

03 October 2022

OIA IRO-311

Email: [REDACTED]@xtra.co.nz

Kia ora [REDACTED],

**Official information request for the Wellington Water and Upper Hutt Service Agreement.**

I write regarding your official information request dated Sunday 25 September 2022 for the Wellington Water and Upper Hutt City Council Service Levy Agreement.

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.

**Please find in our email to you the Provision of Services Agreement between Wellington Water and Upper Hutt City Council (UHCC) and the Wellington City Council (WCC) Provision of Services Agreement.**

Note that the UHCC contract Schedule is identical to the Wellington City Council contract Schedule (provided) and for this reason the UHCC contract Schedule is not provided.

In addition, the information you have requested was put together as part of a LGOIMA response we made in August. Refer to the following link  
<https://www.wellingtonwater.co.nz/assets/OIA-IRO-268-19-Aug-2022-Website-Release.pdf>

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](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Ngā mihi nui

[REDACTED]  
Manager, Customer Experience  
Wellington Water Ltd

# **THIRD VARIATION AGREEMENT IN RESPECT OF AGREEMENT FOR PROVISION OF MANAGEMENT SERVICES RELATING TO WATER SERVICES**

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**UPPER HUTT CITY COUNCIL**

**WELLINGTON WATER LIMITED**

 **Simpson Grierson**

Barristers & Solicitors  
Auckland, Wellington & Christchurch  
New Zealand  
[www.simpsongrierson.com](http://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 from 1 November 2013 to 30 June 2021, 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 dated 12 December 2018 (**Second Variation Agreement**) to update certain provisions and implement the one budget proposal (**Services Agreement**).
- C. Council and Wellington Water have agreed to vary the Services Agreement to extend the expiry date to 30 June 2024 on the terms set out in this agreement (**Third Variation Agreement**).

**THIS AGREEMENT RECORDS THAT:**

**1. DEFINITIONS AND INTERPRETATION**

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- 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**

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- 2.1 **Effective Date:** This Third Variation Agreement is effective as of the date of this Third Variation Agreement (**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 Effective Date.
- 2.2 **Amendment:** The parties agree to amend the Services Agreement by:
  - (a) deleting clause 3.2 (*Term*); and
  - (b) amending Schedule 1 (*General information*) as follows:
    - (i) the "Expiry Date" paragraph shall be amended by deleting the reference to "30 June 2021" and replacing it with "30 June 2024"; and

(ii) the following paragraph shall be deleted:

“Term: The term of this agreement cannot exceed 30 June 2021, being the end of the third LTP period following commencement of this 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

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**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 **Upper Hutt City Council** by:

  
\_\_\_\_\_  
Signature of authorised signatory

*Peter Te Aroha Emile Kelly*  
\_\_\_\_\_  
Name of authorised signatory

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

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

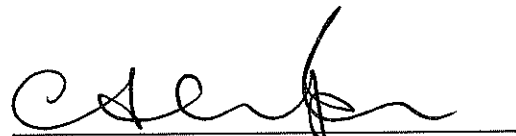
**EXECUTED**

**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 Craighton**  
\_\_\_\_\_  
Name of authorised signatory

# **THIRD VARIATION AGREEMENT IN RESPECT OF AGREEMENT FOR PROVISION OF MANAGEMENT SERVICES RELATING TO WATER SERVICES**

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**WELLINGTON CITY COUNCIL**

**WELLINGTON WATER LIMITED**

 **Simpson Grierson**

Barristers & Solicitors  
Auckland, Wellington & Christchurch  
New Zealand  
[www.simpsongrierson.com](http://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 for the provision of management services relating to water services from 1 November 2013 to 30 June 2021, as may be amended or varied from time to time prior to the date of this agreement (**Services Agreement**).
- B. Council and Wellington Water have agreed to extend the expiry date of the Services Agreement to 30 June 2024.
- C. In order to extend the expiry date, Council and Wellington Water have agreed to amend and restate the Services Agreement in the forms set out in the Schedule to this agreement (**Third Variation Agreement**).

