



**FUNDING AGREEMENT**

BETWEEN

**CROWN INFRASTRUCTURE PARTNERS  
LIMITED**

AND

**RUAPEHU DISTRICT COUNCIL**

FOR

**SOCIAL HOUSING**  
PROJECT REFERENCE Q1282

**Part 1: Key Details**

- 1. Parties**      **CIP**  
Crown Infrastructure Partners Limited, company number 2346751 (**CIP**)
- RECIPIENT**
- Ruapehu District Council, a territorial authority listed in Part 2 of Schedule 2 to the Local Government Act 2002 (**Recipient**)
- 2. Background**      The Recipient has been approved by the New Zealand Government for funding support through the COVID Response and Recovery Fund shovel ready project initiative for the Recipient to deliver the Project(s) described in **Part A of Schedule 1 (Project)**.
- CIP has been mandated to distribute and manage the funding support under this Agreement.
- Key details of this Agreement are set out in this **Part 1**, general terms are set out in **Part 2**, and defined terms are set out in **Part 3**.
- 3. Benefits**      *Job creation:* The Project(s) are expected to create approximately 15 Full Time Equivalent Jobs.
- Other benefits:* The Project(s) are also expected to give rise to the other benefits outlined in **Part B of Schedule 1** (e.g. social benefits, economic benefits, apprenticeships created, etc) (**Benefits**).
- 4. Funding**      The total Funding available to be paid by CIP under and on the terms of this Agreement is up to the aggregate of:
- an initial funding limit of \$2,175,000 plus GST (if any) (**Initial Funding Limit**); and
  - a contingency funding limit of \$230,000 plus GST (if any) (**Contingency Funding Limit**), that may only be paid in the circumstances described in clause 1.6.
- This is the **Total Maximum Amount Payable**. The Recipient is required to fund all other costs required to complete the Project(s) and must ensure that the Co-Funding is committed as at signing of this Agreement and remains committed during the duration of the Project(s).
- On completion of a Project Milestone(s) set out in **Part C of Schedule 1 (Project Milestones)** (including by satisfaction of the applicable Project deliverables set out therein), the Recipient must, subject to clauses 1.3 and 1.5, submit a Payment Request to CIP for payment of the corresponding progress payment (**Payment Milestone**) in accordance with **Part C of Schedule 1**.
- Each Payment Request is to be signed by the Chief Executive and an authorized signatory of the Recipient, and must include the information set out in **Schedule 2**.
- CIP will pay the Recipient the Funding for each Project by way of Payment Milestones on satisfactory completion of the applicable Project Milestones.
- 5. Co-Funding**      NA
- 6. Reporting**      The Recipient must provide CIP with monthly reports by the 10<sup>th</sup> Business Day following the end of each month (excluding December), and quarterly reports by the 10<sup>th</sup> Business Day following the end of each January, April, July, and October prior to the End Date.
- The Recipient must provide CIP with a Post Contract Outcomes Report within 6 months of completion of the Project(s).
- Each **monthly report, quarterly report** and **Post Contract Outcomes Report** must include the information for the Project(s) set out in Schedule 3.
- 7. Special Terms**      Notwithstanding clause 3.21 (Project assets) of **Part 2**, the Recipient will promptly notify CIP in writing if it is considering the sale or disposal of the Project assets at any time within twenty (20) years from the expiry or termination of this Agreement (the **Mandatory Asset Retention Period**). If and when the Recipient concludes a disposal or sale within the Mandatory Asset Retention

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Period, the Recipient will immediately notify CIP in writing and, on demand, repay the total Funding paid to the Recipient under this Agreement. Expiry or termination of this Agreement does not affect the application of this item 7.

8. **Head Contractor** The head contractor(s) for the main contract works for the Project(s) must be approved by CIP in its sole discretion. Such head contractor(s) must be procured in accordance with clause 3.5(d) of Part 2.

