obligations.

22 Dispute resolution

Meeting to attempt to resolve disputes

- 22.1 If a dispute arises under this agreement, a party to the dispute may at any time give written notice to the other party to the dispute requesting that a meeting take place to seek to resolve the dispute. The Representatives of the parties to the dispute must meet within ten business days of the giving of the notice and endeavour to resolve the dispute in good faith.
- 22.2 If such meeting does not take place or if five business days after the meeting the dispute remains unresolved, the dispute must be referred to the Chief Executives of the parties who must negotiate in good faith to resolve the dispute. If after five business days of the dispute being referred to the Chief Executive the dispute remains unresolved, a party to the dispute may refer it to the mediation of a single mediator.
- 22.3 The referral to mediation shall be commenced by one party to the dispute serving written notice (a **Mediation Notice**) on the other party requiring the dispute to be referred to a mediator to be appointed by the parties. Failing agreement within five business days after, and exclusive of, the date of service of the Mediation Notice, the mediator shall be appointed at the request of either party by the chairperson or any other office holder for the time being of LEADR NZ (Leading Edge Alternative Dispute Resolvers), or the nominee of such chairperson or other office holder. The guidelines that govern the mediation shall be set by the parties. Failing agreement within five business days after the appointment of the mediator, either party may request the mediator to set the guidelines (whether or not in conjunction with such party) that govern the mediation proceedings.
- 22.4 The parties acknowledge that the purpose of exchange of information or documents or the making of any offer of settlement pursuant to clauses 22.2 and 22.3 is to attempt to settle the dispute between the parties. Neither party may use any information, documents or offer obtained solely by reasons of clauses 22.2 and 22.3 for any purpose other than in an attempt to settle the dispute in the context of negotiation and mediation.
- 22.5 Subject to any right any party may have to apply to a court for any interim or preliminary relief in respect of the dispute, completion or termination of the mediation shall be a condition precedent to the arbitration of the dispute or any part of it.
- 22.6 If the parties are unable to resolve the dispute by mediation within ten business days of the establishment of the mediation guidelines, the dispute shall be referred to and finally resolved by arbitration by a sole arbitrator under the Arbitration Act 1996. The arbitral proceedings shall be commenced by one party serving written notice (an **Arbitration Notice**) on the other and requiring the dispute to be referred to arbitration. The arbitrator shall be appointed by the parties, or failing agreement within five business days after, and exclusive of, the date of service of the Arbitration Notice, shall be appointed at the request of either party by the president or vice-president for the time being of the New Zealand Law Society or the nominee of such president or vice-president. The arbitration shall be conducted as soon as possible at Wellington, New Zealand. Clauses 3 and 6 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under this agreement. All other clauses in the Second Schedule shall not apply.
- 22.7 Each party shall bear its own costs, expenses and fees incurred pursuant to clauses 22.2, 22.3 and 22.6 and shall equally share the mediator's and arbitrator's fees and expenses.
- 22.8 Every party to a dispute shall act promptly with respect to the appointment of any mediator or arbitrator and in respect of all other matters and proceedings relating to the mediation and arbitration.
- 22.9 The parties to a dispute will be bound by any decision or award of the arbitrator made in accordance with the Arbitration Act 1996, subject to the rights of appeal provided by that Act.

Performance of obligations

22.10 During a dispute, the parties to it must continue to perform their respective obligations under this agreement.

Interlocutory relief and right to terminate

22.11 Clauses 22.1 to 22.10 do not restrict or limit the right of either party to obtain interlocutory relief, or to immediately terminate this agreement where this agreement provides such a right.

23 Priority

23.1 In the event of any inconsistency, this agreement must be interpreted in accordance with the following order of priority:

23.1.1 the terms and conditions set out in the body of this agreement; then

23.1.2 the Schedules; and then

23.1.3 any other documents or information incorporated by reference into this agreement

24 Notices

Giving notices

24.1 Any notice, consent, information, application or request that must or may be given or made to a party under this agreement is only given or made if it is in writing and sent in one of the following ways:

24.1.1 delivered or posted to that party at its address set out in Schedule 1; or

24.1.2 emailed to that party at the email address set out in Schedule 1.

Change of address or email

24.2 If a party gives the other party three business days' notice of a change of its postal address or email address, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address or email address.

Time notice is given

24.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

24.3.1 if it is delivered, when it is left at the relevant address;

24.3.2 if it is sent by post, three business days after it is posted; or

24.3.3 if it is sent by email, one business day after it is sent.

24.4 If any notice, consent, information, application or request is delivered or received on a day that is not a business day, or if on a business day, after 5 pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

25 Miscellaneous

Approvals and consent

- 25.1 Except as otherwise set out in this agreement, an approval or consent to be given under this agreement may not be unreasonably withheld, and may be given subject to reasonable conditions.

Assignment

- 25.2 A party may not assign any of its rights or obligations under this agreement without the prior written consent of the other party.

Costs

- 25.3 Except as otherwise set out in this agreement, each party must pay its own costs in relation to preparing, negotiating and executing this agreement and any document related to this agreement.

Execution of separate agreements

- 25.4 This agreement is properly executed if each party executes either this agreement or an identical agreement. In the latter case, this agreement takes effect when the separately executed agreements are exchanged between the parties.

Further acts

- 25.5 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

No agency or partnership

- 25.6 The relationship between the parties is that of principal and contractor. Wellington Water must not represent itself as an agent or representative of Council except where required to perform the Management Services in accordance with this agreement.

No authority to act

- 25.7 No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this agreement or by express written agreement between the parties.

Severability

- 25.8 If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

Survival of indemnities

- 25.9 Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination of this agreement.

Variation

- 25.10 No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement and is in accordance with clause 4.7.

Waiver

- 25.11 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

26 Definitions and interpretation

Definitions

- 26.1 In this agreement the following definitions apply:

drinking water, drinking water supplier, drinking water supply, operator, owner, stormwater network, stormwater network operator have the meanings given to them in the Water Services Act.

Additional Services means management services:

- (a) included within the Three Year Plan or Annual Work Programme, but not covered by the Management Charge Scope, Opex Charge Scope or Capex Scope (as applicable);
- (b) not included in the agreed Annual Work Programme; and/or
- (c) carried out in response to Unexpected Events.

Amendment Agreement (Third) means the amendment and restatement agreement dated 11 April 2022 ~~2021~~ between Wellington Water and Council, pursuant to which this agreement was amended and restated.

Amendment and Restatement Date means the “Effective Date”, as such term is defined in Amendment Agreement (Third)

Annual Work Programme means the programme prepared and agreed in accordance with clause 11, of all Management Services to be undertaken in a financial year including:

- (a) the detailed work programme;
- (b) timing of work;
- (c) any changes to Key Performance Indicator targets; and
- (d) any specific detailed Council requirements set out in Schedule 9.

Approved Regional Policy means a regional policy developed by Wellington Water and agreed by the Shareholding Councils, or:

- (a) where the regional policy does not relate to Bulk Water Supply, agreed by the Four Cities; or
- (b) where the regional policy relates solely to Bulk Water Supply, agreed by Council.

Asset Management Plans means those as described as a requirement in the LGA 2002 and approved by Council.

Bulk Water Supply means the provision of drinking water to the points of supply to each of the Four Cities.

Bulk Water Supply Services means Bulk Water Supply and the Stormwater Services, the maintenance and expansion of the Network, the planning for and provision of water conservation strategies to the public and such other deliverables in relation to the supply and maintenance of a sustainable, accessible and high quality water service that Council determines that it wishes to provide and as set out in its then current Long Term Plan.

Capex Charge means the annual charge agreed with the Council in the Three Year Plan (based on agreed values determined in Council's annual planning process), to be utilised by Wellington Water for payments of capital expenditure due under Bulk Water Supply Services capital works contracts that fall within the Capex Charge Scope.

Capex Charge Scope means the capital works costs covered by the Capex Charge as detailed in the Annual Work Programme.

Commencement Date is as set out in Schedule 1.

Companies Act means the Companies Act 1993.

Confidential Information means any information provided by Council or any of its Personnel to Wellington Water or any of its Personnel, or otherwise obtained by Wellington Water or any of its Personnel, whether obtained before or after execution of this agreement, in connection with Council, the Management Services or this agreement. It includes:

- (a) all confidential business information, documents, records, financial
- (b) information, personal information under the Privacy Act 1993, reports, technical information and forecasts which relate to Council or its operations;
- (c) Council's Property;
- (d) Council's Intellectual Property; and
- (e) any information created under or arising out of the provision of
- (f) Management Services under this agreement including information which
- (g) Council could lawfully withhold under the Local Government Official Information and Meetings Act 1987.

it does not include.

- (a) information which is in or becomes part of the public domain, other than through a breach of this agreement of an obligation of confidence owed to Council or any of its Personnel; or
- (b) which Wellington Water can prove by contemporaneous written documentation was independently acquired or developed without breaching any of the obligations set out in this agreement.

Contingency Sum means the values that are not allocated to specific services, work or projects in the Annual Work Programme but that are included in the operational budget

agreed with Council as part of the Three Year Plan for performance of the Annual Work Programme

Council Policies means standards, policies and similar written documents in force for Council that relate to or govern the provision of Management Services or Bulk Water Supply Services. The Council Policies provided at Commencement date are listed in Schedule 8.

Expiry Date is as set out in Schedule 1.

Financial Year means a twelve month period commencing on 1 July and ending on 30 June.

Four Cities means WCC, UHCC, HCC and PCC.

Governance Charge means the monthly charge for Wellington Water's governing expenses including directors' fees and professional indemnity insurance, audit fees and other consultancy fees relating to Wellington Water's governance.

GST means the goods and services tax levied under the Goods and Services Tax Act 1985.

HSE Act means the Health and Safety at Work Act 2015.

Intellectual Property includes copyrights, patents, trademarks, designs, brands, logos and circuit layouts, inter alia.

Key Performance Indicators (KPIs) means the standards agreed by Wellington Water and Council annually by which Wellington Water's performance under this agreement will be assessed, as set out in Wellington Water's Statement of Intent (prepared in accordance with the LGA 2002) and/or as otherwise agreed from time to time (including in the Three Year Plan), with agreed individual targets for Council.

LGA 2002 means the Local Government Act 2002.

Long Term Plan (LTP) means as described as a requirement in the LGA 2002.

Loss means any loss including any liability, cost, expense (including legal costs on a full indemnity basis), claim, proceeding, action, demand or damage.

Management Charge means the annual charge agreed with the Council in the Three Year Plan in the relevant year for:

- (a) Wellington Water's internal costs of providing the Management Services (in respect of both operational and capital activities), in accordance with the Annual Work Programme;
- (b) complying with applicable law in connection with the performance of the Management Services; and
- (c) the Governance Charge,

as further described in the Management Charge Scope.

Management Charge Scope means the scope of management costs covered by the Management Charge, as set out in Schedule 4.

Management Services means both the internal and external supply of labour, personnel, professional and consultant services to the Council which are necessary or desirable to carry out on the Council's behalf the management of the Bulk Water Supply Services and/or the Stormwater Services as agreed in the Annual Work Programme and which may include, without limitation, those services listed in Schedule 2.

Mandatory Key Performance Indicators means the critical KPIs agreed from time to time as mandatory KPIs and set out in Wellington Water's Statement of Intent (prepared in accordance with the LGA 2002) and/or the Three Year Plan.

Network means all of the infrastructure for water collection (excluding water collection land), water treatment, distribution, storage and other assets of the Council that are owned by it or used in the provision of Bulk Water Supply to customers of the Council, and the infrastructure and assets owned by the Council for the disposal of stormwater, and includes any additions or new assets added to the network during the term of this contract.

Objectives means the objectives set out in clause 2.

One Budget Charges means the Management Charge, Opex Charge and Capex Charge.

Opex Charge means the annual charge agreed with the Council in the Three Year Plan for the relevant year (based on agreed values determined in Council's annual planning process), to be utilised by Wellington Water for payments of the operational costs due under Bulk Water Supply Services operations and maintenance contracts as further detailed in the Opex Charge Scope, and includes the Contingency Sum.

Opex Charge Scope means the scope of operational costs covered by the Opex Charge, as set out in Schedule 4.

Owner Obligation means each of the following obligations of Council as owner of a drinking water supply under the Water Services Act that are not an obligation on the operator of such drinking water supply:

- (a) registering a drinking water supply, and renewing the registration of the drinking water supply, in accordance with ss23 and 56 of the Water Services Act;
- (b) preparing and lodging a drinking water safety plan with the Regulator in relation to Council's drinking water supply, in accordance with s30 of the Water Services Act; and
- (c) notifying the Regulator of any change in the registered drinking water supply information provided under s54(2), in accordance with s56(3) of the Water Services Act.

Performance Measures means any other performance measures that are not Key Performance Indicators (however described) relating to Management Services included in the Council LTP, Annual Plan, Asset Management Plans, business plans or contracts.

Personnel means any director, officer, employee, agent, contractor or professional adviser of a party.

Property means all property of Council held by Wellington Water from time to time in connection with the performance of this agreement including, without limitation, documents,

data and records relating to the Management Services and associated assets and infrastructure, and documents, data and records produced by Wellington Water in connection with providing the Management Services to Council.

Regulator means Taumata Arowai, in its capacity as water services regulator established by section 8 of the Taumata Arowai-the Water Services Regulator Act 2020.

Representative means each party's representative appointed under clause 5 and specified in Schedule 1.

Shareholding Councils means the councils that are shareholders in Wellington Water. At Amendment and Restatement Date, these are Council, WCC, HCC, UHCC, PCC, and SWDC.

SLA Report means the reporting as outlined in Schedule 3.

Statutory Powers means the statutory responsibilities, duties and powers given to Council by statute, and delegated to Wellington Water by Council under this agreement.

Stormwater Services means the disposal of stormwater drainage on the Network.

Three Year Plan means the three year plan prepared and agreed in accordance with clause 11, of Management Services to be undertaken in the three year period covered by the plan, including the Annual Work Programme and the One Budget Charges.

Unexpected Event means an event requiring management of Bulk Water Supply Services that is not in the Annual Work Programme, being an event beyond the reasonable control of Wellington Water or the Council including acts of god, floods, storms, earthquakes, fires, power failures, riots, strikes, lockouts, war, terrorism or government action.

Unexpected Event Costs means costs due under Bulk Water Supply Services operations and maintenance contracts to manage Unexpected Events.

Unexpected Event Reserve means the amount of any unspent Contingency Sum (up to the Unexpected Event Reserve Cap) retained by Wellington Water and available to pay for operational costs incurred by Wellington Water due to Unexpected Events.

Unexpected Event Reserve Cap means the sum set out in Schedule 4.

Water Services Act means the Water Services Act 2021 once relevant parts, or all, of that Act is in force.

Interpretation

26.2 In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:

26.2.1 headings are inserted for convenience only and do not affect the interpretation of this agreement;

26.2.2 a reference in this agreement to a business day means a day on which banks are open for business generally in Wellington other than a Saturday or Sunday;

26.2.3 if the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day;

- 26.2.4 a reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- 26.2.5 words and expressions in this agreement that are defined in the LGA 2002 have the meaning given in that Act;
- 26.2.6 a reference in this agreement to any policy, plan, agreement or document is to that policy, plan, agreement or document as amended, noted, supplemented or replaced;
- 26.2.7 a reference to a clause, part, schedule or appendix is a reference to a clause, part, schedule or appendix of or to this agreement;
- 26.2.8 an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate, local authority or governmental agency;
- 26.2.9 where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 26.2.10 a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- 26.2.11 references to the word 'include' or 'including' are to be construed without limitation;
- 26.2.12 a reference to this agreement includes the agreement recorded in this agreement; and schedules and appendices form part of this agreement.

Execution and date

Executed as an agreement.

Signed for and on behalf of
Wellington Regional Council by:

Chief Executive

Signed for and on behalf of
Wellington Water Limited in the presence
of:

Chair

Schedule 1

General information

Term of agreement (Clause 3)

Commencement date 19 September 2014

Expiry Date 30 June 2024

Council's Representative (Clause 5)

Name Nigel Corry

Position Chief Executive

Contact details Phone: 0800 496 734
Email: nigel.corry@gw.govt.nz
Address: 100 Cuba Street, Te Aro
Wellington 6011
Postal: P O Box 11646,
Wellington 6011

Wellington Water's Representative (Clause 5)

Name Colin Crampton

Position Chief Executive

Contact details Phone: 04 912 4488
Mobile: 027 492 4419
Email: colin.crampton@wellingtonwater.co.nz
Address: Level 4, IBM House
25 Victoria Street, Petone
Postal: Private Bag 39 804
Wellington Mail Centre, Petone

Notices (Council)
(Clause 24)

Address 100 Cuba Street, Te Aro
Wellington 6011

Email Address nigel.corry@gw.govt.nz

Attention Nigel Corry (Chief Executive)

Notices (Wellington Water)
(Clause 24)

Address Level 4, IBM House
25 Victoria Street
Petone

Email Address colin.crampton@wellingtonwater.co.nz

Attention Colin Crampton

Schedule 2

Management Services

(Clause 26.1)

1. The Management Services include (without limitation) the following tasks and activities:
 - 1.1 carrying out the functions, duties and responsibilities of the principal's representative and engineer's representative (where applicable) under all contracts for Bulk Water Supply Services works to which Council is party;
 - 1.2 carrying out all the functions, duties and responsibilities of the principal under all contracts for Bulk Water Supply Services works to which Wellington Water is party;
 - 1.3 project managing all contracts relating to Bulk Water Supply Services, including overseeing the provision of all works and services by contractors and consultants in accordance with the contract and managing contractor and consultant performance in accordance with recognised benchmarks;
 - 1.4 monitoring, reporting on and administering all financial and operational aspects of contracts relating to Bulk Water Supply Services;
 - 1.5 any services as set out in clause 4A.2 (*Obligations*);
 - 1.6 monitoring and managing Council's obligations under the HSE Act in respect of the Management Services, the assets and infrastructure used to provide Bulk Water Supply Services and all works to or affecting such assets and infrastructure, to the extent there are any, and ensuring Wellington Water and/or Council do not breach their obligations under the HSE Act;
 - 1.7 providing expert advice in respect of Management Services in conjunction with consultants and other experts engaged by Council or by consultants engaged by Wellington Water or by Wellington Water on Council's behalf;
 - 1.8 arranging the provision of Bulk Water Supply Services works in accordance with the approved Annual Work Programme, Council's Annual Plans and Long Term Plan, and approved Asset Management Plans;
 - 1.9 managing on Council's behalf its obligations to the Four Cities for the supply of bulk water on the same basis as prior to Commencement Date;
 - 1.10 providing costing advice to Council for the purposes of Council's bulk water levy for the provision of Bulk Water Supply Services and related matters;
 - 1.11 preparing for Council draft Asset Management Plans, business plans and the draft Annual Work Programme for assets and infrastructure used to provide Bulk Water Supply Services, all in accordance with the requirements of this agreement, the LGA 2002, the Wellington Regional Water Board Act 1972 and industry best practice or Council's practice if that exceeds industry best practice;
 - 1.12 assisting Council to prepare budgets, financial statements and forecasts, and any other information required in a LTP, Annual Plan, Annual Report or any other document relating to the provision of the Management Services by

Wellington Water. All budgets are to be prepared in accordance with instructions given from time to time;

- 1.13 assisting Council (in the manner agreed between the Council and Wellington Water) to undertake asset valuations in respect of the Council's three waters assets;
- 1.14 assisting and co-operating with all audits of Bulk Water Supply Services assets or infrastructure;
- 1.15 providing Council with timely, accurate and quality data so that Council can keep its information systems up to date in respect of water assets and infrastructure;
- 1.16 monitoring the insurance cover required and held by Council in respect of Bulk Water Supply Services and assets, prepare any required infrastructure insurance fund update and advising Council of any deficiency or insurance cover;
- 1.17 identifying and advising Council of all circumstances where a prosecution or claim for damage relating to water, Bulk Water Supply Services, or assets and infrastructure used to provide Bulk Water Supply Services could be brought against Council or by Council, and providing all information and assistance for such prosecutions and claims;
- 1.18 responding to requests from Council for information required by it to administer any law, including (without limitation) the Resource Management Act 1991 and the Building Act 2004;
- 1.19 responding, within five business days or the response times set by Council's system, whichever is the lesser, to public and customer enquiries and requests for service in relation to Bulk Water Supply Services, including meeting such persons where appropriate;
- 1.20 managing all routine, operational and work programme related communications, marketing and community engagement. For the avoidance of doubt, any non-routine communications, marketing, community engagement or use of Council brand, will be carried out in collaboration and with approval of Council;
- 1.21 advising and assisting Council in identifying and quantifying the value of third party damage caused to Councils water network;
- 1.22 assuring compliance with Council's responsibilities under the Civil Defence and Emergency Management Act (CDEM Act) with respect to water as a lifeline utility. This will include assisting with and responding to emergencies involving Bulk Water Supply Services and the provision of an afterhours service outside of standard office hours;
- 1.23 providing services to assist meeting Council's community and stakeholder consultation obligations, including with mana whenua, in relation to matters involving Bulk Water Supply Services;
- 1.24 co-ordinating with the Four Cities or with other parties to ensure that programmed work involving Bulk Water Supply Services is planned around other relevant infrastructure work and around other planned events (for example festivals, sporting events or other special events);
- 1.25 assisting Council to prepare and maintain its various plans in relation to the Bulk Water Supply Services, including but not limited to its Infrastructure Strategy, LTP, Asset Management Plan, District Plan, Emergency Response and

Recovery Plans, Risk Management Plans (strategic and operational), Business Continuity Plan and Environmental Plan;

- 1.26 undertaking any other emergency and civil defence planning in relation to Council's Bulk Water Supply Services, as agreed with Council;
- 1.27 continuously monitoring the appropriateness and effectiveness of policies relating to Bulk Water Supply Services, suggesting improvements and assisting Council draft policy papers;
- 1.28 attending and participating in Council meetings, and meetings with Council officers, contractors, consultants and/or the public, including preparing reports and briefings for such meetings where reasonably required;
- 1.29 in conjunction with Council, managing legal issues and services relating to Bulk Water Supply Services, other than those related to prosecutions and claims for damage which Council will manage;
- 1.30 assisting Council to maintain and update its asset register;
- 1.31 obtaining resource consents required for Bulk Water Supply Services;
- 1.32 preparing detailed current and future Bulk Water Supply Services work programmes;
- 1.33 providing a water meter reading service and meter information to the Four Cities;
- 1.34 promoting water conservation and education;
- 1.35 undertaking any other water conservation and environmental sustainability planning in relation to Council's Bulk Water Supply Services, as agreed with Council;
- 1.36 planning and advice, including the provision of Asset Management Plans in respect of the Network and Bulk Water Supply Services;
- 1.37 providing the necessary inputs to the Council's Annual Plan, Asset Management Plan and Long Term Plan so as to enable the Council to make appropriate decisions as to work necessary on an annual and long term basis to maintain, renew and as necessary expand the Network so as to be able to provide Bulk Water Supply Services on an affordable, sustainable basis to a standard determined by Council;
- 1.38 managing the carrying out of all necessary operating and renewal work on the Network as agreed in the Annual Work Programme and Council's Annual Plans and Long Term Plan;
- 1.39 managing the carrying out of all capital works on and for the expansion of the Network as agreed in the Annual Work Programme and Council's Annual Plans and Long Term Plan;
- 1.40 providing all strategic and policy advice reasonably necessary to ensure that the Bulk Water Supply Services are delivered by Council on an affordable and sustainable basis;
- 1.41 managing the application of resource consents necessary to ensure Bulk Water Supply Services delivery;
- 1.42 providing monthly billing information for bulk water charges;

- 1.43 maintain private supply points from bulk water mains and provide metering information from such supply points to the relevant city Council
- 1.44 any activities that would have been reasonably anticipated as constituting part of the Bulk Water Supply Services offering by both parties at the Commencement Date; and
- 1.45 any other services as agreed between the parties, subject to clause 4.6.