**THIS AGREEMENT RECORDS THAT:**

**1. DEFINITIONS AND INTERPRETATION**

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- 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**

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- 2.1 **Effective Date:** This Third Variation Agreement is effective as of the date of this Third 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 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 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.

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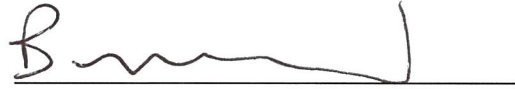
### 3. GENERAL

---

- 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 City Council** by:



Signature of authorised signatory

**BARBARA MCKERRROW**

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

  
\_\_\_\_\_  
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

Version	Date	Comment	Document Number
1	31.10.13	Original signed version (PDF)	1879791
2	23.12.2016	Clean version of consolidated version incorporating amendments from 2015 Variation Agreements between each territorial authority and Wellington Water (template version for all four TAs)	2888313_2
3	16.02.2017	One Budget proposed changes (tracked against consolidated current agreed version).	3284514_1
4	____.06.2021	Extending expiry date to 30 June 2024.	3284514_1

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## Parties

**Wellington City Council** of 101 Wakefield Street, Wellington (**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**) and Wellington Regional Council (**GWRC**).
- 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 The standard of Water Services affects the achievement of certain deliverables in Council's LTP and Annual Plans. 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.
- 1.3 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.

## **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 Contracts (Privity) Act 1982.

#### **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 an 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.

## **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 Local Government Act 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 20<sup>th</sup> 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, 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 clause 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 20<sup>th</sup> 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 **Error! Reference source not found.** 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 four (4) of the five (5) 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.

## **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:

**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.

**Annual Work Programme** means the programme prepared and agreed in accordance with clause **Error! Reference source not found.**, 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 potable 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 sewage, 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; and
- (b) 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.

**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.

**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 Commencement Date, these are WCC, HCC, UHCC and PCC.

**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.

**Three Year Plan** means the three year plan prepared and agreed in accordance with clause **Error! Reference source not found.**, 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 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;

Contract for Provision of Management Services Relating to Water Service

- 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.

Date:

Signed for and on behalf of  
**Council** by

) [Chief Executive]

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

) [Chair]

Contract for Provision of Management Services Relating to Water Service

## Schedule 1

### General information

#### Term of agreement (Clause 3)

<i>Commencement date</i>	1 November 2013
<i>Expiry Date</i>	30 June 2024

#### Council's Representative (Clause 5)

<i>Name</i>	Tom Williams
<i>Position</i>	Chief Infrastructure Officer
<i>Contact details</i>	Phone: 04 803 8097 Mobile: 021 915 860 Email: tom.williams@wcc.govt.nz Address: 113 The Terrace, Wellington Postal: PO Box 2199, Wellington

#### Wellington Water's Representative (Clause 5)

<i>Name</i>	Colin Crampton
<i>Position</i>	Chief Executive

Contract for Provision of Management Services Relating to Water Service

*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*

Mike.mendonca@wcc.govt.nz

*Attention*

Mike Mendonca

**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 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;
  - 1.6 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;
  - 1.7 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;
  - 1.8 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);

Contract for Provision of Management Services Relating to Water Service

- 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;
- 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 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 preparing on Council's behalf its utility valuations and implement its on line valuation methodology;
- 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;

Contract for Provision of Management Services Relating to Water Service

- 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;

Contract for Provision of Management Services Relating to Water Service

- 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 providing a water meter reading service and meter information to Council Finance for invoicing;
- 1.37 maintaining Council's proactive water supply leak detection programme;
- 1.38 administering Council's garden watering restrictions;
- 1.39 promoting water conservation and education.
- 1.40 undertaking any other water conservation and environmental sustainability planning in relation to Council's Water Services, as agreed with Council;
- 1.41 planning and advice, including the provision of Asset Management Plans in respect of the Network and Water Services;
- 1.42 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;
- 1.43 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;

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- 1.44 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;
  - 1.45 providing all strategic and policy advice reasonably necessary to ensure that the Water Services are delivered by Council on an affordable and sustainable basis;
  - 1.46 managing the application of resource consents necessary to ensure Water Services delivery;
  - 1.47 any activities that would have been reasonably anticipated as constituting part of the Water Services offering by both parties at the Commencement date; and
  - 1.48 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 **Error! Reference source not found.** 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.