9. <b>Contact Person</b>	CIP's Contact Person:	Recipient's Contact Person:
	Name: [s9(2)(a)]	Name: Clive Manley
	Email: [s9(2)(a)]	Email: [s9(2)(a)]

10. <b>Address for Notices</b>	To Crown Infrastructure Partners Limited	To the Recipient: Ruapehu District Council
	Level 10	Private Bag 1001
	188 Quay Street	Taumarunui 3946
	Auckland	Attention: Chief Executive Officer
	Attention: [s9(2)(a)]	Email: [s9(2)(a)]
	Email: [s9(2)(a)]	

**SIGNATURES** SIGNED for and on behalf of  
**CROWN INFRASTRUCTURE PARTNERS LIMITED**  
by the persons named below, being persons duly authorised to enter into obligations on behalf of Crown Infrastructure Partners Limited:  
[s9(2)(a)]

[s9(2)(a)]

Name: Graham Mitchell

Name: Sean Wynne

Position: CEO

Position: Deputy CEO – Bulk Housing and Infrastructure

Date: 26 May 2021

Date: 26 May 2021

[s9(2)(a)]

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

Name: CLIVE MANLEY  
Position: CHIEF EXECUTIVE  
Date: 7 MAY 2021

END OF PART 1

[s9(2)(a)]



## PART 2: GENERAL TERMS

### 1. FUNDING

1.1. Each Payment Milestone amount set out in **Part C of Schedule 1** represents the maximum payment to be made by CIP towards Eligible Costs for completion of the applicable Project Milestone. The Contingency Funding Limit may only be paid in the circumstances set out in clause 1.6. In the event that the Recipient's Eligible Costs for completion of a Project Milestone (less the applicable Co-Funding contribution) are:

- (a) more than the maximum payment to be made by CIP, CIP and the Recipient may from time to time agree that excess costs may be carried forward to be claimed against the next Project Milestone (subject always to the maximum payment amount for the Payment Milestone relating to that next Project Milestone); or
- (b) less than the maximum payment to be made by CIP, CIP and the Recipient may from time to time agree that the amount payable by CIP towards Eligible Costs in respect of the next Project Milestone may be increased by the amount of the difference,

provided that the total amount of Funding is in no circumstances to exceed the Total Maximum Amount Payable and that the Recipient remains obliged to contribute Co-Funding in accordance with **item 5 of Part 1** (Key Details).

1.2. CIP will pay each Payment Milestone amount to the Recipient, subject to the terms of this Agreement.

1.3. CIP is not required to pay any Payment Milestone in respect of a Payment Request:

- (a) that does not satisfy the requirements of **Item 4** (Funding) of **Part 1** (Key Details);
- (b) while there are one or more Termination Event(s) subsisting;
- (c) if this Agreement has expired or been terminated; and/or
- (d) if Funding has been suspended under clause 1.5.

1.4. Subject to the terms of this Agreement, CIP will pay each valid Payment Request by no later than 20 Business Days after the date the Payment Request is received by CIP.

1.5. CIP may suspend Funding immediately on becoming aware that:

- (a) the Recipient fails to meet a Project Milestone by the applicable Completion Date set out in **Part C of Schedule 1** (as may be amended in accordance with clause 3.22) and such failure has not been remedied within a period which CIP in its sole discretion believes is reasonable;
- (b) the Recipient, in CIP's reasonable opinion, is unable to fund the estimated costs of the Project(s) that exceed CIP's Total Maximum Amount Payable; and/or
- (c) there has been a material change to the scope of the Project(s) that does not satisfy clause 3.1.

1.6. In the event that:

- (a) the Initial Funding Limit has been paid in full; and
- (b) the Recipient's Eligible Costs for completion of the Project are greater than the project costs noted in the Project Budget (less the \$230,000 included as contingency),

then, subject to clause 1.8, to the extent CIP is satisfied that such excess costs are due to an Engineer Variation, CIP and the Recipient may from time to time agree that all or part of the Contingency Funding Limit, in the amount of such excess costs, may be advanced on the terms of this Agreement.