2. The Management Services do not include:

- 2.1 any activity relating to the setting of water charges, apart from the providing of costing advice and the like as described above;
- 2.2 the approval of Council policies or strategies, Asset Management Plans, Statements of Intent, budgets, Annual Plans and LTPs; and
- 2.3 any service which reasonably, or as outlined in this agreement, remains with Council.

Schedule 3

Service Level Agreement (SLA) Reports (Clauses 10.1 and 10.3)

- Monthly and quarterly reporting (including financial reports) as agreed between Council and Wellington Water
- The quarterly SLA reports shall be structured as follows:
 - 1 Introduction
 - 2 Quarterly Meeting Action Log
 - 3 Highlights
 - 4 Key Performance Indicators Reporting
 - 5 Agreed Performance Metrics
 - 6 Long Term Plan Water Indicators
 - 7 Agreed Customer Performance Indicators

And any other quarterly SLA reporting requirements arising from Schedule

Schedule 4

One Budget Charge details (Clauses 11 and 26.1)

Opex Charge Scope

The Opex Charge covers controllable costs incurred by Wellington Water as further described in the detailed operational controllable cost budget agreed with Council as part of the Three Year Plan. Controllable costs include, for example, charges for repairs and maintenance of Bulk Water Supply assets, costs of consumables such as chemicals and consultants and contractors' charges.

The following costs are outside the Opex Charge Scope:

- . Council's internal costs relating to Bulk Water Supply, such as allocations, financing and depreciation
- . Costs identified as remaining with Council pending expiration of existing contractual terms and/or which may be transferred to Wellington Water at a later date.

Management Charge Scope

The Management Charge covers management costs incurred by Wellington Water as further described in the detailed management cost budget agreed with Council as part of the Three Year Plan. Management costs include, for example, Council's proportion of Wellington Water employees' salaries, lease payments and other operating expenses for Wellington Water's office (including IT and telecommunications costs), insurance premiums and vehicle expenses. The Management Charge also includes the Governance Charge.

Unexpected Event Reserve Cap

The Unexpected Event Reserve Cap is 5% of the Opex Charge for the current Financial Year.

Schedule 5

Partnering (Clause 21)

Partnering Philosophy

1. Partnering encourages the development of relationships of trust, co-operation, open communication and team work.

Definition

2. Partnering is a commitment between two or more organisations for the purpose of achieving specific business objectives by maximising the effectiveness of co-operation.

Expected Results

3. Results that partnering is expected to produce include:
 - 3.1 less adversarial relationships;
 - 3.2 improved problem solving;
 - 3.3 improved planning;
 - 3.4 improved responsiveness;
 - 3.5 increased openness;
 - 3.6 fewer errors;
 - 3.7 improved efficiency;
 - 3.8 improved quality;
 - 3.9 reduction in service charges; and
 - 3.10 potential for savings through innovation.

Dispute Prevention

4. Dispute prevention is recognised as the best dispute resolution. Partnering relationships of trust, open communication and processes for effective issue resolution can minimise the risk of issues escalating into disputes.
5. It is important however, that issues of conflict should not be 'brushed under the carpet', but rather, dealt with at the time the conflict occurs to avoid frustration and the threat to the continuation of the agreement.

Type of Relationship

6. Partnering relationships can be different for each contractual situation.
7. Partnering does not over-ride the agreement, but provides a 'way of working' that is

mutually beneficial. If partnering fails, then the parties can still resort to contractual remedies.

Key elements of partnering

A *Commitment*

8. Commitment to partnering must come from the top management of each stakeholder. This leadership must be visible, supportive and ongoing.

B *Equity*

9. All stakeholders' goals must be considered in reaching mutual goals and there is a commitment to meeting each stakeholder's requirements by searching for solutions to these goals.

C *Trust*

10. Successful partnering relies on relationships of trust.

D *Mutual Objectives*

11. Partnering takes into account the objectives of the parties set out in clause 2 which reflect the parties' requirements for a successful contract.

E *Timely Responsiveness*

12. Rapid issue resolution should minimise the number of issues that escalate into dispute. Partnering aims at problems being solved at the lowest possible level and the earliest possible time. Agreed processes can be established to ensure this occurs.

F *Frank Discussion*

13. Partnering helps the identification of each party's position by creating an environment where frank discussion is appropriate and legitimate. This can happen without precipitating confrontation.

G *Risks Associated with Partnering*

14. It is important to distinguish partnering from partnership. Both involve relationships of trust, long-term commitment and joint goals. Partnering is not a partnership or joint venture.
15. Partnering does not mean being soft and all parties to the relationship need to be vigilant for indications of potential dispute and seek resolution of problems before they escalate to dispute. If this occurs effectively, then the need to resort to contractual remedies is minimised.

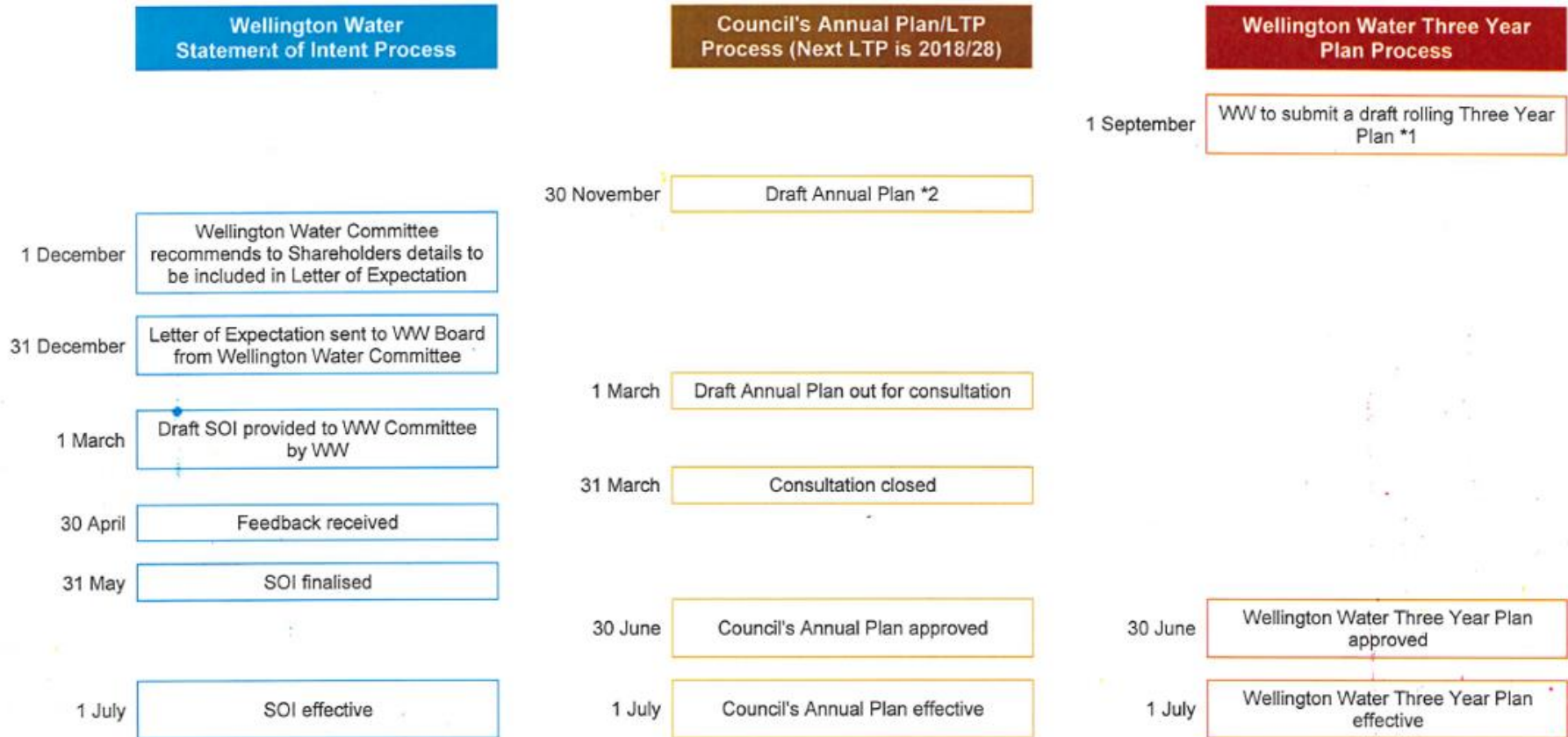
Summary

16. Partnering is a 'way of working' which is based upon mutual trust, and recognition that working together achieves better results than a confrontational, strictly contractual relationship.

Schedule 6

Three Year Plan approval process

(Clause 11.3)



*1 including a full draft Annual Work Programme for the next Financial Year and a forecast high level programme for the two following Financial Years.

*2 Council prepares Annual Plan including information supplied by Wellington Water in its draft Three Year Plan.

**Schedule 7
Not Used**

Schedule 8
Applicable Council Policies
(Clause 4.21)

Greater Wellington Regional Council

To be confirmed by Council at a later date.

Schedule 9

Additional Annual Work Programme Information Required (Clause 26.1)

The draft Annual Work Programme will also include:

- 1 A 12-month detailed work programme listing at the sub-project level, including all anticipated operational project, capital project, planning and design, asset management planning, emergency planning and water conservation work streams;
- 2 A budget at the sub-project level for the above work programme;
- 3 The quarter each sub-project will be delivered in;
- 4 A work programme listing (including budgets) for the two subsequent years;
- 5 A quarterly report structured to align with council quarterly reporting format as follows:
 - 1 Executive summary for the policy, finance and strategy committee**
 - 1.1 Bulk Water overview
 - 1.2 Key results for the quarter
 - 1.3 Quality performance
 - 1.4 Environmental performance
 - 1.5 Business plan performance indicators
 - 2 Group financial summary for the policy, finance and strategy committee**
 - 2.1 Financial summary
 - 3 Additional Information**
 - 3.1 Business continuity
 - 3.2 Health and safety
 - 3.3 Maintenance
 - 3.4 OIA statistics/Ombudsman investigations
 - 3.5 Customer feedback received
 - 3.6 Performance against forecast
 - 3.7 Quarterly project report
 - 3.8 Risk Report

Schedule 10

**Council resource consents to be managed by Wellington Water
(Clause 9.1)**

File Reference	Consent ID	Purpose Description	Activity Type	Location
WGN000071	21685	Intermittent discharge of supernatant from the wash water recovery plant	Discharge	Wainuiomata TP
WGN000199	20538	To discharge excess water and water containing sand and gravel via four scour valves	Discharge	Te Marua TP
WGN000199	20539	To discharge excess water and water containing sand and gravel from an existing scour valve and sand trap	Discharge	Te Marua TP
WGN000199	30733	To take, use, dam and divert water at a rate of 1735 L/s (150 Mega Litres per day) with an instantaneous rate of no more than 1850 L/s from the Hutt River.	Abstraction	Te Marua TP
WGN000200	20540	Abstraction of water from the Orongorongo River for public water supply	Abstraction	Wainuiomata TP
WGN000200	20541	To discharge water and water containing sand and gravel from an existing sand trap	Discharge	Wainuiomata TP
WGN000200	20542	To maintain an existing weir, intake structure, spillway, sand traps and pipeline	Structure	Wainuiomata TP
WGN000200	20544	Abstraction of water from Big Huia Stream for public water supply	Abstraction	Wainuiomata TP
WGN000200	20545	To discharge water and water containing sand and gravel from an existing sand trap	Discharge	Wainuiomata TP
WGN000200	20546	To discharge excess water and water containing sand and gravel from a pipe main and existing sand trap	Discharge	Wainuiomata TP
WGN000200	20547	To maintain an existing weir, intake structure, sand traps and pipeline	Structure	Wainuiomata TP
WGN000200	20548	Abstraction of water from Little Huia Stream for public water supply	Abstraction	Wainuiomata TP
WGN000200	20549	To maintain an existing weir	Structure	Wainuiomata TP
WGN000200	20550	Abstraction of water from Telephone Creek for public water supply	Abstraction	Wainuiomata TP
WGN000200	20551	To maintain an existing weir	Structure	Wainuiomata TP
WGN000201	20552	Abstraction of water from the Wainuiomata River for public water supply	Abstraction	Wainuiomata TP
WGN000201	20553	To discharge excess water and water containing sand and gravel from an existing sand trap	Discharge	Wainuiomata TP
WGN000201	20554	Abstraction of water from Upper George Creek for public water supply	Abstraction	Wainuiomata TP
WGN000201	20556	To maintain and use the existing weir, intake screens, inlet structure and sand traps	Structure	Wainuiomata TP

WGN000201	20558	Take water from the Lower George Creek, via an existing intake, for public water supply	Abstraction	Wainuiomata TP
WGN010057	20743	To lay a pipeline under the bed of the Korokoro Stream	Pipeline	Distribution - Korokoro
WGN010196	21166	To place and maintain a water pipeline and concrete headwall under the bed of George Creek	Pipeline/structure	Wainuiomata TP
WGN010227	21315	To place and maintain a water scour pipe and concrete headwall in Lower George Creek	Pipeline/structure	Wainuiomata TP
WGN020100	21740	To place five concrete blocks in the bed of Duck Creek, to reinstate two existing gabion baskets, place two new gabion baskets and undertake associated disturbance of the bed	Structure	Distribution - Whitby
WGN020108	21764	To place, use and maintain a water pipe beneath the bed of Taupo Stream, and to undertake associated disturbance of the bed, for the purpose of supplying potable water to Pimmerton No. 2 Reservoir	Structure	Distribution - Pimmerton
WGN020151	21883	To discharge water and water containing sand and gravel to the Orongorongo River from scour valves on the pipe main	Discharge	Wainuiomata TP
WGN020180	21995	To place and maintain five gabion baskets in the Orongorongo River, and to undertake associated disturbance of the bed	Structure	Wainuiomata TP
WGN020239	22116	To place, use and maintain a headwall structure	Structure	Distribution - Belmont Regional Park
WGN020239	22117	To place, use and maintain a headwall structure	Structure	Distribution - Belmont Regional Park
WGN030097	22534	To place a water main pipe under the bed of Awamutu Stream	Structure	Distribution - Lower Hutt
WGN030114	22593	To place boulders, to place, use and maintain scour protection at the toe of the existing intake weir on the Orongorongo River, and to undertake associated disturbance of the bend of that river	Structure	Wainuiomata TP
WGN030116	22479	To place and maintain a scour valve outlet structure and to undertake associated disturbance of the stream bed	Structure	Gear Island TP
WGN040007	22945	To discharge to air contaminants associated with the operation of three stationary diesel engines used to power two standby pumps and a standby electric generator	Discharge	Waterloo TP
WGN040096	23237	To place, use and maintain two raw water main pipe crossings under the streambed of George Creek and undertake the associated disturbance of the stream bed, including the placement of rock rip-rap and construction of a fish pass	Structure	Wainuiomata TP
WGN040102	23095	To discharge water containing sand and gravel to George Creek from a series of scour valves on the main pipe	Discharge	Wainuiomata TP
WGN040102	23131	To place, use and maintain three scour outlet structures in the bank of George Creek	Structure	Wainuiomata TP

WGN050115	24038	Construct and maintain riverbank edge protection works	Structure	Wainuiomata TP
WGN050186	24189	To permanently divert the full flow of the Wainuiomata river over the Wainuiomata Lower Dam to create a wetland	Structure	Wainuiomata TP
WGN050257	24385	Takapu Stream realignment	Structure	Distribution - Grenada North
WGN050257	24386	To divert the flow of the Takapu Stream	Structure	Distribution - Grenada North
WGN050257	24438	Reclaim a section of the bed of a tributary of the Takapu Stream	Structure	Distribution - Grenada North
WGN070066	25569	To replace an existing vehicle ford with a box culvert in Sinclair Creek, associated disturbance and temporary diversion.	Land Use	Wainuiomata TP
WGN070211	25970	To place and use a gravel beach in the Wainuiomata river along the Wainuiomata lower dam face.	Land Use	Wainuiomata TP
WGN070215	25976	To attach and use a 100mm galvanised sewerage pipe to the existing water pipe that crosses the Wainuiomata river	Land Use	Wainuiomata TP
WGN100151	30216	to place, use and maintain a water pipeline under the bed of the Kaiwharawhara Stream, including any associated disturbance of, deposition onto the bed, and temporary diversion of water during construction	Land Use	Distribution - Kaiwharawhara
WGN100183	30300	to upgrade and maintain an existing aerial water main and associated outlet structure at Black Creek, Wainuiomata, including any associated deposition onto or disturbance to, the bed of that waterway	Land Use	Distribution- Wainuiomata
WGN100214	31301	to discharge water and water containing sand and gravel to George Creek from an outlet structure in association with the operation of a mini hydro generation turbine at the Wainuiomata Water Treatment Plant Supersedes 30367	Discharge	Wainuiomata TP
WGN100214	30366	to construct and maintain a rock rip rap lined channel and place rock rip rap in the bed of George Creek, including the removal of vegetation and any associated disturbance of and deposition onto the bed of the stream and the temporary diversion of stream	Land Use	Wainuiomata TP
WGN110116	30707	Discharge permit to discharge treated sediment laden storm water directly to water, and to land where it may enter unnamed tributaries of the Hutt River	Discharge	Te Marua TP
WGN110116	30708	Water permit to temporarily divert water from the Stuart Macaskill Lakes and an unnamed tributary of the Hutt River.	Divert	Te Marua TP
WGN110116	30709	To undertake works in the bed of a watercourse and Stuart Macaskill Lakes .	Construction	Te Marua TP

WGN110118	30712	To occasionally discharge water containing contaminants associated with the maintenance and repair (emergency and planned) engineering works on the wholesale water distribution network directly into the surface water bodies and to land where it may enter surface water bodies.	Discharge	Wainuiomata TP
WGN110118	30713	To occasionally take water to dewater excavations associated with maintenance and repair (emergency and planned) engineering works on the wholesale water distribution network.	De-watering	Distribution - global
WGN110136	31106	To discharge treated sediment laden storm water directly to water, and to land where it may enter an unnamed tributary of the Hutt River.	Discharge	Te Marua TP
WGN110136	31107	to temporarily and permanently divert approximately 80 meters of an unnamed tributary of the Hutt River	Divert	Te Marua TP
WGN110136	30746	to reclaim approximately 90 metres of an unnamed tributary of the Hutt River, including 10 meters of natural watercourse and 80 meters of a concrete lined channel, and associated disturbance and deposition of material on the bed of the watercourse during	Land Use	Te Marua TP
WGN110136	31108	to place structures in the bed of an unnamed tributary of the Hutt River including concrete channel lining, dissipation unit and rock rip-rap, and associated disturbance and deposit of material.	Land Use	Te Marua TP
WGN110270	30951	To discharge contaminants to air associated with the operation of municipal water supply fluoridation tanks.	Discharge	Gear Island TP
WGN120127	31496	To temporarily divert the full flow of Taupo Stream through a flume associated with the installation of a water supply pipe under the bed of that stream.	Divert	Distribution - Plimmerton
WGN120143	31522	To construct and maintain three piezometers (BQ32/0022) for groundwater level monitoring in the Lower Hutt Groundwater Zone.	Land Use	Aquifer monitoring
WGN120143	31538	To construct and maintain three piezometers (BQ32/0022) for groundwater level monitoring in the Lower Hutt Groundwater Zone.	Land Use	Aquifer monitoring
WGN130097	31986	To discharge contaminants from a wheel wash facility to land where it will enter George Creek	Discharge	Wainuiomata TP
WGN130285	32280	To occasionally discharge treated water from the bulk water supply pipeline to the coastal marine area to enable maintenance work to be carried out on the pipeline, or to empty part of the pipeline in the event that the water does not meet drinking water standards	Discharge	Distribution - Coastal Marine

WGN140140	32709	To discharge chlorine and oxalic acid to groundwater for the purpose of treating municipal water supply bores in the Waterloo and Gear Island bore fields.	Discharge	Waterloo/Gear Island Wellfields
WGN910018(01)	4825	To construct a water supply intake and pipeline	River/Stream Diversion	Te Marua TP
WGN920004(01)	3548	Install a water supply pipeline	Pipeline/Cable	Distribution - Wainuiomata
WGN920150(01)	4348	Flow recording station to be built	Structure : General	Te Marua TP
WGN940155(03)	3071	Reconstruct and maintain four bridges.	Bridge	Wainuiomata TP
WGN950082(01)		To carry out erosion protection works at Benge Creek	Structure : Hazard mitigation	Te Marua TP
WGN950082(02)	3344	Land Use for erosion protection Benge Creek	Structure : Hazard mitigation	Te Marua TP
WGN950153(01)	3577	To replace bridge and water main.	Pipeline/Cable	Wainuiomata TP
WGN950200(01)	3519	To construct a new pipe bridge upon existing anchor blocks.	Pipeline/Cable	Distribution - Lower Hutt
WGN950223(01)	4435	Culvert a stream - construction new water reservoir	Structure : General	Distribution - Khandallah
WGN960051(01)	4447	To remove damaged bridge and construct/replace with a new one	Bridge	Wainuiomata TP
WGN960095(01)	3079	To install level and quality equipment in 900 mm chamber	Structure - General	Wainuiomata TP
WGN960095(02)	3499	To install level and quality equipment in a 900 mm cylinder	Outfall/Intake Structure	Wainuiomata TP
WGN960095(03)	3500	To construct a discharge outlet on Big Huia Creek	Outfall/Intake Structure	Wainuiomata TP
WGN960095(04)	4448	To install a micro hydro unit on the banks of Big Huia Creek	Structure: General	Wainuiomata TP
WGN960095(05)	2250	To discharge stream water from a micro hydro unit Big Huia Creek	Discharge to water	Wainuiomata TP
WGN960095(06)	3081	To remove and reconstruct a bridge	Bridge	Wainuiomata TP
WGN970036	25813	To take water from Waiwhetu Aquifer, (Waterloo)	Abstraction	Waterloo TP
WGN970036	25814	To take water from the Waiwhetu Aquifer (Gear Island)	Abstraction	Gear Island TP
WGN970041	32480	Discharge supernatant from a storage lagoon to the Hutt River via a Pipeline	Discharge to water	Te Marua TP
WGN970041(14)	1490	Discharge lime dust and exhaust fumes.	Discharge To Air	Te Marua TP
WGN970041(16)	4457	To construct, place, operate and maintain a diffuser, Hutt River	Structure: General	Te Marua TP
WGN970041(17)	21678	Discharge contaminants into supernatant lagoon.	Discharge	Te Marua TP
WGN970085(01)	3506	Repair intakes, raise weir, coffer dams & diversion channel.	Outfall/Intake Structure	Wainuiomata TP
WGN980089(01)	4525	To reinforce the completed emergency works	Structure: General	Distribution - Ngauranga
WGN980153(01)	1539	Filtered air from the lime transfer blowers	Discharge To Air	Wainuiomata TP
WGN980153(02)	21686	Discharge of partly treated river water	Discharge- partly treated water	Wainuiomata TP
WGN990070(01)	4575	To place a concrete ford and rock rip rap.	Structure: General	Te Marua TP
WGN990111(01)	3430	Erect rip-rap to protect piping.	Structure: Hazard Mitigation	Te Marua TP
WGN990254(01)	3186	Construct concrete slab at toe of existing bridge	Bridge	Wainuiomata TP

ACCESSION DEED TO WELLINGTON WATER LIMITED SHAREHOLDERS' AGREEMENT

Date: 26 September 2019

Acceding Party: South Wairarapa District Council

Background

The Acceding Party is, or will become, a shareholder of Wellington Water Limited ("**Company**"). Consequently, the other shareholders of the Company, and the Acceding Party, wish for the Acceding Party to become party to the Shareholders' Agreement relating to the Company ("**Agreement**"). The Acceding Party does so by acceding to the Agreement by entry into this deed.