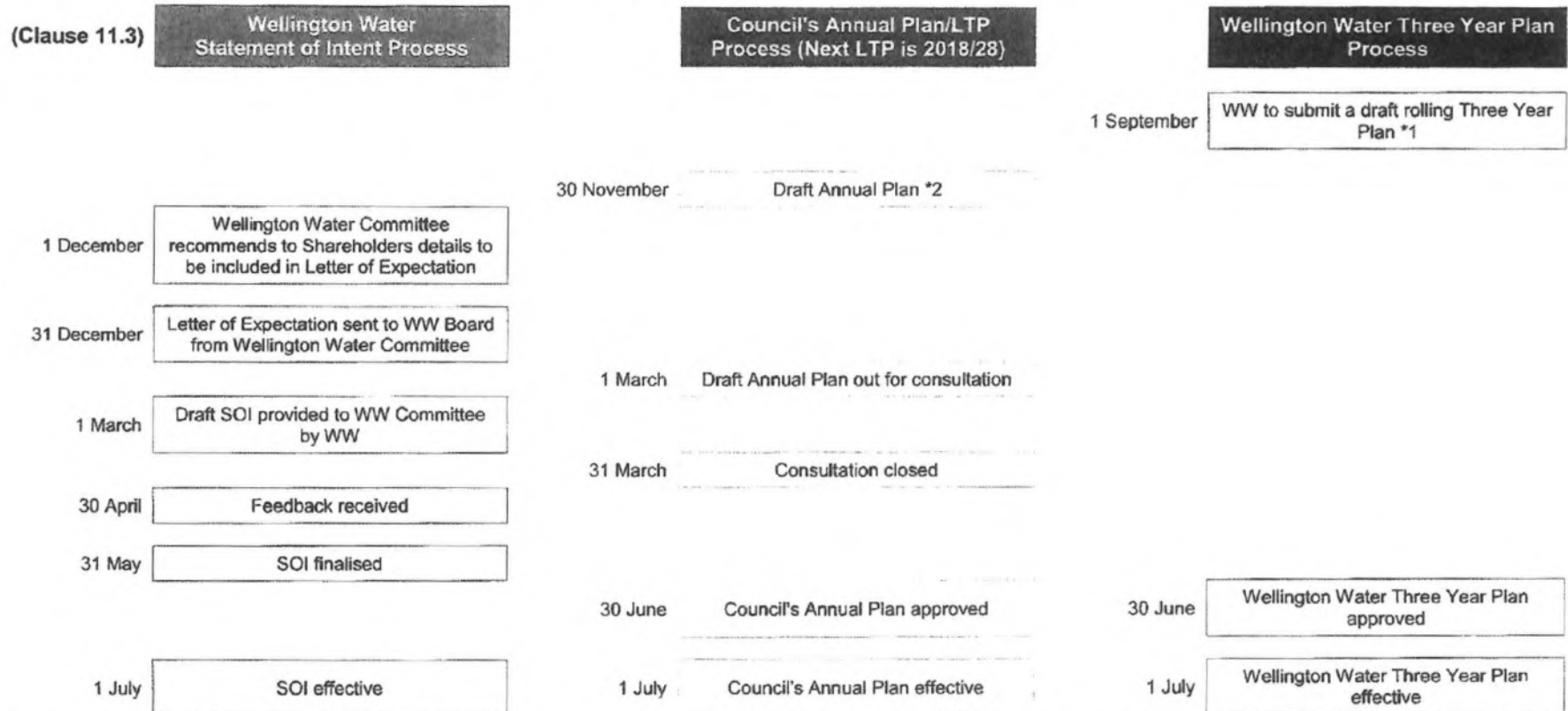
**Summary**

- 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.