1.7. In clause 1.6, "Engineer Variation" means a Variation to the Project works ordered by the Engineer to Contract, within the scope of the applicable Construction Contract, that:

- (a) increases or decreases the quantity of any work;
- (b) omits any work;
- (c) changes the character or quality of any material or work;
- (d) requires additional work to be done; or
- (e) changes the level, line, position, or dimensions of any part of the Project works.

1.8. In no circumstances shall the Recipient apply or use (whether directly or indirectly) funding received by CIP under the Contingency Funding Limit against Project Costs which, in CIP's opinion, are attributable to or which should be charged against the following line items in the Project Budget:

- (a) the line item entitled "*Costs to Date – Project establishment Milestone (see notes below)*"; and
- (b) the line item entitled "*Programme, project management, governance & procurement, reporting etc*".

### 2. CO-FUNDING

2.1. If Co-Funding is specified in **Item 5 of Part 1** (Key Details), the Recipient must:

- (a) ensure that during the term of this Agreement the Co-Funding:
  - i. is and remains secured and available to the Recipient to be applied towards the Project(s); and
  - ii. is applied to Eligible Costs; and
- (b) immediately notify CIP if it becomes aware of any circumstances that may result in the Co-Funding (or any part of the Co-Funding) not being secured and available to the Recipient to be applied towards the relevant Project.

### 3. RECIPIENT'S RESPONSIBILITIES

#### The Project(s)

- 3.1. The Recipient must undertake the Project(s) as described in this Agreement and will not make any material reduction to the scope of the Project(s) without CIP's prior written consent, or make any material increase to the scope of the Project(s) without first satisfying CIP that the Recipient can fund or finance such additional scope.
- 3.2. The Recipient confirms that the Government funding in the form agreed supports the Project(s) proceeding in the timeframes contemplated in this Agreement.
- 3.3. The Recipient will take all reasonable steps to ensure that the Project Milestones are completed by the relevant Completion Date specified in **Part C of Schedule 1** (as may be amended in accordance with clause 3.22).