Covenants

The Acceding Party undertakes and confirms that:

1. It has either been issued Shares in the Company or has received written notice from the Company that it will be issued Shares in the Company.
2. It has been given and has read and understood a copy of the Agreement.
3. With effect from 26 September 2019, the Acceding Party:
 - (a) agrees to accede to the Agreement as a Shareholder;
 - (b) undertakes to be bound by and comply with all of the terms of the Agreement as Shareholder, as if it were named in the Agreement;
 - (c) agrees to have all of the rights of a Shareholder under the Agreement and will observe and perform all of the obligations applicable to, or binding on, a Shareholder under the Agreement, as if it were named in the Agreement; and
 - (d) agrees that each reference in the Agreement to a "Shareholder" will refer also, and apply, to the Acceding Party.
2. For the purposes of the Notice provisions of the Agreement, the details of the Acceding Party are:

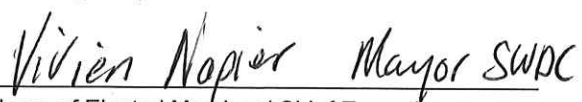
Address: 19 Kitchener St, Martinborough 5711
Email: Harry.Wilson@swdc.govt.nz
Representative: Mayor Viv Napier
3. This deed is governed by and is to be construed in accordance with the laws of New Zealand and the Acceding Party submits to the non-exclusive jurisdiction of the New Zealand courts.

EXECUTED AS A DEED

FOR AND ON BEHALF OF THE ACCEDING PARTY by:




Signature of Elected Member / Chief Executive of
Acceding Party



Name of Elected Member / Chief Executive



Signature of Witness



Name of Witness

FIRST VARIATION AGREEMENT IN RESPECT OF AGREEMENT FOR PROVISION OF MANAGEMENT SERVICES RELATING TO WATER SERVICES

SOUTH WAIRARAPA DISTRICT COUNCIL

WELLINGTON WATER LIMITED

 **Simpson Grierson**

Barristers & Solicitors
Auckland, Wellington & Christchurch
New Zealand
www.simpsongrierson.com

PARTIES

1. **SOUTH WAIRARAPA DISTRICT COUNCIL** of 19 Kitchener Street, Martinborough (Council)
2. **WELLINGTON WATER LIMITED** (company number 1337122) of 25 Victoria Street, Petone, Lower Hutt, 5012, New Zealand (**Wellington Water**)

BACKGROUND

- A. Council and Wellington Water entered into a service agreement dated 14 October 2019 for the provision of management services relating to water services until 30 June 2029 (**Services Agreement**).
- B. Council and Wellington Water have agreed to vary the terms of the Services Agreement to, amongst other things, incorporate provisions addressing the regulation of drinking water, wastewater and stormwater pursuant to the Water Services Act 2021 and the potential transition to a new arrangement for the delivery of three waters services in New Zealand on the terms set out in this agreement (**First Variation Agreement**).

THIS AGREEMENT RECORDS THAT:**1. DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions:** In this First Variation Agreement, unless the context indicates otherwise, words and expressions defined in the Services Agreement have the same meaning when used in this First Variation Agreement.
- 1.2 **Interpretation:** In this First Variation Agreement, unless the context indicates otherwise, the interpretation provisions of the Services Agreement apply as if they were set out in this First Variation Agreement.

2. EFFECTIVE DATE, AMENDMENT AND CONFIRMATION

- 2.1 **Effective Date:** The parties agree that the variations to the Services Agreement set out in this First Variation Agreement have effect on and from the date of this agreement (**Effective Date**).
- 2.2 **Amendment:** With effect from the Effective Date, the Services Agreement is amended and restated in the form set out in the Schedule to this First Variation Agreement and references in the Services Agreement to “this agreement” shall be references to the Services Agreement as amended and restated by this First Variation Agreement.
- 2.3 **Confirmation:** Each of the parties confirms and acknowledges that, except as expressly agreed in this First Variation Agreement, its obligations and covenants under, and the provisions of, the Services Agreement continue and remain in full force and effect.

3. GENERAL

- 3.1 Assignment:** A party may not assign any of its rights or obligations under this First Variation Agreement without the prior written consent of the other party.
- 3.2 Counterparts:** This First Variation Agreement may be signed in counterparts. All executed counterparts will together constitute one document.
- 3.3 Copies:** Any copy of this First Variation Agreement that is received via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this agreement) may be relied on by any party as though it were an original copy of this First Variation Agreement. This First Variation Agreement may be entered into on the basis of an exchange of PDF or other document reproduction format.
- 3.4 Further Acts:** Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this First Variation Agreement and all transactions incidental to it.
- 3.5 Severability:** If a clause or part of a clause of this First Variation Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this First Variation Agreement, but the rest of this First Variation Agreement is not affected.
- 3.6 Variation:** No variation of this First Variation Agreement will be of any force or effect unless it is in writing and signed by the parties to this First Variation Agreement and is in accordance with clause 4.7 of the Services Agreement.
- 3.7 Waiver:** The fact that a party fails to do, or delays in doing, something the party is entitled to do under this First Variation Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 3.8 Governing Law and Jurisdiction:** This First Variation Agreement is governed by the laws of New Zealand.

EXECUTED

SIGNED for and on behalf of **South Wairarapa District Council** by:



Signature of authorised signatory

HARRIE WILSON

Name of authorised signatory

SIGNED for and on behalf of **Wellington Water Limited** by:

Signature of authorised signatory

Name of authorised signatory

EXECUTED

SIGNED for and on behalf of **South Wairarapa District Council** by:

Signature of authorised signatory

Name of authorised signatory

SIGNED for and on behalf of **Wellington Water Limited** by:



Signature of authorised signatory

Colin Crampton

Name of authorised signatory

SCHEDULE
AMENDED AND RESTATED SERVICES AGREEMENT

**Contract for Provision of Management
Services Relating to Water Services**

South Wairarapa District Council

Wellington Water Limited

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Schedule 2

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Agreement dated 14 October 2019, as amended and restated on
11 April 2022 ~~2024~~

Parties

South Wairarapa District Council of 19 Kitchener Street, Martinborough (**Council**)

Wellington Water Limited (Wellington Water) of 25 Victoria Street, Petone, Wellington

Background

- A Wellington Water was established in 2004 by Wellington City Council and Hutt City Council to co-operatively manage the delivery of Management Services to councils in the Wellington Region.
- B Wellington Water is jointly owned by Hutt City Council (**HCC**), Upper Hutt City Council (**UHCC**), Porirua City Council (**PCC**), Wellington City Council (**WCC**), Wellington Regional Council (**GWRC**) and South Wairarapa District Council (**SWDC**).
- C Wellington Water is a council-controlled trading organisation and a local government organisation under the Local Government Act 2002, and a company under the Companies Act 1993.
- D This agreement sets out the terms under which Wellington Water will provide the Management Services to, and exercise the Statutory Powers on behalf of, Council from the Commencement Date.

Operative provisions

1 Deliverables for Council communities

- 1.1 Council has in its Long Term Plan (**LTP**) committed to certain deliverables for the Council's community. In general terms, these deliverables relate to the health, safety and development of the community, and environmental sustainability.
- 1.2 Separately:
 - 1.2.1 Wellington Water is an operator of a drinking water supply pursuant to the performance of the Bulk Water Supply Services, a drinking water supplier, stormwater network operator and a waster network operator in respect of the Network; and
 - 1.2.2 Council is an owner of a drinking water supply, a drinking water supplier, and a stormwater network operator and wastewater network operator in respect of the Network.
- 1.3 The standard of Water Services affects the achievement of certain deliverables in Council's LTP and Annual Plans, and the ability of the Council to comply with the Water Services Act. Council has contracted Wellington Water to provide Management Services in respect of Council's function in providing the Water Services because it believes it will better assist the achievement of these deliverables and at the same time provide cost and resource efficiencies.

- 1.4 Council requires Wellington Water to at all times manage the delivery of Management Services and operate its business in a way that will enable Council to achieve its LTP deliverables and performance measures and to discharge and/or assist the Council in discharging each of the Council's obligations under the Water Services Act.

2 Objectives

- 2.1 The parties will co-operate to achieve the following objectives with respect to the provision of the Management Services:
- 2.1.1 Delivery of Management Services for Council that are affordable, sustainable, accessible, and of the quality agreed in Council's LTP.
 - 2.1.2 Delivery of Management Services for Council in a manner that meets or exceeds the agreed Key Performance Indicators and Performance Measures.
 - 2.1.3 Compliance with Council's statutory, contractual and other obligations in respect of its provision of Water Services.
 - 2.1.4 Compliance with the Health and Safety at Work Act 2015 and maintenance of health and safety plans for all operational and capital project activities.
 - 2.1.5 Emergency management and response planning on behalf of Council, Wellington Water's other shareholders, and other organisations and services.
 - 2.1.6 Continuous improvement in the delivery of the agreed LTP service level for Water Services.
 - 2.1.7 That Wellington Water is familiar with and abides by all relevant Council Policies, subject to clause 4.20.
 - 2.1.8 The prompt, constructive and fair resolution of all issues between the parties.
 - 2.1.9 That Council retains direct ownership of the Network in its district, including assets and infrastructure built and purchased and asset information obtained during the term of this agreement or in existence prior to the Commencement Date of this agreement, or within the existence of this agreement.
 - 2.1.10 That the Network of Council and the networks of other Shareholding Councils in the Wellington region are managed on a co-ordinated basis.

3 Term

- 3.1 This agreement starts on the Commencement Date set out in Schedule 1 and will remain in force until the Expiry Date set out in Schedule 1, unless terminated earlier in accordance with this agreement.
- 3.2 Despite any other provision in this agreement, the Expiry Date of this agreement cannot exceed 30 June 2029.

4 The Management Services and Statutory Powers

Appointment and Powers

- 4.1 Council appoints Wellington Water to provide the Management Services to it and on its behalf. Wellington Water accepts this appointment.
- 4.2 Council authorises Wellington Water to perform on its behalf such acts, and gives Wellington Water such powers and authority, as are necessary to enable Wellington Water to provide the Management Services, including (without limitation) the powers specified in this agreement provided that Wellington Water shall:
- 4.2.1 Have no statutory powers other than those given by statute or expressly by Council in this agreement or by separate formal delegation;
 - 4.2.2 Comply with the directions and conditions specified in every delegation, authority and instrument of appointment given to Wellington Water by Council;
 - 4.2.3 Comply with any limitation on a power or delegation given by Council to Wellington Water, provided that Council will ensure that its delegations to Wellington Water enable Wellington Water's performance of the Management Services (including being principal to the contract under clause 8.4) in accordance with the Three Year Plan without further recourse to Council on a contract-by-contract basis except as agreed otherwise in relation to a particular project or service;
 - 4.2.4 Have no power to delegate any of its functions or powers other than in accordance with this agreement or a delegation, authority or instrument of appointment given to Wellington Water by Council; and
 - 4.2.5 Utilise all delegated functions or powers reasonably and prudently for their proper purpose.

Provision of Management Services

- 4.3 Wellington Water will at all times provide Management Services in accordance with this agreement. At all times during the term of this agreement, Wellington Water will provide the Management Services for Council:
- 4.3.1 in a proper, timely, cost effective and professional manner;
 - 4.3.2 exercising all due care, skill and judgement, and in accordance with accepted professional and business practices and standards, including (without limitation) to the standard set out in Council's Asset Management Plans;
 - 4.3.3 in a manner designed to achieve the Objectives;
 - 4.3.4 in the best interests of Council, recognising the obligations Council has to its ratepayers, citizens and stakeholders;
 - 4.3.5 in a manner that does not reflect adversely on Council;
 - 4.3.6 in the same priority as for other Shareholding Councils for which Wellington Water provides management services (except in an

emergency affecting one or more, but not all Shareholding Councils, when priority may be given to the Shareholding Council or Shareholding Councils affected by the emergency); and

- 4.3.7 in accordance with any instructions and directions given by Council's Representative (which must be consistent with the intent and terms of this agreement), including the powers or delegations given by Council.

Variations to Management Services

- 4.4 Council may from time to time need to vary the Management Services provided by Wellington Water. In these circumstances Council will outline the proposed variation (including the need and outcomes sought) in writing.
- 4.5 Council and Wellington Water can then partner (refer Schedule 5 to determine the most effective and efficient method of achieving the outcome sought).
- 4.6 If the variation results in a change in the Management Services provided or costs incurred, Wellington Water will adjust the One Budget Charges as agreed with Council.

Variations to this Contract

- 4.7 This agreement may not be varied, apart from the specific Council information required in Schedules 1,2, 4, 8, and 9, without the prior written approval of all Shareholding Councils. This clause is for the benefit of and intended to be enforceable by the other Shareholding Councils under the Contract and Commercial Law Act 2017.

Performance Measurement and KPIs

- 4.8 Wellington Water's performance will be measured via the agreed Key Performance Indicators.
- 4.9 Wellington Water will report on other Council performance measures as agreed from time to time, but these will not form the basis of Wellington Water's performance measurement. Other Council LTP performance measures may be used to measure Wellington Water's performance, but only after these measures are agreed with Wellington Water.

Failure to perform Management Services

- 4.10 If at any time Wellington Water fails to perform any Management Services, or believes it is unlikely to be able to deliver any part of the Management Services for Council in accordance with the terms of this agreement, Wellington Water must immediately notify Council of the failure or belief in writing, and outline the steps considered necessary to remedy the situation.
- 4.11 Council and Wellington Water can then partner (refer Schedule 5) to determine the most effective and efficient method of remedying the situation.
- 4.12 If Wellington Water fails to remedy the situation as agreed, and within a period which is reasonable in the circumstances taking into account any material risk to public health or safety or material threat to property or the environment, Council may, after consulting Wellington Water, take, or direct Wellington Water to take, any action Council considers necessary to ensure the Management Services are properly delivered and performed, and to minimise any loss or damage that might

be suffered by Council or any other person as a result of Wellington Water's failure. Such action may include redirecting Management Services to a third party, the cost of which is to be met by Wellington Water.

- 4.13 Where any failure by Wellington Water to perform any Management Service materially and adversely impacts the provision of any Water Service that is essential to public health or safety or has or that threatens to damage property or the environment (or may reasonably have with the passage of time such impact or consequences) the Council may arrange for the provision of those Management Services and clauses 4.10 and 4.11 shall not apply.

Exercise of Statutory Powers

- 4.14 Council by this agreement appoints the Chief Executive Officer of Wellington Water (**CEO**) as its officer and gives the CEO the following powers to exercise on the Council's behalf:
- 4.14.1 the general powers of entry given to a local authority by section 171 of the LGA 2002;
 - 4.14.2 the powers given to a local authority in an emergency or where there is danger, by section 173 of the LGA 2002, provided Wellington Water notifies Council of the event as soon as possible; and
 - 4.14.3 the powers in relation to construction of works on private land given to a local authority by section 181 of the LGA 2002.
- 4.15 Council (acting through its Chief Executive) shall delegate to Wellington Water and Wellington Water Personnel such further Statutory Powers as are necessary to enable Wellington Water to provide the Management Services.
- 4.16 The CEO may, subject to the terms of any delegation, delegate any of the powers set out in clause 4.14 and 4.17 to Wellington Water Personnel, other than the power to further delegate the power.
- 4.17 Council may, by separate written delegation, delegate additional powers to the CEO.
- 4.18 Council may from time to time issue initial or additional sealed warrants to Wellington Water Personnel identified by Wellington Water as suitable to hold a warrant as are required to enable Wellington Water to provide the Management Services.

Compliance with laws

- 4.19 At all times during the term of this agreement Wellington Water must, in respect of operating its business, providing the Management Services and exercising the Statutory Powers:
- 4.19.1 hold all authorisations, permits and licences required under any law; and
 - 4.19.2 comply with the requirements of all applicable laws of any kind.

Compliance with policies and directions

- 4.20 Wellington Water will develop Approved Regional Policies wherever practicable. Approved Regional Policies will supersede the relevant Council policy.

- 4.21 Subject to clause 4.22, when providing the Management Services and exercising the Statutory Powers for Council, Wellington Water must, as a minimum, comply with:
- 4.21.1 Approved Regional Policies; or
 - 4.21.2 where no Approved Regional Policy is in place, either:
 - (a) those Council Policies listed in Schedule 8 as varied from time to time and notified to Wellington Water; or
 - (b) Wellington Water's policies as agreed with Council from time to time.
- 4.22 Without limiting Wellington Water's duties and obligations under this agreement, Council may, after consulting Wellington Water, give Wellington Water by written notice such directions as Council considers reasonably necessary to:
- 4.22.1 ensure that Council complies with its obligations under any law, bylaw, any document or Council Policy adopted by it, or any contract or arrangement to which it is a party; or
 - 4.22.2 achieve efficiency or co-ordination with any Council business or activity, provided that no consultation is required where a situation or event exists that is or may become a nuisance or danger to public health, or that threatens to damage property or the environment.
- 4.23 If:
- 4.23.1 a variation to an Approved Regional Policy, a Council Policy or an agreed Wellington Water policy; or
 - 4.23.2 any direction provided by Council,
- results in a change in the Management Services provided or costs incurred by Wellington Water, Wellington Water will adjust the One Budget Charges as agreed with Council.

Protection of information systems

- 4.24 If Wellington Water is given access to a Council information technology system to enable Wellington Water to provide the Management Services, Wellington Water must:
- 4.24.1 only use the system to provide the Management Services;
 - 4.24.2 take all reasonable care in using the system, including all hardware, software and applications and observe all relevant licence agreements, Council Policies, security procedures and work practices;
 - 4.24.3 not interfere with or disrupt or cause any damage to the system;
 - 4.24.4 ensure that the system is protected from unauthorised access or use, or misuse, damage or destruction by any person;

4.24.5 ensure the integrity of all data and information held on the system is not compromised; and

4.24.6 follow the policies and procedures of the system to maintain the accuracy of data and information held within the system.

Continuous improvement and cost reduction initiatives

4.25 Council seeks to continuously improve processes and reduce costs in respect of the Water Services. Wellington Water must:

4.25.1 initiate and contribute to improvement processes on an ongoing basis; and

4.25.2 continuously use its best efforts to reduce Council's costs in respect of its Water Services.

4A Water Services Act

Water Services Act

4A.1 The Council and Wellington Water acknowledge that for the purposes of the Water Services Act:

4A.1.1 Wellington Water is:

- (a) an operator of a drinking water supply pursuant to the performance of the Bulk Water Supply Services, and is a drinking water supplier;
- (b) a stormwater network operator in respect of the Network; and
- (c) a wastewater network operator in respect of the Network;

4A.1.2 Council is:

- (a) an owner of a drinking water supply, and is a drinking water supplier;
- (b) a stormwater network operator in respect of the Network; and
- (c) a wastewater network operator in respect of the Network.