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- 3.4. The Recipient undertakes to pay the Co-Funding (if any) and any and all cost overruns of the Project(s) and any funding shortfall, and acknowledges that CIP and the New Zealand Government have no obligations or responsibility whatsoever in respect of such Co-Funding, cost overruns or funding shortfalls.
- 3.5. The Recipient must ensure that each Project is carried out:
- (a) in compliance with all applicable laws, regulations, consents, authorisations, rules and professional codes of conduct or practice, including all health and safety and employment and labour laws (including to ensure no migrant exploitation occurs), and ensure the Recipient's contractors and subcontractors are required to do the same;
  - (b) promptly with due diligence, care and skill, and in a manner that meets Best Industry Practice;
  - (c) by appropriately trained, qualified, experienced and supervised persons;
  - (d) by running an open arm's length procurement process pursuant to which contracts for material components of the Project(s) will be awarded to suppliers in accordance with good industry practice for procurement practices and guidelines that apply to the public sector, and the Recipient must provide evidence that it has complied with this obligation if requested by CIP;
  - (e) in a manner that takes into account the Construction Sector Accord's principles and guidelines; and
  - (f) using reasonable endeavours to obtain any necessary resource consents for the Project(s) in accordance with the COVID-19 Recovery (Fast-track Consenting) Act 2020, where such process is reasonably expected by the Recipient to accelerate the obtaining of such resource consents for the Project(s).
- 3.6. The Recipient will notify CIP if:
- (a) the number of Full Time Equivalent Jobs expected to be employed on the Project(s) is or will likely fall below the number specified in **Item 3 of Part 1** (Key Details) and **Part B of Schedule 1**, and in doing so will provide a revised forecast; and
  - (b) any of the expected Benefits specified in **Part B of Schedule 1** are unlikely to arise.
- 3.7. The Recipient must, in respect of each Construction Contract with a Head Contractor:
- (a) not, except with the prior written consent of CIP:
    - i. accept any early termination of or exercise any right to rescind, cancel or terminate the Construction Contract;
    - ii. do or omit to do any act or thing which would entitle the counterparty to either terminate or regard the Construction Contract as terminated;
    - iii. waive or agree to waive any provisions of the Construction Contract;
    - iv. subject to clause 3.1, make or agree to make any material variation to the Construction Contract, where **material variation** means any variation which on its own or together with any other variation or variations results in, or is likely to result in the Project Budget (taking into account all variations) being exceeded or the Project(s) being materially delayed, or any variation that amends the scope, specifications or function of the Project(s); or
  - v. dismiss or change a party to the Construction Contract; and
- (b) take such action and institute and maintain all such proceedings as may be necessary or expedient to preserve or protect the interests of the Recipient in or under the Construction Contract.
- 3.8. The Recipient must:
- (a) not enter into (A) any construction contract for a material component of the Project(s) with any party in connection with the Project(s) or (B) any material agreement in connection with the construction of the Project(s), except for contracts approved by CIP or entered into with the prior written consent of CIP;
  - (b) inform CIP as soon as it becomes aware of:
    - i. any delays to the Project(s); or
    - ii. any proposal to vary the nature, scope, quality, design or sequence of the Project(s) or the cost of or time for performance under any Construction Contract or any related contract (including any proposal to accelerate, terminate or make any claim thereunder); and
  - (c) not undertake any development of the Project(s) land other than the Project(s) as contemplated by the Construction Contract, plans and Project Budget and as approved by CIP.
- ### Information Undertakings
- 3.9. The Recipient will provide CIP with the reports specified in **Item 6 of Part 1** (Key Details), in accordance with the timeframes and reporting requirements set out **Item 6 of Part 1** (Key Details) and **Schedule 3**.
- 3.10. The Recipient will provide CIP with any other information about the Project(s) reasonably requested by CIP within the timeframe set out in the request.
- 3.11. The Recipient will promptly notify CIP if:
- (a) the Recipient (or any of its personnel or contractors) becomes aware of, or subject to, a Conflict of Interest; or
  - (b) the Recipient becomes aware of any matter that could reasonably be expected to have an adverse effect on a Project, or result in a Termination Event or a breach of any term of this Agreement by the Recipient.
- 3.12. The Recipient will not at any time do anything in connection with the Project(s) that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of CIP or the New Zealand Government. The Recipient will keep CIP informed of any matter known to the Recipient which could reasonably be expected to have such an effect.
- ### Funding, records and auditors
- 3.13. The Recipient will receive and manage all Funding in accordance with good financial management and accounting practices and to a high standard that demonstrates appropriate use of public funds.
- 3.14. The Recipient must keep full and accurate records (including invoices and accounting records) of the Project(s), and retain them for at least 7 years after the last payment of Funding under

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this Agreement. The Recipient must permit CIP (or any auditor nominated by CIP) to inspect all records (including financial and project records) relating to the Project(s), and will allow CIP and/or the auditor access to the Recipient's premises, systems and personnel for the purposes of this inspection.

- 3.15. The Recipient must, within three Business Days of demand, indemnify CIP against any cost, loss or liability incurred by CIP as a result of the Recipient's failure to pay any and all cost overruns of the Project(s) and any funding shortfall. This indemnity survives the termination of this Agreement.

### Insurance

- 3.16. The Recipient must, in accordance with Best Industry Practice in respect of any construction activities and infrastructure assets, effect and maintain insurance that is adequate to cover loss or damage relating to the construction works and Project(s) infrastructure assets. The Recipient will, on request, provide CIP with evidence of its insurance cover required under this clause.
- 3.17. The Recipient must promptly pay when due all premiums and other amounts and do all other things necessary to maintain the insurances, and not do anything or permit anything to be done, or not done, which would prejudice any of the insurances required by this Agreement or any claims thereunder.
- 3.18. The Recipient must apply all claim proceeds to the extent that the proceeds are in respect of the Project(s) (including while it is under construction) at all times to reinstate the relevant asset, unless otherwise approved by CIP.

### Health and Safety and Conflicts of Interest

- 3.19. Without limiting its other obligations under this Agreement, the Recipient will:
- (a) perform its, and ensure that the Recipient's contractors and any subcontractors perform their, obligations in carrying out any works in relation to the Project(s) in compliance with its and their obligations under the Health and Safety at Work Act 2015;
  - (b) on request by CIP, provide copies of its and its contractors' health and safety management plans applicable to the Project(s) for review; and
  - (c) report any health and safety injury, or any notice issued under the Health and Safety at Work Act 2015, to CIP to the extent that it relates to, or affects, this Agreement or the Project(s).
- 3.20. The Recipient must address any potential or actual Conflict of Interest in relation to itself or its personnel or contractors in accordance with Best Industry Practice or, where required by CIP, to CIP's satisfaction.

### Project assets

- 3.21. The Recipient must not sell or dispose of the Project assets set out in **Part A of Schedule 1** during the term of this Agreement.

### Project Milestone Completion Dates

- 3.22. The Recipient may request an extension of time to a Completion Date for a Project Milestone specified in **Part C of Schedule 1** for a Project, provided such extension of time request is supported by, and is not for a period that extends beyond, the date specified in a valid and approved extension of time claim certified by the Engineer to Contract for the relevant Project Milestone under the relevant Construction Contract.

- 3.23. CIP shall not unreasonably withhold such extension of time request that satisfies the requirements of this clause.

## 4. PROJECT GOVERNANCE

- 4.1. The Recipient will:
- (a) provide reasonable notice to CIP of all Project management group meetings and Project governance group meetings for the Project(s); and
  - (b) provide copies of all documents and notices to be tabled at the Project management group meetings and Project governance group meetings for the Projects to CIP no later than 5 Business Days prior to the meetings, and the minutes of those meetings within a reasonable period after each meeting.
- 4.2. CIP may at any time appoint observers who will be entitled to attend and speak at all Project management group meetings and Project governance group meetings (but will not be entitled to vote on any matter at those meetings).
- 4.3. If CIP has reasonable grounds for concern over the Recipient's ability to deliver the Project(s), including where a material change to the scope of the Project(s) arises, CIP shall be entitled to contract the necessary expertise (which may for example include, procurement, engineering, project management, financial expertise) to the Recipient at the Recipient's cost for the sole purpose of providing the expertise necessary to carry out the Project(s) to the standards required by the Agreement. The Recipient must allow such expertise to perform the role assigned by CIP to the Recipient on the Project(s), and do all things necessary to support and assist those contracted expertise to perform the role assigned to them by CIP.

## 5. TERM AND TERMINATION

- 5.1. This Agreement will be effective on and from the Commencement Date (which will be the date this Agreement has been signed by both parties) and will remain in force until the End Date, unless terminated in accordance with this Agreement.
- 5.2. CIP can terminate this Agreement in full or part with immediate effect, by giving notice to the Recipient, at any time:
- (a) while CIP reasonably considers that the Recipient has become or is likely to become, insolvent;
  - (b) while the Recipient is subject to the appointment of a liquidator, receiver, administrator, manager or similar person in respect of any of its assets, or a Crown Manager or Commission is appointed in respect of the Recipient under Part 10 of the Local Government Act 2002;
  - (c) if the Site Works Commencement Deadline has not been satisfied;
  - (d) where the Recipient fails to meet a Project Milestone by the applicable Completion Date set out in Part C of Schedule 1, and such failure has not been remedied within a period which CIP in its sole discretion believes is reasonable; or
  - (e) while any one or more of the following events or circumstances remains unremedied:
    - i. the Recipient is materially in breach of any obligation, or a condition or warranty, under this Agreement;
    - ii. the Recipient abandons a Project(s) or fails to pay its contractors or other suppliers to the Project(s) as and when due;



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- iii. the Recipient fails to contribute the Co-Funding (if any) in accordance with **Item 5 of Part 1** (Key Details) or pay any Project cost overruns or funding shortfalls;
- iv. the Recipient has provided CIP with information in connection with or under this Agreement that (whether intentionally or not) is materially incorrect or misleading, and/or omits material information;
- v. CIP reasonably considers that this Agreement or the Project(s) has caused, or may cause, CIP and/or the New Zealand Government to breach any legal obligations (including its international trade obligations); or
- vi. the Recipient is involved in any intentional or reckless conduct which, in the opinion of CIP, has damaged or could damage the reputation, good standing or goodwill of CIP, CIP and/or the New Zealand Government, or is involved in any material misrepresentation or any fraud.