Obligations

4A.2 Without limiting any other provision of this agreement but subject to clauses 4A.3 and 4A.4 below, Wellington Water will:

4A.2.1 assist the Council to comply with its obligations under the Water Services Act in each of the capacities set out in clause 4A.1.2; and

4A.2.2 provide to Council in a timely manner all documentation, information, assistance and/or co-operation as may be reasonably necessary in order for the Council to comply with each Owner Obligation,

and the provision of such services will constitute Management Services for the purposes of this agreement.

Information

- 4A.3 Where Wellington Water requires Council to provide any information held by the Council (or any information that is held by a third party but which the Council is entitled to disclose to Wellington Water) in order for Wellington Water to comply with its obligations under this agreement (Required Information), then Wellington Water will, as soon as reasonably practicable after becoming aware that it requires such Required Information, request that Required Information from the Council in writing.
- 4A.4 As soon as reasonably practicable following receipt of a request for Required Information, Council will deliver (or procure the delivery of) such Required Information as is reasonably available to it. Any such Required Information delivered by the Council to Wellington Water will constitute Confidential Information for the purposes of this agreement.

Directions and compliance orders

- 4A.5 Where Wellington Water (acting reasonably) considers that compliance by it with any direction and/or compliance order issued to Wellington Water pursuant to the Water Services constitutes an:
- 4A.5.1 Unexpected Event, then clauses 11.14 to 11.15 will apply; and
- 4A.5.2 Additional Service, then clauses 11.16 to 11.18 will apply.
- 4A.6 Where a conflict arises between any valid direction given to Wellington Water by the Regulator and any direction of the Council, Council Policy or Approved Regional Policy, the direction of the Regulator will prevail.

5 Representatives

Representatives

- 5.1 Each party appoints the Representative named in Schedule 1 as its Representative under this agreement. The Representatives are responsible for the day to day administration of this agreement on behalf of the party appointing them. In the case of Wellington Water, the Representative is also responsible for the day to day delivery of the Management Services and the supervision of all persons employed or engaged by Wellington Water in providing the Management Services.
- 5.2 The Representatives must be available and able to be contacted during normal business hours. A party must notify the other party immediately should its Representative be removed or replaced, together with the contact details of its new Representative, or of any change to its Representative's contact details.
- 5.3 Each party is responsible for the acts, omissions and defaults of its Representative. Any direction, instruction, notice, approval or other communication made or given to a Representative will be deemed to have been made by or given to the party appointing that person.

6 Employees and Consultants

Employees and Consultants

- 6.1 Wellington Water must engage Personnel of good character and with the necessary skills, expertise, qualifications and training to carry out the Management Services. Wellington Water must ensure that its Personnel perform the Management Services with due care, skill and judgement, and in an efficient, professional and cost effective manner.
- 6.2 Wellington Water will require its Personnel to comply with Council Policies, Approved Regional Policies and instructions pursuant to clause 4.3.7 when performing the Management Services for Council, subject to clause 4.21, and must:
- 6.2.1 take all reasonable steps to ensure that Personnel comply with the applicable instructions, Approved Regional Policies, Council Policies or Wellington Water's policies (as applicable), and otherwise acts in a manner consistent with Wellington Water's duties and obligations under this agreement;
 - 6.2.2 if it becomes aware that any Personnel has breached those instructions, Approved Regional Policies, Council Policies or Wellington Water's policies (as applicable), take all appropriate remedial steps and, in the case of a serious breach, forthwith advise the Council of the breach and the remedial steps taken; and
 - 6.2.3 take appropriate action against Personnel who fail to follow, or breach, any instruction, Council Policy, Approved Regional Policy or Wellington Water policy or procedure when performing the Management Services.
- 6.3 Where a conflict occurs between a Council Policy and an Approved Regional Policy, the Approved Regional Policy will prevail.

7 Assets used to provide the Management Services and access to Water Services assets

- 7.1 Wellington Water must ensure that at all times it has sufficient and serviceable assets in order to operate efficiently and to meet its obligations under this agreement.
- 7.2 In respect of all assets accessed or used by Wellington Water in the provision of Management Services under this contract, Wellington Water must:
- 7.2.1 safeguard the assets from damage, loss and destruction; and
 - 7.2.2 keep the assets in good condition and repair (fair wear and tear excepted).
- 7.3 To the extent of carrying out Management Services, Wellington Water (or a nominated Wellington Water contractor) is entitled to access Council Water Services assets, property or infrastructure in order to discharge those Management Services.
- 7.4 Wellington Water has no power or authority to acquire or own Water Services assets or infrastructure used or to be used to provide the Water Services. All Water Services assets, property and infrastructure (whether or not in existence at

the Commencement Date) used to provide the Water Services are to be owned solely by one or more Shareholding Councils.

- 7.5 The parties acknowledge that Wellington Water may acquire, lease and/or own assets used in its day to day operations in its capacity as provider of water services management services, including office space, furniture, vehicles and equipment (including IT equipment and software, tools and other technical equipment).

8 Contracts

Existing contracts

- 8.1 Where, on the Commencement Date, Council is party to a contract for works, services or supply of assets relating to Water Services:
- 8.1.1 the contract will remain with Council; and
 - 8.1.2 Wellington Water will, from the Commencement Date, manage the contract on Council's behalf to the extent that it was managed by Council prior to the Commencement Date, unless the parties (including third party contractor where required) agree to assign the contract to Wellington Water.
- 8.2 The only exceptions to this are:
- 8.2.1 Water races maintenance contract with Pope & Gray Contractors Ltd. However this may be reviewed in time and managed by Wellington Water.

Appointment of Wellington Water as principal's representative

- 8.3 So that Wellington Water may manage contracts referred to in clause 8.1 on behalf of Council, Council has or will appoint such Wellington Water Personnel as Council's representative and/or the engineer to the contract under every such contract. Council will give the required notice under each such contract to effect the appointment, and will at the same time copy that notice to Wellington Water. Wellington Water will appoint an alternative person Council's representative if Council, acting reasonably, requests this of Wellington Water.

Future contracts

- 8.4 Wellington Water will become the principal to all future contracts for Water Services, subject to clauses 8.5 through 8.12 and unless otherwise agreed in writing by the parties.
- 8.5 The parties acknowledge their intention that as existing contracts for operations and maintenance of Water Services and related assets expire or terminate, Wellington Water will use its best endeavours to obtain future operations and maintenance services for Council in a manner that delivers the best possible value (in terms of quality and cost) to Council including, where appropriate, by entering into procurement arrangements which benefit both the Council and one or more other Shareholding Councils.
- 8.6 Wellington Water will procure, negotiate and enter into all future contracts for Water Services in a manner:

- 8.6.1 consistent with the applicable Annual Work Programme and performance measures and approvals in relevant plans and budgets, all applicable Council Policies and/or Approved Regional Policies and using good public sector procurement practices; and
- 8.6.2 not inconsistent with Councils then current Annual Plan.
- 8.7 Wellington Water will deliver to Council:
 - 8.7.1 an original of each new executed contract relating to Water Services to which Council is a principal or pursuant to which Council has rights and obligations, together with originals of all documents recording variations to such contracts. Wellington Water must retain a copy of all such contracts and any variation documents; and
 - 8.7.2 on Council's request, a copy of each new executed contract relating to Water Services to which Wellington Water is a principal together with copies of all documents recording variations to such contracts.
- 8.8 Wellington Water requires prior written approval by Council before it can sign a works or construction contract that is not substantively based on either NZS3910: 2013 or NZS3915: 2005 (or any replacement or additional New Zealand Standard form construction contract) with appropriate amendments or any standard form template approved by the Shareholding Councils for use by Wellington Water.
- 8.9 The Council will pay Wellington Water any amount payable by Wellington Water as principal to a third party contract pursuant to this clause 8 as a result of the termination by Council of this agreement or Council no longer requiring Wellington Water to provide the Management Services and Wellington Water will:
 - 8.9.1 use its best endeavours to reduce the amount of the payment required of it;
 - 8.9.2 if requested by Council, co-operate with Council in a joint endeavour to reduce the amount of the payment; and
 - 8.9.3 transfer the contract to Council as principal and Council will assume the contract.
- 8.10 Wellington Water shall ensure that each contract entered into pursuant to this agreement where Wellington Water is the Principal contains no prohibition on the transfer of such contract from Wellington Water to Council.
- 8.11 Any Water Services asset created pursuant to a contract for capital work entered into by Wellington Water will be owned by the Council or, where applicable, those Shareholding Councils which have jointly requested Wellington Water to procure the capital works in accordance with arrangements made between Wellington Water and the Shareholding Councils in relation to that asset.
- 8.12 Any contract entered into by Wellington Water as principal pursuant to this clause 8 shall provide that any new asset shall vest in the Council on Practical Completion or handover of the asset pursuant to that contract. As between Wellington Water and Council it is agreed that any interest in any such asset vested in Wellington Water pursuant to a contract or at law shall vest in Council on Practical Completion or handover of the asset.

- 8.13 To the extent permitted by law the parties agree that this agreement is not intended and is not to be construed as a Construction Contract pursuant to the Construction Contracts Act 2002.

9 Resource Consents

- 9.1 Council will use its best efforts to transfer to Wellington Water all resource consents relating to Water Services assets and operations managed by Wellington Water on behalf of Council and owned by Council.
- 9.2 Until such time as resource consents are transferred to Wellington Water pursuant to clause 9.1 above, Wellington Water will continue to act on behalf of Council, as if the resource consent had been transferred.
- 9.3 Wellington Water will maintain a direct relationship with the consent authority. For resource consents in Wellington Water's name, the Council asset owner will ensure that Wellington Water's consent is obtained prior to the Council asset owner communicating with the consent authority. Such consent shall not be unreasonably withheld or delayed.
- 9.4 Wellington Water will keep Council informed in relation to discussions with the consent authority. In line with clause 25.7, during discussions with the consent authority Wellington Water may not make any commitment or obligation on expenditure or other matter that may create the impression of a commitment by Council, without Council's prior written approval.

10 Reports, information, reviews and records

Reports

- 10.1 Wellington Water shall deliver reports to Council in relation to the Management Services Wellington Water provides. The reports shall contain the information set out in Schedule 3 and other information Council may reasonably require to be included from time to time.

Local Government Act 2002 Reporting

- 10.2 Wellington Water shall provide Council with reports to meet Council's reporting cycle, or at other such intervals as Council may specify to meet the requirements of the LGA 2002. This will include, but is not limited to, reports to support Council Bylaw reviews, and policy and strategy reviews.

Service Level Agreement Performance Report ("SLA Report")

- 10.3 Wellington Water shall deliver an SLA Report covering the information set out in Schedule 3 to Council in relation to the Management Services Wellington Water provides on a quarterly basis, to be delivered by the 20th day of the month following quarter end.

Activity and Operations Reports

- 10.4 Wellington Water shall provide all other reports as outlined in the agreed Annual Work Programme (**AWP**).

Budgeting and Financial Reports

- 10.5 Wellington Water shall provide all information required in a timely manner to meet Council's annual financial planning and financial reporting cycles.

Information and Audit

- 10.6 Wellington Water shall promptly provide such information relating to the Water Services and/or the Management Services as Council shall reasonably request:
- 10.6.1 where such information relates to a matter that is of material interest to an elected member or the community;
 - 10.6.2 where the information relates to a matter that constitutes a legal, financial or reputational risk or liability to the Council or could reasonably give rise to any such risk or liability;
 - 10.6.3 where the information is reasonably required to enable the Council to fulfil its obligations under any contract with a third party;
 - 10.6.4 where the information is reasonably required to enable the Council to fulfil its obligations and/or carry out its functions under any law or legislative provision; and

Council will pay all of Wellington Water's costs and expenses incurred in fulfilling any such request.

Council audits

- 10.7 Subject to compliance with the Shareholders' Agreement entered into between the Shareholding Councils are complied with, Council may reasonably, and at its own cost, monitor and audit Wellington Water's performance in the delivery of the Management Services from time to time. An audit may take the form of spot checks and/or a more formal audit. The objective of such audit shall be to ascertain the level of compliance by Wellington Water with the requirements of this agreement, with a particular focus on the quality of the Management Services and compliance with legislation, consents and standards.
- 10.8 Council will give the board of Wellington Water reasonable notice if a formal audit is to be undertaken and will consider feedback provided by the board on scope, timing or requisite reviewer expertise.
- 10.9 Wellington Water shall co-operate with Council and its auditors to provide access to such information, records, premises, Wellington Water personnel and subcontractors as shall be reasonably necessary to facilitate such audits.
- 10.10 In addition to the reports to be delivered under clause 10.1, Council may from time to time and at Council's cost, require Wellington Water to provide it with information concerning any aspect of the Management Services Wellington Water provides, acting reasonably. Wellington Water must endeavour to provide the information as soon as practicable or within a timeframe agreed with Council.

Reviews

- 10.11 The parties will meet to review this agreement at a time to be agreed, but no later than the third anniversary of the Commencement Date, and every third year after that. The purpose of the review will be to determine the extent to which:

- 10.11.1 the provisions of this agreement are being complied with and are functioning adequately from a practical perspective;
- 10.11.2 the Performance Measures and the Key Performance Indicators are appropriate; and
- 10.11.3 any revision of the provisions of this agreement is necessary or desirable.

Records

- 10.12 Wellington Water must keep and maintain full records and documentation in relation to the Management Services and this agreement in accordance with the Public Records Act 2005, the Local Government Official Information and Meetings Act 1987, the Building Act 2004 the Water Services Act, and any applicable standards or policies. Wellington Water must keep copies of these records in hard copy and in electronic form and must deliver a full set of both to Council on termination or expiry of this agreement.
- 10.13 Wellington Water must comply with clause 10.12 during the term of this agreement and for 7 years after the agreement set out in this agreement ends.
- 10.14 On request by Council, Wellington Water must make all documents and records relating to the Management Services available to Council for inspection by Council and/or its Personnel and, if required, copying.
- 10.15 The following records are to be provided to Council when available:
 - 10.15.1 'as built' records and asset information,
 - 10.15.2 asset management system data,
 - 10.15.3 Project Information Memoranda information,
 - 10.15.4 Land Information Memorandum information,
 - 10.15.5 Building compliance information, and
 - 10.15.6 such other records as reasonably required by Council from time to time.
- 10.16 All asset data, records and documents referred to in clauses 10.12 to 10.15 must be kept and delivered (as applicable) in a form that is compatible with Council's information system and in accordance with a timeframe to be advised by Council from time to time.

11 Three Year Plan, Annual Work Programme, One Budget Charges and Additional Services

Three Year Plan and Annual Work Programme

- 11.1 By 1 September each year, or by another date agreed with Council, Wellington Water will provide to Council a draft rolling Three Year Plan, for the period from 1 July to 30 June of any one year.

- 11.2 The draft Three Year Plan will detail:
- 11.2.1 for the next Financial Year commencing 1 July:
- (a) the full draft Annual Work Programme;
 - (b) the One Budget Charges for the next Financial Year commencing 1 July;
 - (c) any proposed amendments to the Key Performance Indicators;
 - (d) any amendments to the Opex Charge Scope, Management Charge Scope, Contingency Sum or the Unexpected Event Reserve Cap; and
- 11.2.2 for the following two Financial Years, the forecast high level Annual Work Programme and the forecast One Budget Charges.
- 11.3 Each year, Wellington Water and Council will agree a final Three Year Plan based on the draft provided under clause 11.1 and in accordance with the process and timeframes set out in Schedule 6. The final Three Year Plan will be approved by the Wellington Water Board and agreed in writing by the Chief Executives or delegated representatives of both Wellington Water and Council by 30 June each year, excluding any carry-forwards still to be agreed at that point.
- 11.4 Once agreed, the Three Year Plan may only be altered in terms of programme content and budget during the course of the Financial Year by written agreement of Wellington Water and Council.

One Budget Charges

- 11.5 Council will pay Wellington Water the One Budget Charges for each Financial Year as follows:
- 11.5.1 the Management Charge will be paid in twelve equal monthly instalments;
- 11.5.2 the Opex Charge will be paid in twelve equal monthly instalments; and
- 11.5.3 the Capex Charge will be paid in monthly instalments of such sums as are agreed in the Three Year Plan, or as otherwise agreed from time to time, to finance the performance of Annual Work Programme.
- 11.6 Wellington Water will invoice Council (in advance) for each monthly instalment of One Budget Charges by the twenty fifth (25) day of the preceding month. Each invoice must separately identify the Management Charge, Opex Charge and Capex Charge.
- 11.7 Council must pay all valid GST invoices from Wellington Water for the One Budget Charges by the 10th business day of the month to which the invoice relates.
- 11.8 If the Three Year Plan is not agreed by 30 June for the following Financial Year, until such time as the Three Year Plan is agreed, the One Budget Charges will be based on the amount forecast for that year in the Three Year Plan adopted the previous Financial Year. Once the Three Year Plan is agreed, the One Budget Charges will be recalculated and the updated Three Year Plan (including the One

Budget Charges) will be applied retrospectively from the start of the Financial Year.

Wellington Water to operate within One Budget Charges

- 11.9 Subject to clauses 11.4 and 11.15, Wellington Water must:
- 11.9.1 manage its operations within the agreed Management Charge; and
 - 11.9.2 carry out the Annual Work Programme within the Opex Charge and the Capex Charge,
- 11.10 Wellington Water may, in its discretion and with its Board's approval, amend the allocation of funds between the Management Charge and the Opex Charge provided that the total sum of the Management Charge and the Opex Charge does not change.

Contingency Sum and treatment of overs and unders in expenditure

- 11.11 The parties acknowledge that the Opex Charge includes a Contingency Sum and agree that the Contingency Sum may be used by Wellington Water, at its discretion but subject to the reporting requirements in clause 10, during the Financial Year to manage its operations and/or fund Unexpected Events.
- 11.12 The parties acknowledge that there may be overs and/or unders in relation to expenditure of the Opex Charge and the Capex Charge against the Annual Work Programme and the following applies:
- 11.12.1 subject to clause 11.13, overs and/or unders in relation to expenditure of the Opex Charge do not require Wellington Water to repay any part of the One Budget Charges or entitle Wellington Water to increase the One Budget Charges.
 - 11.12.2 the treatment of any overs and/or unders in relation to expenditure of the Capex Charge against the Annual Work Programme will be agreed by the parties as part of their regular review of expenditure and any agreed wash- up process.
- 11.13 At the end of each Financial Year, the unspent portion of the Contingency Sum (if any) will be:
- 11.13.1 transferred to the Unexpected Event Reserve; and
 - 11.13.2 to the extent that the Unexpected Event Reserve exceeds the Unexpected Event Reserve Cap, repaid to Council.

Unexpected Events and the Unexpected Event Reserve

- 11.14 The parties acknowledge that:
- 11.14.1 the Management Services require Wellington Water to manage Unexpected Events from time to time;
 - 11.14.2 the Management Services required to respond to Unexpected Events are deemed to be Additional Services;

11.14.3 despite clauses 11.16 and 11.17, Wellington Water may undertake Additional Services in response to Unexpected Events where it is impracticable for Council to instruct or authorise Wellington Water, providing that Council may subsequently, by written notice:

- (a) instruct Wellington Water to cease such response; or
- (b) require further Unexpected Events Costs to be agreed with Council in accordance with clause 11.17; and

11.14.4 the Unexpected Events Costs will be paid in accordance with clause 11.15.

11.15 Unexpected Events Costs incurred by Wellington Water will be paid from the following sources, in the following order:

11.15.1 from the Unexpected Event Reserve to the extent that such funds are available; then

11.15.2 from the Contingency Sum, if such sum is available; then

11.15.3 to the extent that the remaining balance of the Unexpected Events Costs is not available from the above sources, Council will ensure that sufficient funds are made available to Wellington Water to cover such Unexpected Events Costs.

Additional Services and contracts not covered by One Budget Charges

11.16 The parties acknowledge that, from time to time the parties may agree that Wellington Water will undertake Management Services that are Additional Services and, without limitation:

11.16.1 Council may ask Wellington Water to carry out, or propose, Additional Services; and/or

11.16.2 subject to clause 11.14.3:

- (a) Wellington Water will notify Council if it considers that a direction from Council, or other circumstances, require it to carry out Additional Services; and
- (b) Council will, as soon as reasonably practicable after receiving notice required by 11.16.2(a), notify Wellington Water whether or not it considers the direction or other circumstances to be Additional Services.

11.17 Where Council has asked Wellington Water to carry out Additional Services under clause 11.16.1, or has notified Wellington Water under clause 11.16.2(b) that it considers a direction or other circumstances to be Additional Services:

11.17.1 Before the Additional Services commence (except in the case of an Unexpected Event where, for clarity, clause 11.14.3 applies) Wellington Water will advise Council as appropriate in the circumstances, either:

- (a) the value of the Additional Services, their programme and their impact (if any) on the Annual Work Programme; or

- (b) the mechanism under which the value of the Additional Services and the impact (if any) on the Annual Work Programme will be derived; or
 - (c) a proposed budget for the Additional Services that must not be exceeded without further agreement between the parties.
- 11.17.2 Following receipt of Wellington Water's advice under clause 11.17.1, Council will agree, acting reasonably, with Wellington Water a value, a mechanism for valuing, or a budget (as applicable) for the Additional Services.
- 11.17.3 If the parties are unable to agree under clause 11.17.1, the matter will be treated as a dispute and resolved in accordance with clause 22.
- 11.18 Subject to agreement having been reached under clause 11.17, Wellington Water will invoice the Council for Additional Services (in the form of a valid GST invoice and separately to invoices for the One Budget Charges) and:
 - 11.18.1 Subject to clause 11.18.2, such invoices must be paid by Council no later than the 20th of the month following the invoice date.
 - 11.18.2 Where the invoice relates to a contract where Wellington Water is the principal under the contract, Council must pay all valid GST invoices for capital works charges within seven (7) business days of receiving an invoice from Wellington Water.
- 11.19 Where, as part of the Management Services or Additional Services, Wellington Water manages a contract between Council and a third party (where Council is principal), Wellington Water must:
 - 11.19.1 ensure that invoices from the third party where appropriate are addressed to Council care of Wellington Water; and
 - 11.19.2 when satisfied that an invoice is in order for Council to pay, send an approval (as agreed between the parties) to Council to that effect together with the invoice.
- 11.20 An invoice from a third party will only be in order for Council to pay if:
 - 11.20.1 it is a valid GST invoice;
 - 11.20.2 all obligations of the third party that the invoice relates to have been met in accordance with the contract between Council and the third party;
 - 11.20.3 the invoice is for no more than the amount allowed under the contract for meeting those obligations; and
 - 11.20.4 there are no circumstances that entitle Council to, or suggest Council should as prudent business practice, dispute the invoice or withhold payment pursuant to the contract provisions.
- 11.21 Where, as part of the Management Services, Wellington Water manages a contract (where Council is principal) whereby the third party provides services to Council and another Shareholding Council, Wellington Water must:

- 11.21.1 ensure the third party accurately accounts for and invoices separately the services it provides to Council; and
- 11.21.2 comply with clauses 11.19 and 11.20.
- 11.21.3 Payments made by Council in relation to an invoice from Wellington Water for work undertaken on the provision of Water Services for Council must be paid promptly to the relevant supplier of that work.

Late payments

- 11.22 Where, as a result of any payment invoiced under clause 11 not being paid by the due date, Wellington Water is required to draw down on its credit facilities, the interest cost arising thereby will be charged to the Council or Shareholding Councils (as applicable).

GST

- 11.23 If any payment under this agreement is subject to GST, the amount payable is to be increased by the amount of the GST.

Disputed Invoices

- 11.24 Council will promptly pay all amounts payable by it to Wellington Water under this agreement and will not intentionally withhold or threaten to withhold any payment due to Wellington Water, notwithstanding any dispute between Council and Wellington Water, whether as to the performance of the Management Services, the amount of the invoice or otherwise.
- 11.25 On request by Council, Wellington Water will promptly provide Council with such information and analysis in connection with the calculation of any amount invoiced to Council by Wellington Water as Council may reasonably request.

12 Intellectual Property

Ownership of intellectual property

- 12.1 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the performance of the Management Services for Council in particular (as opposed to as a result of the performance of the Management Services generally, which is dealt with under clause 12.2 will vest in, and belong to, Council on creation. Council grants Wellington Water a revocable, non-transferable and royalty free licence to exercise all Council intellectual property rights in its Intellectual Property, for the purposes of providing the Management Services to Council. Wellington Water's licence from Council terminates when this agreement terminates.
- 12.2 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the performance of the Management Services generally and not for a particular Council, will vest in, and belong to, Wellington Water on creation. Wellington Water grants Council a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-license) to exercise all Wellington Water's intellectual property rights in its Intellectual Property.
- 12.3 All Intellectual Property discovered, developed or otherwise coming into existence as a result of the efforts of a third party in connection with the performance of a contract relating to Water Services between Council and that third party will, as

between Council and Wellington Water, vest in, and belong to, Council. If Council obtains from a third party Intellectual Property relating to the Management Services, Council will endeavour to obtain a royalty free licence for Wellington Water to use that Intellectual Property to the extent necessary for Wellington Water to meet its obligations to Council under this agreement.

Wellington Water's material

- 12.4 If any material, matter or thing (including software, documentation or data) is owned by Wellington Water and such material, matter or thing is incorporated in or attached to any Intellectual Property owned by Council (whether pursuant to clause 12.1 or otherwise), Wellington Water grants Council a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-license) to exercise all intellectual property rights in such material, matter or thing for the purpose of accessing and using the Intellectual Property owned by Council as referred to in this clause.

No infringement

- 12.5 Wellington Water must not infringe the intellectual property rights of Council or a third party in connection with this agreement.

13 Operation and management of Wellington Water

- 13.1 Without limiting the obligations and duties of Wellington Water or its directors, Wellington Water:
- 13.1.1 must comply with the objectives in section 59 of the LGA 2002, including to be a good employer, to exhibit a sense of social and environmental responsibility and to conduct its affairs in accordance with sound business practice;
 - 13.1.2 must make all decisions in accordance with its statement of corporate intent and its constitution in accordance with section 60 of the LGA 2002;
 - 13.1.3 must maintain operative business continuity plans, emergency response plans, and alternative site arrangements for the Water Services and the Management Services;
 - 13.1.4 must maintain operative and health and safety plans for all Water Services, Management Services, operational activities and capital projects; and
 - 13.1.5 must comply with all relevant legislation.

14 Confidentiality

Obligations of confidence

- 14.1 Where Wellington Water receives Confidential Information from Council under this agreement or otherwise in connection with the Management Services, Wellington Water must:
- 14.1.1 keep the Confidential Information confidential;
 - 14.1.2 not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of this agreement;

- 14.1.3 not, without Council's written consent, disclose Confidential Information to any person other than its personnel or Council's personnel who need the information for the purposes of this agreement; and
- 14.1.4 establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

Further permitted use and disclosure

- 14.2 Notwithstanding clause 14.1, Wellington Water may use or disclose Confidential Information to the extent necessary to:
 - 14.2.1 comply with any law, binding directive of a regulator or a court order; or
 - 14.2.2 obtain professional advice in relation to matters arising under or in connection with this agreement.
- 14.3 Where Wellington Water believes it is required to disclose Council's Confidential Information pursuant to the Local Government Official Information and Meetings Act 1987, Wellington Water must notify and consult with Council prior to any disclosure of the information and, where appropriate, Wellington Water will refer the request for Confidential Information to Council and Council will take responsibility for the request.

Exclusions

- 14.4 Clause 14.1 does not apply to Confidential Information:
 - 14.4.1 which was known to Wellington Water at the time of disclosure, unless such knowledge arose through the breach of an obligation of confidence known to Wellington Water; or
 - 14.4.2 which Wellington Water acquires from a third party (other than Council personnel) where that third party was entitled to disclose it.

Responsibility for Personnel

- 14.5 Wellington Water must ensure that its Personnel do not do, or omit to do anything, which if done or omitted to be done by Wellington Water, would breach this clause 14.

Undertakings from Personnel

- 14.6 Council may at any time require any Personnel of Wellington Water engaged in the performance of obligations under this agreement to give written undertakings in a form prepared by Council relating to the non-disclosure of the Confidential Information and Wellington Water must promptly arrange for all such undertakings to be given.

Notification of unauthorised use

- 14.7 Wellington Water must immediately notify Council of any potential, suspected or actual unauthorised use, copying or disclosure of Council's Confidential Information.

Return of Confidential Information

- 14.8 Wellington Water must immediately on demand or on completion or termination of this agreement, return to Council any documents in its possession, power or control containing Confidential Information. Wellington Water must not retain copies of any Council Confidential Information in any form.

Obligations to continue after agreement ends

- 14.9 All obligations of confidence set out in this agreement continue in full force and effect after the agreement set out in this agreement ends.

15 Warranties

General warranties

- 15.1 Each party represents and warrants to the other on a continuing basis that:
- 15.1.1 it has full corporate power to enter into and give effect to this agreement and to complete the transactions contemplated by this agreement;
 - 15.1.2 it has taken all necessary action to authorise the execution, delivery and performance of this agreement;
 - 15.1.3 at the date of this agreement, the execution, delivery and performance of this agreement by it does not contravene any contractual, legal or other obligations that apply to it; and
 - 15.1.4 on execution of this agreement, its obligations under this agreement will be valid, binding and enforceable.

Performance of Management Services

- 15.2 Wellington Water represents and warrants to Council on a continuing basis that:
- 15.2.1 Wellington Water holds all licences, permits, consents and authorisations required under any law in relation to the provision of the Management Services and will continue to do so at all times during the term of this agreement; and
 - 15.2.2 Wellington Water will use its best endeavours to meet or exceed both the Performance Measures and the KPIs.

16 Liability

Limited liability

- 16.1 Subject to clause 16.2, Wellington Water will not be liable in damages to Council, nor will Council be liable in damages to Wellington Water, for any claims, actions, liabilities, loss, costs or expenses whatsoever arising directly or indirectly out of any damage or loss arising from any breach of this agreement by Wellington Water or Council (as the case may be), or from any negligence, act or omission of it or its respective Personnel.

- 16.2 Despite clause 16.1:
- 16.2.1 a party is liable to pay all amounts properly payable by that party to another party pursuant to this agreement;
 - 16.2.2 Wellington Water must undertake any actions necessary to protect Council's interests, including any follow up action required in situations of possible or actual loss (economic or otherwise) to Council; and
 - 16.2.3 if Wellington Water recovers compensation from a third party (including an insurer) in respect of an occurrence that Wellington Water would, in the absence of clause 17.1, be liable to Council for, Wellington Water will be liable to pay to Council the compensation recovered by Wellington Water, less Wellington Water's reasonable costs.

Third party claims

- 16.3 In respect of each claim made, or action taken, against Wellington Water by a third party (other than Wellington Water's Personnel) which Wellington Water may incur in, or which may arise from, it carrying out its duties and obligations to Council under this agreement, Council will pay the amount of:
- 16.3.1 Wellington Water's liability to the third party; and
 - 16.3.2 Wellington Water's losses, costs and expenses,
- to the extent that Wellington Water cannot recover these amounts under its insurance (including the amount of any excess) or from a third party. Wellington Water will invoice the Council for these amounts (in the form of a valid GST invoice and separately to invoices for the One Budget Charges) and Council must pay each such valid GST invoice within seven (7) business days of receiving an invoice from Wellington Water.
- 16.4 Where a claim to which clause 16.3 may apply is made against Wellington Water, Wellington Water must:
- 16.4.1 forthwith advise Council of the claim; and
 - 16.4.2 comply with any directions given at any time by Council to Wellington Water in relation to the claim to protect Council's interests including follow up action required in situations of possible or actual loss (economic or otherwise).
- 16.5 Council is authorised by Wellington Water to notify other Shareholding Councils of any such third party claim.
- 16.6 If Council has paid a liability of Wellington Water pursuant to clause 16.3 and Wellington Water recovers compensation under its insurance or from a third party in respect of the occurrence giving rise to the liability, Wellington Water will pay to Council the compensation recovered by Wellington Water, but not exceeding the amount paid by Council, less Wellington Water's reasonable costs.
- 16.7 Clause 16 refers to claims, actions, liabilities, losses, costs or expenses whatsoever arising directly or indirectly out of damage or loss of any activity undertaken by Wellington Water in the provision of Management Services without limitation, irrespective of whether the Management Services consist of capital works, maintenance, operations, activities or provision of advice.

17 Insurance

Insurance

- 17.1 While Wellington Water is providing services (whether to Council or third parties), Wellington Water must maintain:
- 17.1.1 public liability insurance for an amount not less than \$20 million in respect of any claim;
 - 17.1.2 professional indemnity insurance for an amount not less than \$5 million in respect of any claim by a third party;
 - 17.1.3 motor vehicle insurance for an amount not less than \$2 million in respect of any claim by a third party;
 - 17.1.4 general insurance for repair and replacement of all items used by Wellington Water to provide the Management Services that are lost or damaged; and
 - 17.1.5 statutory liability insurance for an amount not less than \$2 million in respect of any claim.
- 17.2 Council must maintain insurance of Water Services assets the subject of the Management Services as a council would reasonably procure which may include such self-insured portion as the Council shall elect.
- 17.3 Subject to the termination transition arrangements in clause 20, Wellington Water's professional indemnity cover should be maintained for a period of 6 years after the expiry or termination of this agreement.

Insurer and terms

- 17.4 Each policy maintained in accordance with this clause 17 must be with a reputable insurer and be on terms commonly acceptable in the current insurance market.

Protection of insurance

- 17.5 Each party must comply with and observe the terms of all insurance policies referred to in clauses 17.1 and 17.2 and must not do anything which could result in any policy being rendered void or voidable. Each party must also comply with the terms of any notification or management process for a claim under a policy referred to in clauses 17.1 and 17.2.

Evidence of insurance

- 17.6 Each party must deliver to the other party evidence satisfactory to the other party that it has a particular insurance policy and that the policy is current. This should be delivered to each party's representative under this agreement as soon as possible following a request from the other party to do so.

18 Termination

- 18.1 Council may give Wellington Water written notice immediately terminating this agreement if Wellington Water ceases to carry on business, is about to become

insolvent, or has a liquidator appointed to it or a receiver appointed for all or any of its assets.

- 18.2 Council may terminate this agreement on not less than twelve (12) weeks' written notice to Wellington Water if:
- 18.2.1 Wellington Water is in material breach of this agreement; and
 - 18.2.2 the breach is capable of remedy; and
 - 18.2.3 Wellington Water has not remedied the breach within sixty (60) days after receiving notice requiring it to do so.
- 18.3 Council may terminate this agreement on not less than six (6) months' written notice to Wellington Water if Wellington Water fails to achieve a Mandatory Key Performance Indicator in any three consecutive years.
- 18.4 Either party may terminate this agreement with effect as at 30 June in any year provided it gives written notice of termination to the other party no later than 30 June the previous year and the party giving notice has the written agreement of five (5) of the six (6) Shareholding Councils.
- 18.5 Council may terminate this agreement with effect from any given date provided it gives written notice of termination to Wellington Water and to the other Shareholding Councils no later than 36 months previous to that date.

18A Three Waters Structural Reform

- 18A.1 Council and Wellington Water acknowledge that the Crown (through the Department of Internal Affairs) has progressed a national programme for the transformation of local government three waters service delivery arrangements (**Crown Reform Proposal**), which would see the creation, by statute, of four new water service delivery entities that would be responsible for the ownership of all assets associated with, and the delivery, supply and management of, drinking water, stormwater and wastewater.
- 18A.2 Each of Council and Wellington Water acknowledges that if the Crown implements the Crown Reform Proposal, then it may be necessary to transition and migrate some or all of the Management Services, Bulk Water Supply Services, Network and/or any other matter contemplated by this agreement to one or more service delivery entities established as part of the Crown Reform Proposal. To the extent that any such transition or migration is required in connection with the Crown Reform Proposal, then each of Wellington Water and the Council will:
- 18A.2.1 act in good faith to:
 - (a) jointly develop and agree a transition plan, setting out the respective tasks to be accomplished by each party in connection with an orderly transition to the arrangements as set out under the Crown Reform Proposal and a schedule for the completion of the tasks;
 - (b) agree any amendments to the Management Services as may be necessary in connection with the transition to the arrangements as set out under the Crown Reform Proposal,
- in each case on the basis that unless otherwise required pursuant to the

Crown Reform Proposal, Wellington Water will continue to deliver the Management Services in accordance with the terms of this agreement and all applicable laws (until such time as these arrangements are terminated by the Crown Reform Proposal); and

- 18A.2.2 perform their respective tasks under the transition plan developed under clause 18A.2.1.
- 18A.3 The parties acknowledge that the Crown may request that Wellington Water assists with the transition to any Crown Reform Proposal, including by way of establishing a transition unit within Wellington Water and/or transferring or seconding personnel to a new agency (**Transition Services**). Following any such request, Wellington Water will use commercially reasonable endeavours to procure funding from the Crown for all or part of the costs of any new employees, seconded employees or transferred employees that Wellington Water is required to engage or provide in connection with the Transition Services, provided that any costs or expenses that Wellington Water incurs in connection with any such Transition Services and which it is not able to recover from the Crown will constitute Management Charges for the purposes of this agreement.
- 18A.4 Wellington Water confirms that it will provide the Transition Services, if any, in accordance with good industry practice and in a manner that minimises the costs and expenses of those Transition Services to the extent reasonably practicable.
- 18A.5 If the Crown requests that Wellington Water seconds and/or transfers any Wellington Water employees to a new agency in connection with the Crown Reform Proposal, then where Wellington Water considers (acting reasonably) that the secondment or transfer of such employee may adversely impact the performance of the Management Services, then:
- 18A.5.1 Wellington Water will notify the Council, including such detail as may be reasonably necessary for the Council to assess the potential impact to the Management Services and/or costs arising out of the transfer or secondment of such employee; and
- 18A.5.2 Wellington Water will consult with each Shareholding Council (including the Council) in respect of any such secondment or transfer (including the terms thereof) prior to approving any such secondment or transfer.
- 18A.6 The parties acknowledge that clauses 19 and 20 of this agreement shall be without prejudice to any termination, transition and/or migration arrangements in respect of the Management Services, Bulk Water Supply Services, the Network and/or any other matter contemplated by this agreement pursuant to statute or other legislative instrument in connection with the Crown Reform Proposal.

19 Obligations at end of agreement

Return of property

- 19.1 When this agreement ends, whether by expiration of the term or on earlier termination:
- 19.1.1 all sums outstanding or incurred in relation to this agreement prior to the Expiry Date or termination must be immediately paid;

- 19.1.2 Council may instruct Wellington Water to:
- (a) continue providing all or part of the Management Services while termination transition takes place under clause 20, at a reasonable cost based on, and no more than, the charges then payable under this agreement;
 - (b) deliver all or any part of the Property to an address nominated by Council;
 - (c) make all or any part of the Property available for collection, at the premises of Wellington Water at an agreed time;
 - (d) permit Council's Personnel to have access to Wellington Water's premises for the purposes of removing all or any part of the Property;
 - (e) reasonably assist Council or its new service provider to install Council's equipment and any other equipment procured by Council in connection with the termination transition;
 - (f) retain or destroy all or any part of the Property; and/or
 - (g) proceed with termination transition under clause 20 in relation to the relevant Service(s).

19.2 Wellington Water must immediately comply with any instructions given by Council pursuant to clause 19.1.2.

19.3 Council will pay Wellington Water's reasonable costs and expenses incurred in complying with clause 19.1 insofar as such compliance requires the performance of:

19.3.1 services in addition to the Management Services;

19.3.2 the Management Services after the expiration or termination of this agreement.

Consequences of termination

19.4 If this agreement expires or is terminated for any reason:

19.4.1 each party retains its rights under this agreement and at law in respect of any breach of this agreement by the other party;

19.4.2 Wellington Water will not be entitled to any other payment or any compensation as a result of termination, subject to clause 19.3; and

19.4.3 the parties will agree in good faith whether any part of the One Budget Charges received by Wellington Water (and that have not been spent or irrevocably committed as part of the Management Services) should be repaid to Council.

Clauses survive expiration or termination of agreement

- 19.5 This clause and the following clauses will survive the expiration or termination (for whatever reason) of this agreement:
- 19.5.1 clauses 10.1 through 10.12 (Reports, information, reviews and records);
 - 19.5.2 clause 12 (Intellectual Property);
 - 19.5.3 clause 14 (Confidentiality);
 - 19.5.4 clause 16 (Liability);
 - 19.5.5 clause 19 (Obligations at end of agreement);
 - 19.5.6 clause 20 (Termination transition);
 - 19.5.7 clause 22 (Dispute resolution); and
 - 19.5.8 any other clauses that make provision for continued operation.

20 Termination transition

- 20.1 Wellington Water acknowledges and agrees that both prior to and following the expiry or termination of the agreement set out in this agreement, Council must be able to maintain continuity of services whilst finding a new service provider for the ongoing provision of the Management Services, or resume providing the Management Services itself.
- 20.2 Wellington Water will comply with Council's reasonable directions to effect an orderly transition and migration of the Management Services from Wellington Water to the new service provider in accordance with the following procedures:
- 20.2.1 Wellington Water and Council will promptly and jointly develop and agree a transition plan, setting out the respective tasks to be accomplished by each party in connection with an orderly transition and a schedule for the completion of the tasks;
 - 20.2.2 Wellington Water and Council will perform their respective tasks under the transition plan developed under clause 20.2.1;
 - 20.2.3 Wellington Water and Council will discuss the transfer of any Wellington Water employees that Wellington Water identifies as being surplus to its requirements or who Council requests to be transferred;
 - 20.2.4 Wellington Water will transfer to Council any assets originally transferred to Wellington Water by Council and which are still held by Wellington Water and have not been paid for, and any other assets which Wellington Water identifies are surplus to its requirements and which Council requests to be transferred;
 - 20.2.5 Wellington Water will, upon request, provide Council with detailed specifications for any equipment which Council or any new service provider will require to properly perform the Management Services;
 - 20.2.6 where it is reasonably necessary to do so in order to maintain continuity of the Management Services, Wellington Water will deliver to Council all

data (in electronic form compatible with Council's information system) which is being used by Wellington Water in connection with the Management Services;

20.2.7 Wellington Water will provide any training reasonably requested by Council for its employees or employees of the new service provider who will have responsibility for the Management Services following termination transition; and

20.2.8 Wellington Water will provide all information relating to the Management Services reasonably requested by Council by written notice.

20.3 Unless this agreement has been terminated by Council due to a breach of the agreement by Wellington Water that has not been remedied in accordance with clause 18.2, Council will pay Wellington Water its reasonable costs and expenses in complying with clause 20.2 insofar as such compliance requires:

20.3.1 the performance of services which are in addition to the Management Services.

20.3.2 performance of the Management Services after the expiration or termination of this agreement.

21 Partnering

21.1 Wellington Water and Council agree that where practicable their relationship under this agreement will be characterised by the 'partnering' style of relationship as set out in Schedule 5 and in accordance with the following:

21.1.1 Partnering is a method of operating a contractual relationship to promote prompt and constructive communication and a problem solving approach between the parties. Partnering has three primary objectives:

- (a) ensuring that the contract operates smoothly;
- (b) to promote value adding to both the provision of the Management Services and each party's separate interests; and
- (c) to facilitate the avoidance of disputes;

21.1.2 the parties will implement partnering in this agreement in accordance with the style of partnering set out in Schedule 5.

21.1.3 the use of partnering techniques and the adoption of the style of partnering set out in Schedule 5 does not in any way imply any fiduciary obligations, obligation of good faith, partnership and/or joint venture between the parties; and

21.1.4 the partnering information set out in Schedule 5 is subordinate to the provisions of this agreement and shall not be considered as overriding, amending or waiving any contractual rights or obligations.