5.3. However, where CIP considers that a Termination Event set out in clause 5.2(e) can be remedied, CIP will give notice to the Recipient requesting a remedy, and will not exercise its right of termination unless the relevant event remains unremedied for at least 14 days (or any longer period agreed with the Recipient) after that notice has been provided by CIP.

5.4. CIP may recover Funding from the Recipient as follows:

- (a) **Misspent Funding.** At any time CIP may recover the amount of any Funding that has been spent or used other than in accordance with this Agreement, together with interest on all such amounts calculated at 10% per annum from the date of the misspending to the date the money is repaid.
- (b) **Co-Funding not provided.** If Co-Funding is required as set out in **Item 5 of Part 1** (Key Details), on expiry or termination of this Agreement, if the Co-Funding has not been used for the Project(s), CIP may recover an amount that represents the amount of Co-Funding that has not been used and may set off such amounts against any Funding payable to the Recipient.
- (c) **Project abandoned.** If the Recipient has abandoned a Project(s) or stated an intention to abandon a Project(s), and does not within 10 Business Days of being requested to do so by CIP demonstrate to CIP's satisfaction that the Recipient will proceed with the Project(s), CIP may recover an amount up to the total value of the Funding already paid.
- (d) **Excess Funding.** On expiry or termination of this Agreement, where the total Funding paid under this Agreement and any other money received by the Recipient to carry out the Project(s) exceeds the funding required to perform the Project(s), the Recipient must upon request refund to CIP the excess amount. The Recipient is not required to refund, under this clause 5.4(d), any amount that exceeds the total amount of Funding.

5.5. Item 7 of Part 1, and clauses 1.3, 3.4, 3.5(a), 3.9, 3.11, 3.12, 3.15 and 5 to 12 survive expiry or termination of this Agreement, along with any other parts of this Agreement necessary to give effect to those provisions. Expiry or termination of this Agreement does not affect any accrued rights, including any rights in respect of a breach of this Agreement or Termination Event that occurred before expiry or termination.

## 6. WARRANTIES

6.1. The Recipient warrants that, as at the date of this Agreement:

- (a) it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with its terms; and
- (b) all information and representations disclosed or made to the Infrastructure Reference Group and/or CIP by the Recipient in connection with this Agreement are true and correct, do not omit any material matter, and are not likely to mislead or deceive CIP as to any material matter.

6.2. The Recipient acknowledges that CIP has entered into this Agreement in reliance on these warranties.

## 7. LIABILITY

7.1. The maximum liability of CIP under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to the total amount of Funding paid or payable under this Agreement, capped at the Total Maximum Amount Payable.

7.2. CIP is not liable for any claim under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, where such claim is or relates to any loss of profit, loss of revenue, loss of use, loss of reputation, loss of goodwill, loss of opportunity (in each case whether direct, indirect or consequential) or any other indirect, consequential or incidental loss or damages of any kind whatsoever.

## 8. CONFIDENTIALITY

8.1. Subject to clauses 8.2 and 8.3, each party will keep the other party's Confidential Information in confidence, and will use or disclose that Confidential Information only to the extent necessary to perform its obligations, and/or take the intended benefit of its rights, under this Agreement. However, this will not prohibit:

- (a) either party from using or disclosing any information with the written prior consent of the other party;
- (b) use or disclosure of information that has become generally known to the public other than through a breach of this Agreement;
- (c) disclosure required by any law, or any compulsory order or requirement issued pursuant to any law; or
- (d) CIP from using or disclosing to any third party any information, document, report or other material, provided that prior to any such disclosure CIP removes all information that is commercially sensitive to the Recipient from the relevant work.