22 Dispute resolution

Meeting to attempt to resolve disputes

- 22.1 If a dispute arises under this agreement, a party to the dispute may at any time give written notice to the other party to the dispute requesting that a meeting take place to seek to resolve the dispute. The Representatives of the parties to the dispute must meet within ten business days of the giving of the notice and endeavour to resolve the dispute in good faith.
- 22.2 If such meeting does not take place or if five business days after the meeting the dispute remains unresolved, the dispute must be referred to the Chief Executives of the parties who must negotiate in good faith to resolve the dispute. If after five business days of the dispute being referred to the Chief Executive the dispute remains unresolved, a party to the dispute may refer it to the mediation of a single mediator.
- 22.3 The referral to mediation shall be commenced by one party to the dispute serving written notice (a Mediation Notice) on the other party requiring the dispute to be referred to a mediator to be appointed by the parties. Failing agreement within five business days after, and exclusive of, the date of service of the Mediation Notice, the mediator shall be appointed at the request of either party by the chairperson or any other office holder for the time being of the Resolution Institute, or the nominee of such chairperson or other office holder. The guidelines that govern the mediation shall be set by the parties. Failing agreement within five business days after the appointment of the mediator, either party may request the mediator to set the guidelines (whether or not in conjunction with such party) that govern the mediation proceedings.
- 22.4 The parties acknowledge that the purpose of exchange of information or documents or the making of any offer of settlement pursuant to clauses 22.2 and 22.3 is to attempt to settle the dispute between the parties. Neither party may use any information, documents or offer obtained solely by reasons of clauses 22.2 and 22.3 for any purpose other than in an attempt to settle the dispute in the context of negotiation and mediation.
- 22.5 Subject to any right any party may have to apply to a court for any interim or preliminary relief in respect of the dispute, completion or termination of the mediation shall be a condition precedent to the arbitration of the dispute or any part of it.
- 22.6 If the parties are unable to resolve the dispute by mediation within ten business days of the establishment of the mediation guidelines, the dispute shall be referred to and finally resolved by arbitration by a sole arbitrator under the Arbitration Act 1996. The arbitral proceedings shall be commenced by one party serving written notice (an Arbitration Notice) on the other and requiring the dispute to be referred to arbitration. The arbitrator shall be appointed by the parties, or failing agreement within five business days after, and exclusive of, the date of service of the Arbitration Notice, shall be appointed at the request of either party by the president or vice-president for the time being of the New Zealand Law Society or the nominee of such president or vice-president. The arbitration shall be conducted as soon as possible at Wellington, New Zealand. Clauses 3 and 6 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under this agreement. All other clauses in the Second Schedule shall not apply.

- 22.7 Each party shall bear its own costs, expenses and fees incurred pursuant to clauses 22.2, 22.3 and 22.6 and shall equally share the mediator's and arbitrator's fees and expenses.
- 22.8 Every party to a dispute shall act promptly with respect to the appointment of any mediator or arbitrator and in respect of all other matters and proceedings relating to the mediation and arbitration.
- 22.9 The parties to a dispute will be bound by any decision or award of the arbitrator made in accordance with the Arbitration Act 1996, subject to the rights of appeal provided by that Act.

Performance of obligations

- 22.10 During a dispute, the parties to it must continue to perform their respective obligations under this agreement.

Interlocutory relief and right to terminate

- 22.11 Clauses 22.1 to 22.10 do not restrict or limit the right of either party to obtain interlocutory relief, or to immediately terminate this agreement where this agreement provides such a right.

23 Priority

- 23.1 In the event of any inconsistency, this agreement must be interpreted in accordance with the following order of priority:
- 23.1.1 the terms and conditions set out in the body of this agreement; then
 - 23.1.2 the Schedules; and then
 - 23.1.3 any other documents or information incorporated by reference into this agreement.

24 Notices

Giving notices

- 24.1 Any notice, consent, information, application or request that must or may be given or made to a party under this agreement is only given or made if it is in writing and sent in one of the following ways:
- 24.1.1 delivered or posted to that party at its address set out in Schedule 1; or
 - 24.1.2 emailed to that party at the email address set out in Schedule 1.

Change of address or email

- 24.2 If a party gives the other party three business days' notice of a change of its postal address or email address, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address or email address.

Time notice is given

24.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

24.3.1 if it is delivered, when it is left at the relevant address;

24.3.2 if it is sent by post, two business days after it is posted; or

24.3.3 if it is sent by email, one business day after it is sent.

24.4 If any notice, consent, information, application or request is delivered or received on a day that is not a business day, or if on a business day, after 5 pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

25 Miscellaneous

Approvals and consent

25.1 Except as otherwise set out in this agreement, an approval or consent to be given under this agreement may not be unreasonably withheld, and may be given subject to reasonable conditions.

Assignment

25.2 A party may not assign any of its rights or obligations under this agreement without the prior written consent of the other party.

Costs

25.3 Except as otherwise set out in this agreement, each party must pay its own costs in relation to preparing, negotiating and executing this agreement and any document related to this agreement.

Execution of separate agreements

25.4 This agreement is properly executed if each party executes either this agreement or an identical agreement. In the latter case, this agreement takes effect when the separately executed agreements are exchanged between the parties.

Further acts

25.5 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

No agency or partnership

25.6 The relationship between the parties is that of principal and contractor. Wellington Water must not represent itself as an agent or representative of Council except where required to perform the Management Services in accordance with this agreement.

No authority to act

- 25.7 No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this agreement or by express written agreement between the parties.

Severability

- 25.8 If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

Survival of indemnities

- 25.9 Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination of this agreement.

Variation

- 25.10 No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement and is in accordance with clause 4.7.

Waiver

- 25.11 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

26 Definitions and interpretation

Definitions

- 26.1 In this agreement the following definitions apply:

drinking water, drinking water supplier, drinking water supply, operator, owner, stormwater network, stormwater network operator, wastewater network, wastewater network operator have the meanings given to them in the Water Services Act.

Additional Services means management services:

- (a) included within the Three Year Plan or Annual Work Programme, but not covered by the Management Charge Scope, Opex Charge Scope or Capex Scope (as applicable);
- (b) not included in the agreed Annual Work Programme (including, without limitation, any management services in connection with a Supply Network Event); and/or

(c) carried out in response to Unexpected Events.

Amendment Agreement (First) means the amendment and restatement agreement dated 11 April 2022 ~~2021~~ between Wellington Water and Council, pursuant to which this agreement was amended and restated.

Amendment and Restatement Date means the “Effective Date”, as such term is defined in Amendment Agreement (First).

Annual Work Programme means the programme prepared and agreed in accordance with clause 11, of all Management Services to be undertaken in a financial year including:

- (a) the detailed work programme;
- (b) timing of work;
- (c) any changes to Key Performance Indicator targets; and
- (d) any specific detailed Council requirements set out in Schedule 9.

Approved Regional Policy means a regional policy developed by Wellington Water and agreed by the Shareholding Councils, or:

- (a) where the regional policy does not relate to Bulk Water Supply, agreed by the Four Cities; or
- (b) where the regional policy relates solely to Bulk Water Supply, agreed by GWRC.

Asset Management Plans means those as described as a requirement in the LGA 2002 and approved by Council.

Bulk Water Supply means the provision of drinking water to the points of supply to each of the Four Cities using GWRC's bulk water network.

Capex Charge means the annual charge agreed with the Council in the Three Year Plan (based on agreed values determined in Council's annual planning process), to be utilised by Wellington Water for payments of capital expenditure due under Water Services capital works contracts that fall within the Capex Charge Scope.

Capex Charge Scope means the capital works costs covered by the Capex Charge as detailed in the Annual Work Programme.

Commencement Date is as set out in Schedule 1.

Companies Act means the Companies Act 1993.

Confidential Information means any information provided by Council or any of its Personnel to Wellington Water or any of its Personnel, or otherwise obtained by Wellington Water or any of its Personnel, whether obtained before or after execution of this agreement, in connection with Council, the Management Services or this agreement. It includes:

- (a) all confidential business information, documents, records, financial information, personal information under the Privacy Act 1993, reports, technical information and forecasts which relate to Council or its operations;
- (b) Council's Property;
- (c) Council's Intellectual Property; and
- (d) any information created under or arising out of the provision of Management Services under this agreement including information which Council could lawfully withhold under the Local Government Official Information and Meetings Act 1987.

It does not include:

- (a) information which is in or becomes part of the public domain, other than through a breach of this agreement of an obligation of confidence owed to Council or any of its Personnel; or
- (b) which Wellington Water can prove by contemporaneous written documentation was independently acquired or developed without breaching any of the obligations set out in this agreement.

Contingency Sum means the values that are not allocated to specific services, work or projects in the Annual Work Programme but that are included in the operational budget agreed with Council as part of the Three Year Plan for performance of the Annual Work Programme.

Council Policies means standards, policies and similar written documents in force for Council that relate to or govern the provision of Management Services or Water Services. The Council Policies provided at Commencement date are listed in Schedule 8.

Drainage Services means the collection, treatment and disposal of wastewater, and the disposal of stormwater drainage in the jurisdiction of Council.

Expiry Date is as set out in Schedule 1.

Financial Year means a twelve month period commencing on 1 July and ending on 30 June.

Four Cities means WCC, UHCC, HCC and PCC.

Governance Charge means the monthly charge for Wellington Water's governing expenses including directors' fees and professional indemnity insurance, audit fees and other consultancy fees relating to Wellington Water's governance.

GST means the goods and services tax levied under the Goods and Services Tax Act 1985.

HSE Act means the Health and Safety at Work Act 2015.

Intellectual Property includes copyrights, patents, trademarks, designs, brands, logos and circuit layouts, inter alia.

Key Performance Indicators (KPIs) means the standards agreed by Wellington Water and Council annually by which Wellington Water's performance under this agreement will be assessed, as set out in Wellington Water's Statement of Intent (prepared in accordance with the LGA 2002) and/or as otherwise agreed from time to time (including in the Three Year Plan), with agreed individual targets for Council.

LGA 2002 means the Local Government Act 2002.

Long Term Plan (LTP) means as described as a requirement in the LGA 2002.

Loss means any loss including any liability, cost, expense (including legal costs on a full indemnity basis), claim, proceeding, action, demand or damage.

Management Charge means the annual charge agreed with the Council in the Three Year Plan in the relevant year for:

- (a) Wellington Water's internal costs of providing the Management Services (in respect of both operational and capital activities), in accordance with the Annual Work Programme;
- (b) complying with applicable law in connection with the performance of the Management Services; and
- (c) the Governance Charge,

as further described in the Management Charge Scope.

Management Charge Scope means the scope of management costs covered by the Management Charge, as set out in Schedule 4.

Management Services means both the internal and external supply of labour, personnel, professional and consultant services to the Council which are necessary or desirable to carry out on the Council's behalf the management of the Water Services as agreed in the Annual Work Programme and which may include, without limitation, those services listed in Schedule 2.

Mandatory Key Performance Indicators means the critical KPIs agreed from time to time as mandatory KPIs and set out in Wellington Water's Statement of Intent (prepared in accordance with the LGA 2002) and/or the Three Year Plan.

Network means all of the pipelines, treatment stations, reservoirs and other assets of the Council that are owned by it or used in the provision of Water Services to consumers of the Council, the collection, treatment and disposal of sewage and stormwater drainage, and includes any additions or new assets added to the Network during the term of this contract.

Objectives means the objectives set out in clause 2.

One Budget Charges means the Management Charge, Opex Charge and Capex Charge.

Opex Charge means the annual charge agreed with the Council in the Three Year Plan for the relevant year (based on agreed values determined in Council's annual planning process), to be utilised by Wellington Water for payments of the operational costs due under Water Services operations and maintenance

contracts as further detailed in the Opex Charge Scope, and includes the Contingency Sum.

Opex Charge Scope means the scope of operational costs covered by the Opex Charge, as set out in Schedule 4.

Owner Obligation means each of the following obligations of Council as owner of a drinking water supply under the Water Services Act that are not an obligation on the operator of such drinking water supply:

- (a) registering a drinking water supply, and renewing the registration of the drinking water supply, in accordance with ss23 and 56 of the Water Services Act;
- (b) preparing and lodging a drinking water safety plan with the Regulator in relation to Council's drinking water supply, in accordance with s30 of the Water Services Act; and
- (c) notifying the Regulator of any change in the registered drinking water supply information provided under s54(2), in accordance with s56(3) of the Water Services Act.

Performance Measures means any other performance measures that are not Key Performance Indicators (however described) relating to Management Services included in the Council LTP, Annual Plan, Asset Management Plans, business plans or contracts.

Personnel means any director, officer, employee, agent, contractor or professional adviser of a party.

Property means all property of Council held by Wellington Water from time to time in connection with the performance of this agreement including, without limitation, documents, data and records relating to the Management Services and associated assets and infrastructure, and documents, data and records produced by Wellington Water in connection with providing the Management Services to Council.

Regulator means Taumata Arowai, in its capacity as water services regulator established by section 8 of the Taumata Arowai-the Water Services Regulator Act 2020.

Representative means each party's representative appointed under clause 5 and specified in Schedule 1.

Shareholding Councils means the councils that are shareholders in Wellington Water. At Amendment and Restatement Date, these are GWRC, WCC, HCC, UHCC, PCC and SWDC.

SLA Report means the reporting as outlined in Schedule 3.

Statutory Powers means the statutory responsibilities, duties and powers given to Council by statute, and delegated to Wellington Water by Council under this agreement.

Supply Network Event means any requirement issued by the Regulator to Wellington Water or Council that the Council must take action under section 127(2) of the LGA 2002.

Three Year Plan means the three year plan prepared and agreed in accordance with clause 11, of Management Services to be undertaken in the three year period covered by the plan, including the Annual Work Programme and the One Budget Charges.

Unexpected Event means an event requiring management of Water Services that is not in the Annual Work Programme, being an event beyond the reasonable control of Wellington Water or the Council including acts of god, floods, storms, earthquakes, fires, power failures, riots, strikes, lockouts, war, terrorism or government action.

Unexpected Event Costs means costs due under Water Services operations and maintenance contracts to manage Unexpected Events.

Unexpected Event Reserve means the amount of any unspent Contingency Sum (up to the Unexpected Event Reserve Cap) retained by Wellington Water and available to pay for operational costs incurred by Wellington Water due to Unexpected Events.

Unexpected Event Reserve Cap means the sum set out in Schedule 4.

Water Services means the provision of Water Supply and Drainage Services, the maintenance and expansion of the Network, the planning for and provision of water conservation strategies to the public, and such other deliverables in relation to the supply and maintenance of a sustainable, accessible and high quality water service that Council determines that it wishes to provide and as set out in its then current Long Term Plan.

Water Services Act means the Water Services Act 2021 once relevant parts, or all, of that Act is in force.

Water Supply means the provision of drinking water to the point of supply of each dwelling house and commercial or industrial premise to which drinking water is supplied, in the jurisdiction of Council.

Interpretation

- 26.2 In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:
- 26.2.1 headings are inserted for convenience only and do not affect the interpretation of this agreement;
 - 26.2.2 a reference in this agreement to a business day means a day on which banks are open for business generally in Wellington other than a Saturday or Sunday;
 - 26.2.3 if the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day;
 - 26.2.4 a reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

- 26.2.5 words and expressions in this agreement that are defined in the LGA 2002 have the meaning given in that Act;
- 26.2.6 a reference in this agreement to any policy, plan, agreement or document is to that policy, plan, agreement or document as amended, noted, supplemented or replaced;
- 26.2.7 a reference to a clause, part, schedule or appendix is a reference to a clause, part, schedule or appendix of or to this agreement;
- 26.2.8 an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate, local authority or governmental agency;
- 26.2.9 where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 26.2.10 a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- 26.2.11 references to the word 'include' or 'including' are to be construed without limitation;
- 26.2.12 a reference to this agreement includes the agreement recorded in this agreement; and
- 26.2.13 schedules and appendices form part of this agreement.

Execution and date

Executed as an agreement.

Signed for and on behalf of **Council** by

)
)
)

[Chief Executive]

[Authorised signatory]

Signed for and on behalf of **Wellington Water Limited** in the presence of:)
)
)

Chair

Director

Witness signature:

Witness name:

Occupation:

Address:

Schedule 1

General Information

Term of agreement (Clause 3)

Commencement date 1 October 2019

Expiry Date 30 June 2029

Council's Representative (Clause 5)

Name Harry Wilson

Position Chief Executive

Contact details Phone: 06 306 9611
Mobile: 027 444 4824
Email: Harry.Wilson@swdc.govt.nz
Address: 19 Kitchener Street
Martinborough 5741

Postal: PO Box 6, Martinborough 5741

Wellington Water's Representative (Clause 5)

Name Colin Crampton

Position Chief Executive

Contact details Phone: 04 912 4488
Mobile: 027 492 4419
Email: colin.crampton@wellingtonwater.co.nz

Address: Level 4, IBM House
25 Victoria Street, Petone

Postal: Private Bag 39 804
Wellington Mail Centre, Petone

Notices (Council) (Clause 24)

Address 19 Kitchener Street
Martinborough 5741

Email Address Harry.Wilson@swdc.govt.nz

Attention

Harry Wilson

Notices (Wellington Water)
(Clause 24)

Address

Level 4, IBM House
25 Victoria Street
Petone

Email Address

colin.crampton@wellingtonwater.co.nz

Attention

Colin Crampton

Schedule 2

Management Services

(Clause 26.1)

1. The Management Services include (without limitation) the following tasks and activities:
 - 1.1 carrying out the functions, duties and responsibilities of the principal's representative and engineer's representative (where applicable) under all contracts for Water Services works to which Council is party;
 - 1.2 carrying out all the functions, duties and responsibilities of the principal under all contracts for Water Services works to which Wellington Water is party;
 - 1.3 project managing all contracts relating to Water Services, including overseeing the provision of all works and services by contractors and consultants in accordance with the contract and managing contractor and consultant performance in accordance with recognised benchmarks;
 - 1.4 monitoring, reporting on and administering all financial and operational aspects of contracts relating to Water Services;
 - 1.5 any services as set out in clause 4A.2 (*Obligations*);
 - 1.6 monitoring and managing Council's obligations under the HSE Act in respect of the Management Services, the assets and infrastructure used to provide Water Services and all works to or affecting such assets and infrastructure, to the extent there are any, and ensuring Wellington Water and/or Council do not breach their obligations under the HSE Act;
 - 1.7 providing expert advice in respect of Management Services in conjunction with consultants and other experts engaged by Council or by consultants engaged by Wellington Water or by Wellington Water on Council's behalf;
 - 1.8 arranging the provision of Water Services works in accordance with the approved Annual Work Programme, Council's Annual Plans and Long Term Plan, and approved Asset Management Plans;
 - 1.9 providing costing advice to Council for the purposes of Council's charges for the provision of Water Services and related matters, including (without limitation) water rates and costs, trade waste charges, consent and permit fees, and user charges;
 - 1.10 provide representation at wholesale and retail water supply negotiations and meetings; if applicable;
 - 1.11 preparing for Council draft Asset Management Plans, business plans and the draft Annual Work Programme for assets and infrastructure used to provide Water Services, all in accordance with the requirements of this agreement, the LGA 2002 and industry best practice or Council's practice if that exceeds industry best practice;
 - 1.12 managing on Council's behalf the wastewater and drinking water treatment plant owned by Council;

- 1.13 assisting Council to prepare budgets, financial statements and forecasts, and any other information required in a LTP, Annual Plan, Annual Report or any other document relating to the provision of the Management Services by Wellington Water. All budgets are to be prepared in accordance with instructions given from time to time;
- 1.14 assisting Council (in the manner agreed between the Council and Wellington Water) to undertake asset valuations in respect of the Council's three waters assets;
- 1.15 assisting and co-operating with all audits of Water Services assets or infrastructure;
- 1.16 providing Council with timely, accurate and quality data so that Council can keep its information systems up to date in respect of water assets and infrastructure;
- 1.17 monitoring the insurance cover required and held by Council in respect of Water Services and assets, prepare any required infrastructure insurance fund update and advising Council of any deficiency or insurance cover;
- 1.18 advising Council on its trade waste functions;
- 1.19 identifying and advising Council of all circumstances where a prosecution or claim for damage relating to water, waste water, sewage, trade waste, Water Services, or assets and infrastructure used to provide Water Services could be brought against Council or by Council, and providing all information and assistance for such prosecutions and claims;
- 1.20 responding to requests from Council for information required by it to administer any law, including (without limitation) the Resource Management Act 1991 and the Building Act 2004;
- 1.21 responding, within five business days or the response times set by Council's system, whichever is the lesser, to public and customer enquiries and requests for service in relation to Water Services, including meeting such persons where appropriate;
- 1.22 managing all routine, operational and work programme related communications, marketing and community engagement. For the avoidance of doubt, any non-routine communications, marketing, community engagement or use of Council brand, will be carried out in collaboration and with approval of Council;
- 1.23 advising and assisting Council in identifying and quantifying the value of third party damage caused to Councils three water networks;
- 1.24 assuring compliance with Council's responsibilities under the Civil Defence and Emergency Management Act (CDEM Act) with respect to water and wastewater as a lifeline utility. This will include assisting with and responding to emergencies involving Water Services and the provision of an afterhours service outside of standard office hours;
- 1.25 providing services to assist meeting Council's community and stakeholder consultation obligations, including with mana whenua, in relation to matters involving Water Services;

- 1.26 co-ordinating with other units of Council or with other parties to ensure that programmed work involving Water Services is planned around other relevant infrastructure work and around other planned events (for example festivals, sporting events or other special events);
- 1.27 assisting Council to prepare and maintain its various plans in relation to the Water Services, including but not limited to its LTP, District Plan, Emergency Response and Recovery Plans, Risk Management Plans (strategic and operational), Code of Engineering Practice, Business Continuity Plan and Environmental Plan;
- 1.28 undertaking any other emergency and civil defence planning in relation to Council's Water Services, as agreed with Council;
- 1.29 continuously monitoring the appropriateness and effectiveness of bylaws and policies relating to Water Services, suggesting improvements and assisting Council draft bylaw amendments and policy papers;
- 1.30 attending and participating in Council meetings, and meetings with Council officers, contractors, consultants and/or the public, including preparing reports and briefings for such meetings where reasonably required;
- 1.31 preparing for Council's approval a report which complies with section 125 of the LGA 2002;
- 1.32 in conjunction with Council, managing legal issues and services relating to Water Services, other than those related to prosecutions and claims for damage which Council will manage;
- 1.33 assisting Council to maintain and update its asset register;
- 1.34 obtaining resource consents required for Water Services;
- 1.35 preparing detailed current and future Water Services work programmes;
- 1.36 maintaining Council's proactive water supply leak detection programme;
- 1.37 administering Council's garden watering restrictions;
- 1.38 promoting water conservation and education;
- 1.39 undertaking any other water conservation and environmental sustainability planning in relation to Council's Water Services, as agreed with Council;
- 1.40 planning and advice, including the provision of Asset Management Plans in respect of the Network and Water Services;
- 1.41 providing the necessary inputs to the Council's Annual Plan and Long Term Plan so as to enable the Council to make appropriate decisions as to work necessary on an annual and long term basis to maintain, renew and as necessary expand the Network so as to be able to provide Water Services on an affordable, sustainable basis to a standard determined by Council;
- 1.42 managing the carrying out of all necessary operating and renewal work on the Network as agreed in the Annual Work Programme and Council's Annual Plans and Long Term Plan;

- 1.43 managing the carrying out of all capital works on and for the expansion of the Network as agreed in the Annual Work Programme and Council's Annual Plans and Long Term Plan;
 - 1.44 providing all strategic and policy advice reasonably necessary to ensure that the Water Services are delivered by Council on an affordable and sustainable basis;
 - 1.45 managing the application of resource consents necessary to ensure Water Services delivery;
 - 1.46 any activities that would have been reasonably anticipated as constituting part of the Water Services offering by both parties at the Commencement date; and
 - 1.47 any other services as agreed between the parties, subject to clause 4.6.
2. The Management Services do not include:
- 2.1 any activity relating to billing and the setting of water charges, apart from the providing of costing advice and the like as described above;
 - 2.2 the approval of Council policies or strategies, Asset Management Plans, Statements of Intent, budgets, Annual Plans and LTPs; and
 - 2.3 any service which reasonably, or as outlined in this agreement, remains with Council.

Schedule 3

Service Level Agreement (SLA) Reports (Clauses 10.1 and 10.3)

- Monthly and quarterly reporting (including financial reports) as agreed between Council and Wellington Water
- The quarterly SLA reports shall be structured as follows:
 - 1 Introduction
 - 2 Quarterly Meeting Action Log
 - 3 Highlights
 - 4 Key Performance Indicators Reporting
 - 5 Agreed Performance Metrics
 - 6 Long Term Plan 3 Water Indicators
 - 7 Agreed Customer Performance Indicators
- And any other quarterly SLA reporting requirements arising from Schedule 9.

Schedule 4

One Budget Charge details (Clauses 11 and 26.1)

Opex Charge Scope

The Opex Charge covers controllable costs incurred by Wellington Water as further described in the detailed operational controllable cost budget agreed with Council as part of the Three Year Plan. Controllable costs include, for example, charges for repairs and maintenance of Water Supply assets, costs of consumables such as chemicals and consultants and contractors' charges.

The following costs are outside the Opex Charge Scope:

- Council's internal costs relating to Water Supply, such as allocations, financing and depreciation
- Costs identified as remaining with Council pending expiration of existing contractual terms and/or which may be transferred to Wellington Water at a later date.

Management Charge Scope

The Management Charge covers management costs incurred by Wellington Water as further described in the detailed management cost budget agreed with Council as part of the Three Year Plan. Management costs include, for example, Council's proportion of Wellington Water employees' salaries, lease payments and other operating expenses for Wellington Water's office (including IT and telecommunications costs), insurance premiums and vehicle expenses. The Management Charge also includes the Governance Charge.

Unexpected Event Reserve Cap

The Unexpected Event Reserve Cap is 5% of the Opex Charge for the current Financial Year.

Schedule 5

Partnering (Clause 21)

Partnering Philosophy

1. Partnering encourages the development of relationships of trust, co-operation, open communication and team work.

Definition

2. Partnering is a commitment between two or more organisations for the purpose of achieving specific business objectives by maximising the effectiveness of co-operation.

Expected Results

3. Results that partnering is expected to produce include:
 - 3.1 less adversarial relationships;
 - 3.2 improved problem solving;
 - 3.3 improved planning;
 - 3.4 improved responsiveness;
 - 3.5 increased openness;
 - 3.6 fewer errors;
 - 3.7 improved efficiency;
 - 3.8 improved quality;
 - 3.9 reduction in service charges; and
 - 3.10 potential for savings through innovation.

Dispute Prevention

4. Dispute prevention is recognised as the best dispute resolution. Partnering relationships of trust, open communication and processes for effective issue resolution can minimise the risk of issues escalating into disputes.
5. It is important however, that issues of conflict should not be 'brushed under the carpet', but rather, dealt with at the time the conflict occurs to avoid frustration and the threat to the continuation of the agreement.

Type of Relationship

6. Partnering relationships can be different for each contractual situation.
7. Partnering does not over-ride the agreement, but provides a 'way of working' that is mutually beneficial. If partnering fails, then the parties can still resort to contractual remedies.

Key elements of partnering

A Commitment

8. Commitment to partnering must come from the top management of each stakeholder. This leadership must be visible, supportive and ongoing.

B Equity

9. All stakeholders' goals must be considered in reaching mutual goals and there is a commitment to meeting each stakeholder's requirements by searching for solutions to these goals.

C Trust

10. Successful partnering relies on relationships of trust.

D Mutual Objectives

11. Partnering takes into account the objectives of the parties set out in clause 2 which reflect the parties' requirements for a successful contract.

E Timely Responsiveness

12. Rapid issue resolution should minimise the number of issues that escalate into dispute. Partnering aims at problems being solved at the lowest possible level and the earliest possible time. Agreed processes can be established to ensure this occurs.

F Frank Discussion

13. Partnering helps the identification of each party's position by creating an environment where frank discussion is appropriate and legitimate. This can happen without precipitating confrontation.

G Risks Associated with Partnering

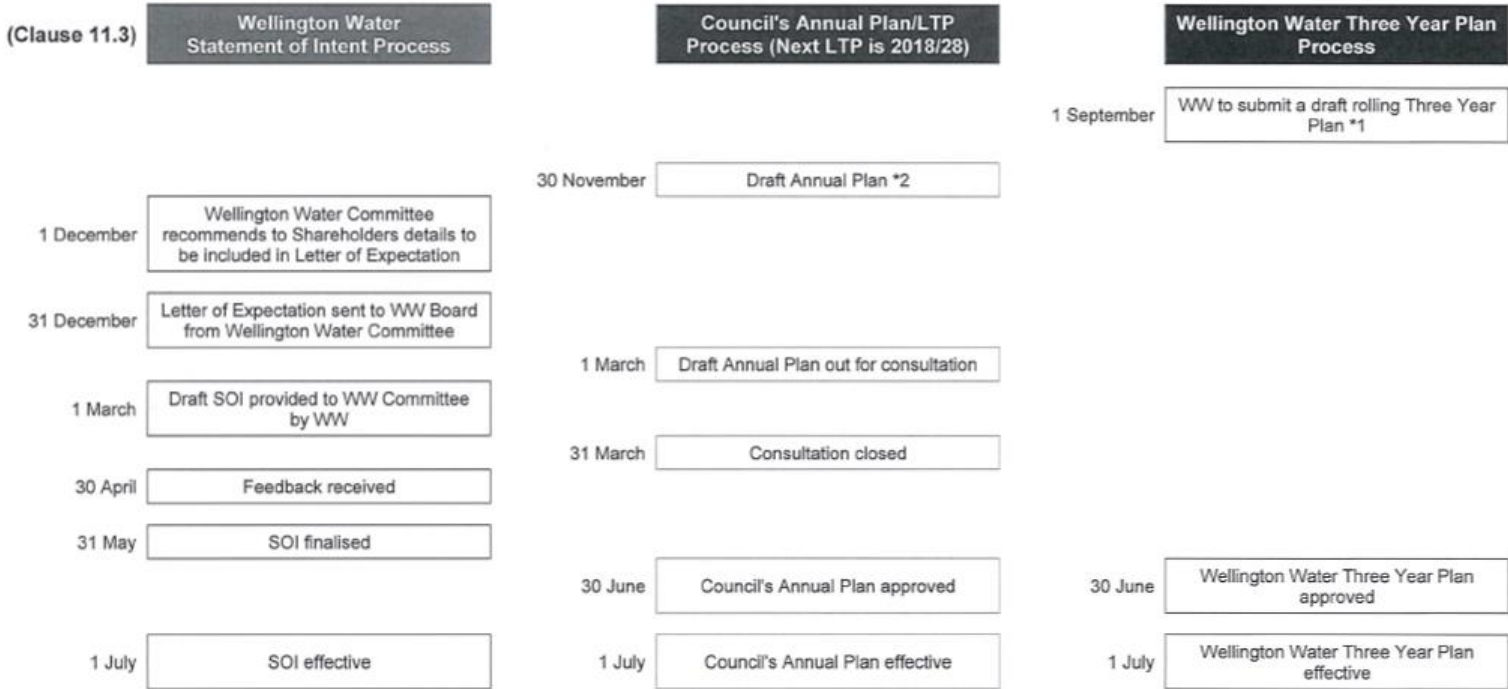
14. It is important to distinguish partnering from partnership. Both involve relationships of trust, long-term commitment and joint goals. Partnering is not a partnership or joint venture.
15. Partnering does not mean being soft and all parties to the relationship need to be vigilant for indications of potential dispute and seek resolution of problems before they escalate to dispute. If this occurs effectively, then the need to resort to contractual remedies is minimised.

Summary

16. Partnering is a 'way of working' which is based upon mutual trust, and recognition that working together achieves better results than a confrontational, strictly contractual relationship.

Schedule 6

Three Year Plan approval process
 (Clause 11.3) Three Year Plan approval process



*1 Including a full draft Annual Work Programme for the next Financial Year and a forecast high level programme for the two following Financial Years.
 *2 Council prepares Annual Plan including information supplied by Wellington Water in its draft Three Year Plan.

Schedule 7

Not used

Schedule 8

Applicable Council Policies
(Clause 4.21)

South Wairarapa District Council Policies

1. To be confirmed by Council at a later date.

Schedule 9

Additional Annual Work Programme Information Required
(Clause 26.1)

No additional information required.

Variation to Wellington Water Limited Shareholders Agreement

PARTIES

Wellington City Council

Hutt City Council

Upper Hutt City Council

Porirua City Council

Wellington Regional Council

AGREEMENT dated 9 August 2019

PARTIES

Wellington City Council
("WCC")

Hutt City Council
("HCC")

Upper Hutt City Council
("UHCC")

Porirua City Council
("PCC")

Wellington Regional Council
("WRC")

INTRODUCTION

- A. WCC, HCC, UHCC, PCC and WRC are parties to a Shareholders Agreement relating to Wellington Water Limited ("WWL") dated 16 September 2014 ("**Agreement**").
- B. The Wellington Water Committee, which is jointly established and maintained by the parties, has proposed the participation of mana whenua partner entities ("**MWPEs**") in relation to the governance of WWL.
- C. In consideration of each other party agreeing to certain other changes to the Agreement, the parties are all agreeable to the amendment of the Agreement to provide for the participation of MWPEs in the governance of WWL.
- D. The parties agree to vary the Agreement on the terms set out in this variation agreement ("**Variation**").

AGREEMENT

1. **Effective date:** The provisions of this Variation will take effect on and from the date all parties have signed this Variation ("**Effective Date**").
2. **Variation:** With effect from the Effective Date, the parties agree that the Agreement shall be amended and restated in the form set out in the Appendix to this Variation.

3. **Other terms in Agreement:** Except as specified in clause 2 of this Variation, all other terms and conditions in the Agreement are unchanged and shall continue in full force and effect.
4. **Counterparts:** This Variation may be executed in any number of counterparts, including by way of facsimile or PDFs of completed signature blocks exchanged by email, and, provided that each party has executed a counterpart, the counterparts together constitute a binding and enforceable agreement between the parties.
5. **Governing law:** This Variation is governed by the laws of New Zealand.

SIGNATURES

WELLINGTON CITY COUNCIL by:

Kevin Lavery

Signature of authorised signatory

KEVIN LAVELY

Name of authorised signatory

CHIEF EXECUTIVE

Designation of authorised signatory

HUTT CITY COUNCIL by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

3. **Other terms in Agreement:** Except as specified in clause 2 of this Variation, all other terms and conditions in the Agreement are unchanged and shall continue in full force and effect.
4. **Counterparts:** This Variation may be executed in any number of counterparts, including by way of facsimile or PDFs of completed signature blocks exchanged by email, and, provided that each party has executed a counterpart, the counterparts together constitute a binding and enforceable agreement between the parties.
5. **Governing law:** This Variation is governed by the laws of New Zealand.

SIGNATURES

WELLINGTON CITY COUNCIL by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

HUTT CITY COUNCIL by:



Signature of authorised signatory

Johanna Elizabeth Miller
Name of authorised signatory

Chief Executive
Designation of authorised signatory

UPPER HUTT CITY COUNCIL by:



Signature of authorised signatory

Peter Kelly

Name of authorised signatory

Chief Executive

Designation of authorised signatory

PORIRUA CITY COUNCIL by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

WELLINGTON REGIONAL COUNCIL

by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

UPPER HUTT CITY COUNCIL by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

PORIRUA CITY COUNCIL by:

Wendy Walker

Signature of authorised signatory

Wendy Walker

Name of authorised signatory

Chief Executive

Designation of authorised signatory

WELLINGTON REGIONAL COUNCIL

by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

UPPER HUTT CITY COUNCIL by:

Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

PORIRUA CITY COUNCIL by:

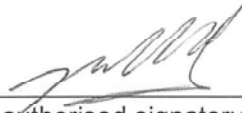
Signature of authorised signatory

Name of authorised signatory

Designation of authorised signatory

WELLINGTON REGIONAL COUNCIL

by:



Signature of authorised signatory

GREG CAMPBELL

Name of authorised signatory

CHIEF EXECUTIVE

Designation of authorised signatory

APPENDIX
Amended and Restated Agreement

Shareholders and Partnership Agreement
relating to
Wellington Water Limited

Wellington City Council

Hutt City Council

Upper Hutt City Council

Porirua City Council

Wellington Regional Council

And any other Shareholder and Mana Whenua Partner Entity
acceding to this Shareholders and Partnership Agreement

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Te Taki o Wellington Water

He wai, he wai

He wai herenga tāngata

He wai herenga whenua

He wairua

He waiora

Tihei Mauri ora

Tis water, tis water

Water that joins us

Water that necessitates the land

Soul of life

Life forever

Tis life

Parties

Wellington City Council (WCC)

Hutt City Council (HCC)

Upper Hutt City Council (UHCC)

Porirua City Council (PCC)

Wellington Regional Council (WRC)

Any other Shareholder(s) acceding to this document in accordance with clause 1.6 below

Any Mana Whenua Partner Entity(ies) acceding to this document in accordance with clause 2.3 below (MWPE)

Background

- A. Wellington Water Limited (**Company**) manages drinking water, wastewater and storm water services in the greater Wellington region for its local authority shareholders, working in partnership with mana whenua, through the MWPEs, to provide leadership across water issues.
- B. The parties are:
 - a. shareholders in the Company; and
 - b. mana whenua partner entities,and wish to enter into this document for the purpose of recording the agreements they have reached in relation to managing their shareholdings in the Company, mana whenua's partnership with the Shareholders in relation to governance of the Company, and their respective relationships with each other.
- C. The existing parties to this document acknowledge that additional parties may accede to this document in the manner described in clause 2.3 below, either as additional shareholders in the Company or as MWPEs.

Operative provisions

1 Shareholder and other obligations

Shareholder and customer

- 1.1 Each Shareholder acknowledges that all Shareholders are expected to also be customers of the Company under a Service Level Agreement.

Duty to comply with Constitution

- 1.2 Each Shareholder shall comply with the Company's Constitution. Each MWPE shall, in the exercise of its role as contemplated in this document, agree that the Company is obliged to comply with the Constitution.

Council controlled organisation

- 1.3 The Shareholders and MWPEs acknowledge that the Company is a council controlled organisation and accordingly:
- 1.3.1 the Shareholders will each use their best endeavours to ensure that they each comply with their, and the Company complies with its, obligations under the LGA and the Companies Act; and
 - 1.3.2 each of the MWPEs will, when undertaking its role as contemplated in this document, agree that the Company is obliged to comply with its obligations under the LGA and the Companies Act.

Security Interest

- 1.4 A Shareholder must not grant a Security Interest over any of its Shares without the written consent of the other Shareholders.

Shareholding

- 1.5 Each Shareholder holds the Shares as set out in the share register for the Company.

New Shareholder accession to this document

- 1.6 The Shareholders acknowledge that from time to time one or more local authorities or council controlled organisations may become shareholders of the Company, by being issued Shares in the Company in accordance with the Constitution. In such event, the new Shareholder will be required under the Constitution to become a party to this document as a Shareholder and may do so by way of entry into a deed of accession in a form required by the Shareholders.

2 Treaty of Waitangi / Te Tiriti o Waitangi

- 2.1 The Shareholders acknowledge the importance of the Treaty of Waitangi / Te Tiriti o Waitangi as a founding document of Aotearoa New Zealand and are committed to the principles it contains. In giving effect to the Treaty of Waitangi / Te Tiriti o Waitangi principles, the Shareholders agree that mana whenua, through the MWPEs, will have an important role in the governance of the Company, as contemplated in this document, including by nominating members on the Wellington Water Committee and by jointly (as part of the Wellington Water Committee) recommending the appointment of the Directors of the Company (such Director appointments to be made by the Class A Shareholders as required under the Constitution).
- 2.2 Each MWPE:
- 2.2.1 is a Māori authority in the geographical area in which the Company operates;
 - 2.2.2 has been jointly approved by all Shareholders as a MWPE for the purposes of this document (as contemplated in clause 2.3 below); and
 - 2.2.3 has acceded to this document as a MWPE by way of entry into a deed of accession in a form required by the Shareholders.
- 2.3 The Shareholders acknowledge that they, any of them and/or the Company may from time to time receive request(s) from any group(s) or entity(ies) seeking recognition as a MWPE for the purposes of this document. The Shareholders agree to consider such request(s) in good faith, and may, by unanimous resolution, agree to recognise as a MWPE under this document any Māori authority within the geographical area in which the Company operates. On such resolution, the relevant Māori authority shall become a MWPE upon acceding to this document as a MWPE by way of entry into a deed of accession as required in clause 2.2.3 above.

3 Wellington Water Committee

Establishment and Terms of Reference

- 3.1 The Shareholders will jointly establish, maintain and operate a Wellington Water Committee in accordance with the Terms of Reference and the provisions of this document, to provide overarching governance in relation to Water Services in the greater Wellington region and to assist the Shareholders to fulfil their obligations under this document.

Committee Membership

- 3.2 The Wellington Water Committee will comprise Committee Members appointed as follows:

- 3.2.1 Each Shareholder will appoint one of its elected members as a Committee Member;
 - 3.2.2 Each MWPE will nominate, and the Shareholders will unanimously appoint, a person to be a Committee Member on the Wellington Water Committee; and
 - 3.2.3 In relation to each Committee Member, whether appointed under clause 3.2.1 or 3.2.2, an Alternate will be appointed in the same way as the relevant primary Committee Member.
- 3.3 Any Committee Member and/or Alternate may be replaced from time to time as follows:
- 3.3.1 a Committee Member who is also an elected member of a Shareholder, by the relevant Shareholder; and
 - 3.3.2 a Committee Member who is not also an elected member of a Shareholder, by the relevant nominating MWPE,
- in each case, by the relevant party providing written notice to the Wellington Water Committee and the Shareholders.

Delegations to Committee Members

- 3.4 Each Shareholder agrees to delegate to its nominated or appointed Committee Member, and their Alternate, those responsibilities and powers set out in the Appendix to the Terms of Reference.

Attendance of Committee Members at meetings

- 3.5 Each:
 - 3.5.1 Shareholder agrees to use its reasonable endeavours to ensure that its appointed elected member Committee Member (or their Alternate); and
 - 3.5.2 MWPE agrees to use its reasonable endeavours to ensure that its nominated Committee Member (or their Alternate),attends each meeting of the Wellington Water Committee.
- 3.6 It shall be considered a breach of this document if an appointed Committee Member or their Alternate is not present at three consecutive meetings of the Wellington Water Committee.

4 Shareholder decisions

- 4.1 The matters contained in part 1 of Schedule 2 must be approved by unanimous agreement of the Shareholders, which may be approved through their elected members who are on the Wellington Water Committee.

5 Composition of the Board

The Board

- 5.1 The parties agree that the appointment of the Directors must meet the requirements in accordance with the Board Skills Matrix, subject to the maximum number of Directors permitted under the Constitution.
- 5.2 An appointee must not be a person disqualified from acting as a Director under the Companies Act.
- 5.3 Otherwise, the Directors are to be appointed in accordance with the terms of the Constitution and this document.
- 5.4 A performance evaluation of the Board will be undertaken by the Board on an annual basis, in line with accepted good governance principles and practices, and the results will be reported directly to the Wellington Water Committee and to the Chief Executives of the Shareholders.

6 Statement of Intent

- 6.1 The parties agree that the business of the Company is expected to be conducted in accordance with its Statement of Intent, which must be prepared in accordance with the LGA.
- 6.2 Each Shareholder retains its rights under the LGA to comment on and decide whether to approve a Statement of Intent, but will use its best endeavours to co-ordinate its feedback in accordance with the procedure set out in this clause 6.
- 6.3 Unless the parties agree an alternative date, no later than 1 December each year, the Wellington Water Committee will meet to discuss and recommend to the Shareholders details to be included in the Letter of Expectation to the Company in relation to its Statement of Intent.
- 6.4 The parties agree that the Letter of Expectation will request the Company to include in its Statement of Intent appropriate restrictions on the activities set out in part 2 of Schedule 2.
- 6.5 The parties will exercise their power to agree the Letter of Expectation via the Wellington Water Committee.

- 6.6 No later than 15 December in each year, or an alternative date agreed by the Shareholders, the chairperson of the Wellington Water Committee will circulate the agreed Letter of Expectation to the Chairperson of the Board, the Chief Executive of the Company and to all Shareholders.
- 6.7 The Shareholders will procure that the draft Statement of Intent prepared by the Company is provided to the Wellington Water Committee and will exercise its powers in relation to the draft Statement of Intent via the Wellington Water Committee.
- 6.8 The Wellington Water Committee will, in accordance with the Terms of Reference, consider the draft Statement of Intent and will agree feedback and recommendations in respect of the draft Statement of Intent to be provided to the Company.
- 6.9 Subject to clause 6.2, no later than 30 April in each year, the Wellington Water Committee will circulate to the Chairperson of the Board, the Chief Executive of the Company and to all Shareholders a letter outlining Wellington Water Committee's agreed combined feedback to the draft Statement of Intent.
- 6.10 The Wellington Water Committee will, in accordance with the Terms of Reference, consider the final Statement of Intent when it is received from the Company and agree recommendations in respect of the final Statement of Intent to be provided to the Shareholders.
- 6.11 Each Shareholder must formally consider the final Statement of Intent taking into account the recommendations of the Wellington Water Committee.
- 6.12 The parties acknowledge that under the LGA, the Shareholders may jointly, by resolution, require the Board to modify its Statement of Intent.

7 Shareholder amalgamation

- 7.1 In the event of an amalgamation or any other change in the regional governance structure of a Shareholder, the parties will meet and discuss the effect of the amalgamation on the shareholding structure of the Company and will exercise their voting rights to ensure that the shareholding percentages for both classes of shares remain reasonable as agreed by all Shareholders.

8 Conduct by the parties

Spirit of collaborative working

- 8.1 The parties must at all times act in a spirit of co-operation and collaborative working, endeavouring to act together to allow for the effective communications for and on, and governance of, the Company.
- 8.2 The parties shall use best endeavours to act under the principle of no surprises, both with the Company and with each other in relation to their respective interests. If any decision under this document has a material impact on a Shareholder's Service Level

Agreement with the Company, that Shareholder must immediately notify the other parties of the change.

9 Dispute resolution

Application of procedures

- 9.1 The procedures set out below must be followed in relation to the resolution of a dispute amongst the parties concerning either of the following:
- 9.1.1 this document, its subject matter, the rights or liabilities under this document or the negotiations leading to it; or
 - 9.1.2 the conduct of the business or affairs of the Company.

Notice in writing

- 9.2 If a party claims that a dispute has arisen, that party must give written notice to the other parties. The written notice must specify the nature of the dispute.

Escalation

- 9.3 The Representatives shall be responsible for dealing with any disputes in a timely manner.

Negotiation in good faith

- 9.4 On receipt of a notice delivered in accordance with clause 9.2 and before any party may refer a dispute to mediation, the Representatives must, in good faith and acting reasonably, do their best to resolve the difficulty quickly and efficiently through negotiation.
- 9.5 If any Representative considers that the dispute is not being resolved in a timely manner, such Representative may serve written notice on the other parties' Representatives to escalate the dispute to the Chief Executives (where the Representatives are not the Chief Executive) of the applicable Shareholders for resolution.
- 9.6 If the issue has not been resolved within 30 days (or within such other period as agreed by the parties) of the date of the notice referred to in clause 9.4, any party may submit the dispute to mediation.

Mediation

- 9.7 If the parties do not resolve the difficulty by negotiation, the parties must, in good faith and acting reasonably, do their best to resolve the difficulty by participating in mediation with an independent mediator.
- 9.8 If the parties do not agree on a mediator, then the mediator will be appointed by the President of the New Zealand Law Society.
- 9.9 The parties must mediate the difficulty in accordance with principles agreed between them or, if no agreement can be reached, the principles determined by the mediator.

- 9.10 Unless the parties agree otherwise, the mediator's fee and any other costs of the mediation itself (such as for venue hire or refreshments) will be shared equally between the parties, but the parties will each pay their own costs of preparing for and participating in the mediation (such as for travel and legal representation).

Implementation of agreement reached through negotiation or mediation

- 9.11 The parties must do whatever is reasonably necessary to put into effect any negotiated or mediated agreement or other resolution. This includes exercising voting rights and other powers as required.

Rights and obligations during a dispute

- 9.12 During a dispute, each party must continue to perform its obligations under this document.

Interlocutory relief and right to terminate

- 9.13 This clause does not restrict or limit the right of a party to obtain interlocutory relief, or to immediately terminate this document where this document provides such a right.

10 Termination

Duration

- 10.1 This document commences on its execution date in accordance with its terms and continues until:
- 10.1.1 one Shareholder holds all of the Shares or none of the Shareholders hold Shares, and there are no then current MWPEs; or
 - 10.1.2 terminated earlier in accordance with clause 10.2.

Termination for default

- 10.2 This document will terminate if an Insolvency Event occurs in relation to the Company.

Termination by notice

- 10.3 Any Shareholder may withdraw from being a Shareholder and a party to this document if the Service Level Agreement in respect of such Shareholder is terminated.
- 10.4 Any Shareholder may withdraw from being a Shareholder and a party to this document by giving 36 months' prior written notice to the Company and to all other Shareholders.

Right of first refusal

- 10.5 If a Shareholder ceases to be a Shareholder in the Company for any reason, the Shareholder must offer its Shares to the remaining Shareholders pro rata to their respective shareholdings.

- 10.6 No Shareholder is entitled to terminate this document except as expressly permitted in this document.

Effect of termination

- 10.7 Any termination of this document with respect to a Shareholder or a MWPE does not affect any accrued rights that Shareholder or that MWPE may have against the other parties to this document or which the other parties to this document may have against it.
- 10.8 Clause 11 continues to apply to the parties despite any termination of this document.

11 Confidential Information

Confidentiality

- 11.1 Each party must keep, and must ensure that its nominated and/or appointed Committee Member and Representative shall keep, confidential the terms of this document, the contents of all negotiations leading to its preparation and any other information relating to the Company or to another Shareholder or MWPE that it obtains as a result of this document or anything done under it (**Confidential Information**), and must not disclose or permit the disclosure of such Confidential Information to any other person. If a party becomes aware of a breach of this obligation, that party will immediately notify the other parties.

Further permitted use and disclosure

- 11.2 This document does not prohibit the disclosure of Confidential Information by a party in the following circumstances:
- 11.2.1 The other parties have consented to the disclosure of the relevant Confidential Information.
 - 11.2.2 The disclosure is specifically contemplated and permitted by this document.
 - 11.2.3 The disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this document.
 - 11.2.4 The disclosure is to a professional adviser in order for it to provide advice in relation to matters arising under or in connection with this document.
 - 11.2.5 The disclosure is required by a court or governmental or administrative authority.
 - 11.2.6 The disclosure is required by applicable law or regulation, including under the Local Government Official Information and Meetings Act 1987.

Obligations to continue after agreement ends

- 11.3 All obligations of confidence set out in this document continue in full force and effect after this document ends.

12 Announcements

- 12.1 Each party agrees that it will not make any public announcements or issue media releases in connection with, or on behalf of, the other parties or the Wellington Water Committee in relation to the Company or Water Services. Nothing in this provision shall prohibit or restrict a Shareholder from making public announcements or media releases in connection with the Shareholder's own involvement with, or policies in relation to, the Wellington Water Committee or the Company.
- 12.2 Only the Chairperson of the Wellington Water Committee or their nominee shall be authorised to make public announcements or media releases in connection with or on behalf of the Wellington Water Committee in relation to the Company or any Water Services.

13 Notices

Giving notices

- 13.1 Any notice or communication given to a party under this document is only given if it is in writing and sent in one of the following ways:
- 13.1.1 Delivered or posted to that party at its address and marked for the attention of the Representative; or
- 13.1.2 Emailed to that party at its email address and marked for the attention of Representative,

in each case using the contact details notified by each party to the other parties and the Company from time to time (although subject to clause 13.2).

Change of details

- 13.2 If a party gives the other parties and the Company three business days' notice of a change of its postal address or email address, any notice or communication is only given by that other party if it is delivered, posted or emailed to the latest postal address or email address.

Time notice is given

- 13.3 Any notice or communication is to be treated as given at the following time:
- 13.3.1 If it is delivered, when it is left at the relevant address.
- 13.3.2 If it is sent by post, two business days after it is posted.
- 13.3.3 If it is sent by email, when it is received in readable form addressed in the manner specified above.

- 13.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

14 Miscellaneous

Assignments and transfers

- 14.1 A party must not assign or transfer any of its rights or obligations under this document without the prior written consent of each of the other parties.

Costs

- 14.2 Except as otherwise set out in this document, each party must pay its own costs and expenses, including legal costs and expenses, in relation to preparing, negotiating, executing and completing this document and any document related to this document.

Entire agreement

- 14.3 This document contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this document was executed.

Execution of separate documents

- 14.4 This document is properly executed if each party executes either this document or an identical document. In the latter case, this document takes effect when the separately executed documents are exchanged between the parties.

Further acts

- 14.5 Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this document and all transactions incidental to it.

Inconsistency with Constitution

- 14.6 If there is any inconsistency between this document and the Constitution then the parties agree to abide by this document and to do everything required to change the Constitution so that it is consistent with this document.

No partnership or agency

- 14.7 Nothing contained or implied in this document will create or constitute, or be deemed to create or constitute, a partnership between the parties. A party must not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other parties to any obligation.

Privity

- 14.8 Nothing in this agreement gives any right to a person not named as a party to this agreement, and no such person is entitled to make a claim against any party to this agreement.

No reliance on other matters

- 14.9 Each of the parties acknowledges that in agreeing to enter into this document it has not relied on any representation, warranty or other assurance except those set out in this document.

Severability

- 14.10 Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

Variation

- 14.11 No variation of this document will be of any force or effect unless it is in writing and signed by the parties to this document.

Waivers

- 14.12 A waiver of any right, power or remedy under this document must be in writing signed by the party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 14.13 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this document does not amount to a waiver.

15 Definitions and interpretation

Definitions

- 15.1 In this document the following definitions apply:

Alternate means in relation to a Committee Member, an alternate to that Committee Member, to attend and vote at meetings of the Wellington Water Committee but only where the relevant primary Committee Member is unable to do so.

Board means the board of directors for the time being of the Company.

Board Skills Matrix means the board skills matrix set out in Schedule 1 of the Constitution.

Class A Shares means Shares in the Company entitling the holder of those Shares to vote at a meeting of the Shareholders on any resolution. No other rights or obligations attach to the Class A Shares.

Class B Shares means Shares in the Company entitling the holder to an equal share in any dividends authorised by the Board and an equal share in the distribution of surplus assets of the Company. No other rights or obligations attach to the Class B Shares.

Committee Member means a member of the Wellington Water Committee.

Companies Act means the Companies Act 1993.

Confidential Information has the meaning set out in clause 11.1.

Constitution means the constitution of the Company.

Director means a director for the time being of the Company, who is jointly appointed by the Shareholders holding Class A Shares (including pursuant to authority delegated to those Shareholders' respectively appointed Committee Member and, in accordance with these terms of reference, that person's Alternate, on the Wellington Water Committee) and who is neither a member (including Councillors and Mayors) of, nor a person employed by, any Local Authority (as defined under the LGA), or a person employed by any MWPE.

Insolvency Event in relation to a party means anything that reasonably indicates that there is a significant risk that that party is or will become unable to pay its debts as they fall due. This includes any of the following:

- (a) The party's liabilities exceed its assets.
- (b) A meeting of the party's creditors being called or held.
- (c) A step being taken to liquidate the party.
- (d) A step being taken to have a receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed to the party or any of its assets or such an appointment taking place.
- (e) The party entering into any type of arrangement with, or assignment for, the benefit of all or any of its creditors including any formal arrangement or compromise under the Companies Act.
- (f) The party ceases or threatens to cease to carry on its main business.

Letter of Expectation means a letter to the Board setting out the expectations of the parties in relation to the Company's Statement of Intent. The process for agreeing such a letter is set out in clause 6.

LGA means the Local Government Act 2002.

Mana Whenua Partner Entity or **MWPE** means a Māori authority jointly approved by the Shareholders as contemplated in clauses 2.2 and 2.3.

Related Person has in relation to companies and natural persons, the same meaning as 'Related company' and 'Relative' under the Companies Act 1993 and in relation to the trustees of a trust includes the settlor and beneficiaries of the trust and any person holding the power to appoint and remove trustees or beneficiaries of the trust.

Representative means any person appointed by a party to this document as its representative for the purposes of this document, including as the primary point of contact for the other parties and to the Wellington Water Committee and means:

- (a) in relation to each Shareholder, the person who is the "Representative" for that Shareholder pursuant to the Constitution, or as applicable, the alternate to that person appointed pursuant to the Constitution; and
- (b) in relation to each MWPE, the Chair of that MWPE (or such other representative as notified in writing by the relevant MWPE to all other parties).

Security Interest includes a mortgage, debenture, charge, lien, pledge, assignment or deposit by way of security, bill of sale, lease, hypothecation, hire purchase, credit sale, agreement for sale on deferred terms, option, right of pre-emption, caveat, claim, covenant, interest or power in or over an interest in an asset and any agreement or commitment to give or create any such security interest or preferential ranking to a creditor including set off.

Service Level Agreement means a contract for provision of management services relating to Water Services between the Company and a Shareholder.

Shareholder means, at the relevant time, a shareholder in the Company. Where Shares are held by persons jointly, those persons are considered one Shareholder for the purpose of this document.

Shares means shares in the Company.

Statement of Intent means each statement of intent to be completed annually by the Board in accordance with the LGA.

Terms of Reference means the terms of reference of the Wellington Water Committee in the form set out in Schedule 3 as amended from time to time by agreement of the parties.

Water Services means the network infrastructure for the delivery of bulk water, water reticulation, wastewater and stormwater services in the Wellington region, for which the Company is responsible for managing and operating.

Wellington Water Committee means the joint committee formed by the Shareholders, together with Mana Whenua Partner Entities as contemplated in this document, pursuant to clauses 3.1 and 3.2.

Interpretation

15.2 In the interpretation of this document, the following provisions apply unless the context otherwise requires:

- 15.2.1 Headings are inserted for convenience only and do not affect the interpretation of this document.

- 15.2.2 A reference in this document to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington, New Zealand.
- 15.2.3 If the day on which any act, matter or thing is to be done under this document is not a business day, the act, matter or thing must be done on the next business day.
- 15.2.4 A reference in this document to dollars or \$ means New Zealand dollars and all amounts payable under this document are payable in New Zealand dollars.
- 15.2.5 A reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 15.2.6 A reference in this document to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- 15.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document. Any schedules and attachments form part of this document.
- 15.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 15.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 15.2.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 15.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 15.2.12 A reference to this document includes the agreement recorded in this document.

Execution and date

Executed as an agreement.

Date:

Wellington City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Hutt City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Upper Hutt City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Porirua City Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Wellington Regional Council by:

In the presence of:

.....
Authorised signatory

.....
Witness

.....
Name of authorised signatory (print)

.....
Name of witness (print)

.....
Designation of authorised signatory

.....
Occupation and address of witness

Schedule 1 - [NOT USED]

Schedule 2

Matters requiring approval or reflection in Statement of Intent

Part 1 - Matters requiring unanimous resolution of Shareholders

The unanimous agreement of the Shareholders is required for:

- changes to the Constitution;
- increases in share capital and the issue of further securities, share buybacks and financial assistance, excluding buybacks created as a result of the agreed termination provisions in the Service Level Agreement;
- any alteration of rights, privileges or conditions attaching to the Shares;
- any arrangement, dissolution, reorganisation, liquidation, merger or amalgamation of the Company; and
- “major transactions” as that term is defined in the Companies Act.

Part 2 - Matters to be restricted in the Statement of Intent

The parties to the Shareholders' Agreement agree that the Letter of Expectation will request that the Company ensures its Statement of Intent includes appropriate restrictions on the following matters:

- making a loan or borrowing money, except for any borrowings in the ordinary course of business of no more than \$1,000,000 in total;
- granting security over the assets of the Company, or granting an indemnity or guarantee other than in the ordinary course of business;
- making a material change in the nature of the Company's business or engaging in business activities outside the ordinary course of business;
- entering a new customer service level agreement, except in the form already agreed by the parties to the Shareholders' Agreement;
- entering into a partnership or joint venture, except in the ordinary course of business;
- acquiring a new business or shares in another company;
- starting or settling any legal or arbitration proceedings, except in the ordinary course of business; and
- transferring or disposing of real or intellectual property with a value of over \$200,000.

Schedule 3

Form of Wellington Water Committee Terms of Reference

Wellington Water Committee

Purpose

The Wellington Water Committee ("the Committee") is established to:

- Provide governance and leadership across issues which are related to the planning, delivery and management of water services to communities serviced by Wellington Water Limited;
- Provide governance oversight of Wellington Water Limited, including by exhibiting good governance practice;
- Provide a forum for the representatives of Wellington Water Limited's shareholders and mana whenua to meet, discuss and co-ordinate on relevant issues and, through their representatives, to exercise their powers; and
- Strive for consistency across all client councils so all customers receive a similar level of service.

Status

The Committee is, for the purposes of the Local Government Act 2002, a joint committee of the Lower Hutt City Council, Porirua City Council, Upper Hutt City Council, Wellington City Council, and the Wellington Regional Council.

Specific responsibilities

The Committee's responsibilities are:

Governance oversight responsibilities

Shareholder and mana whenua governance oversight of Wellington Water Limited and of the network infrastructure for the delivery of bulk water, water reticulation, wastewater and stormwater services in the geographical areas of Wellington Water Limited's operations, including by:

- Receiving and considering the half-yearly and annual reports of Wellington Water Limited;
- Receiving and considering such other information from Wellington Water Limited as the Committee may request on behalf of the parties to the Shareholders and Partnership Agreement and/or receive from time to time;
- Undertaking performance and other monitoring of Wellington Water Limited;

- Considering and providing recommendations to the parties to the Shareholders and Partnership Agreement on proposals from Wellington Water Limited;
- Providing co-ordinated feedback, and recommendations as needed, on any matters requested by Wellington Water Limited or any of the parties to the Shareholders and Partnership Agreement;
- Providing recommendations to the parties to the Shareholders and Partnership Agreement regarding regional studies which the Shareholders need to be cognisant of;
- Providing recommendations to the parties to the Shareholders and Partnership Agreement regarding water conservation;
- Agreeing the annual Letter of Expectation to Wellington Water Limited;
- Receiving, considering and providing agreed feedback and recommendations to Wellington Water Limited on its draft statement of intent;
- Receiving, considering and providing recommendations to the parties to the Shareholders and Partnership Agreement regarding Wellington Water Limited's final statement of intent.
- Agreeing when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required, without prejudice to Shareholder and Board rights to call meetings under Wellington Water Limited's constitution and;
- Seeking and interviewing candidates for Wellington Water Limited's Board as needed and recommending to the holders of Class A Shares appointments and/or removals of directors of Wellington Water Limited;
- Recommending the remuneration of directors of Wellington Water Limited;
- Monitoring the performance of the Board of Wellington Water Limited; and
- Providing recommendations to the parties to the Shareholders and Partnership Agreement regarding changes to these terms of reference, the Shareholders and Partnership Agreement and the constitution of Wellington Water Limited.

Membership

The membership of the Committee will be as specified in the Shareholders and Partnership Agreement.

With the exception of the Committee Members nominated by the Mana Whenua Partners Entities, each appointee must be an elected member of the appointing Shareholder.

Chairperson

The Chairperson and Deputy Chairperson will be elected by the Committee once all Committee members have been appointed.

Quorum

Subject to the below for Committee meetings to appoint directors of Wellington Water Limited, for a meeting of the Committee to have a quorum, a majority of Committee Members, or their appointed Alternates, must be present, and the number making up the majority must include at least an equal number of Shareholder appointed Committee Members as MWPE nominated Committee Members.

Where the Committee is providing a forum for the Shareholders to meet and exercise their powers in relation to Wellington Water Limited, the requirements of Wellington Water Limited's constitution will prevail.

Clause 11.3 of the company's constitution provides that Directors shall be appointed and removed by the unanimous resolution of the Shareholders holding Class A Shares. For this matter the quorum for the Committee meeting is therefore attendance by all Committee Members (or their Alternates) for the holders of the Class A Shares.

Alternates

Each Committee Member appointed to the Committee must have an Alternate.

Other Shareholder attendee

Each Shareholder-appointed elected member Committee member will be entitled to invite an officer attendee to Committee meetings, provided however that the additional attendee will not have any voting rights on the Committee.

Decision-making

The Committee will strive to make all decisions by consensus.

In the event that a consensus on a particular matter before the Committee is not able to be reached, each Committee Member has a deliberative vote. In the situation where there is an equality of votes cast on a matter, the Chairperson does not have a casting vote and therefore the matter subject to the vote is defeated and the status quo is preserved.

Other than for those matters for which the Committee has effective decision-making capacity through these Terms of Reference, each Shareholder retains its full

powers to make its own decisions on matters referred to it by the Committee and on matters specified in Part 1 of Schedule 2 to the Shareholders and Partnership Agreement (for clarity, this means that only Shareholders have voting rights in relation to the matters specified in Part 1 of Schedule 2).

Secretariat services

Unless otherwise agreed from time to time by all of the elected member Committee Members, the Council for which the Chairperson is an elected member will provide secretariat services to the Committee.

The Chairperson will be responsible for managing the agenda at Committee meetings.

Standing Orders

The Standing Orders of the Council providing secretariat services to the Committee will apply to Committee meetings, subject to the provisions for meeting quorum and decision making as set out in these terms of reference taking precedence.

Remuneration

Each Shareholder will be responsible for remunerating the elected member Committee Member appointed by it to the Committee, and their Alternate, for any costs associated with those persons' membership on the Committee.

The Shareholders will also be responsible for remunerating (in equal shares) the Committee Members nominated by Mana Whenua Partner Entities, and their Alternates, and appointed to the Committee by the Shareholders, for any costs associated with those persons' membership on the Committee.

Administration

Reports to be considered by the Committee may be submitted by any of the Shareholders, any of the Mana Whenua Partner Entities, or Wellington Water Limited.

Duration of the Committee

In accordance with clause 30(7) of Schedule 7 to the Local Government Act 2002, the Committee is not deemed to be discharged following each triennial election.

Appendix

Common delegations by Shareholders

Governance oversight responsibilities

- Each Shareholder will delegate to the Committee the responsibilities and powers necessary to participate in and carry out the Committee's governance oversight responsibilities.

Shareholders' responsibilities

- Each Shareholder will delegate to its appointed elected member Committee Member and, in accordance with these terms of reference, that person's Alternate, all responsibilities and powers in relation to the agreement of:
 - when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required (without prejudice to Shareholder and Board rights to call meetings under Wellington Water Limited's constitution); and
 - the appointment, removal and remuneration of Wellington Water Limited's directors.