8.2. The Recipient acknowledges and agrees that nothing in this Agreement restricts the CIP's ability to:

- (a) discuss, and provide all information in respect of, any matters concerning the Recipient, the Project(s) or this Agreement with any Minister of the Crown, any other government agency or any of their respective advisors;
- (b) meet its obligations under any constitutional or parliamentary convention (or other obligation at law) of or in relation to the New Zealand Parliament, the New Zealand House of Representatives or any of its Committees, any Minister of the Crown, or the New Zealand Auditor-General, including any obligations under the Cabinet Manual including the "no surprises" principle; and

[s9(2)(a)]



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- (c) publicise and report on the awarding of the Funding, including the Recipient's and any of its subcontractor's names, the amount and duration of the Funding and a brief description of the Project(s), on websites; in media releases; general announcements and annual reports.

8.3. The Recipient acknowledges that:

- (a) the contents of this Agreement; and
- (b) information provided to CIP,

may be official information in terms of the Official Information Act 1982 and, in line with the purpose and principles of the Official Information Act 1982, this Agreement and such information may be released to the public unless there is good reason, in terms of the Official Information Act 1982, to withhold it. This may include a copy of the Agreement (redacted to remove confidential and commercially sensitive information), being published on CIP's website.

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

### 9. MEDIA AND COMMUNICATIONS

- 9.1. Before making any media statements or press releases (including social media posts) regarding this Agreement and/or CIP's involvement with the Project(s), the Recipient will consult with CIP, and will obtain CIP's prior approval to any such statements or releases.
- 9.2. All correspondence with CIP under this clause 9 must be directed to CIP's Contact Person. The Recipient will refer any enquiries from the media or any other person about the terms or performance of this Agreement to CIP's Contact Person.
- 9.3. The Recipient will acknowledge the New Zealand Government as a source of funding in all publications (including any digital presence) and publicity regarding the Project(s) in accordance with funding acknowledgement guidelines agreed with CIP. The Recipient must obtain the CIP's approval of the form and wording of the acknowledgement prior to including the acknowledgement in the publication or publicity (as the case may be).
- 9.4. If requested by CIP, the Recipient will establish or erect temporary and/or permanent signage (which may be in the form of a plaque) at the site of the Project(s) acknowledging the New Zealand Government as a source of funding for the Project(s). CIP may provide such signage and CIP will consult with the Recipient in respect of a suitable location for such signage.
- 9.5. The Recipient does not have the right to enter into any commitment, contract or agreement on behalf of CIP or any associated body, or to make any public statement or comment on behalf of CIP or the New Zealand Government.

### 10. DISPUTES

In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, or in relation to any question regarding its existence, breach, termination or invalidity (in each case, a **Dispute**), either party may give written notice to the other. As soon as reasonably practicable thereafter, the parties will meet and endeavour to resolve the Dispute by discussion, negotiation and agreement. A party must not commence any proceedings in connection with a Dispute unless at least 40 days have elapsed since the issue of a notice, and that party has used reasonable endeavours to comply with this clause. However, nothing in this clause prohibits seeking urgent interim relief.

### 11. CONTACT PERSONS

- 11.1. All matters or enquiries regarding this Agreement will be directed to each party's Contact Person (set out in **Item 9 of Part 1** (Key Details)).
- 11.2. Each party may from time to time change the person designated as its Contact Person on 10 Business Days' written notice to the other party.

### 12. GENERAL

12.1. Each notice or other communication given under this Agreement (each a **notice**) will be in writing and delivered personally or sent by post or email to the address of the relevant party set out in **Item 10 of Part 1** (Key Details) or to any other address from time to time designated for that purpose by at least 10 Business Days' prior written notice to the other party. A notice under this Agreement is deemed to be received if:

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

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

- 12.2. This Agreement constitutes the sole and entire understanding with respect to the subject matter hereof and supersedes all prior discussions, representations and understandings, written or oral.
- 12.3. No amendment to this Agreement will be effective unless agreed in writing and signed by both parties.
- 12.4. Recipient may not assign or transfer any of its contractual rights or obligations under this Agreement, except with CIP's prior written approval.
- 12.5. No failure, delay or indulgence by any party in exercising any power or right conferred on that party by this Agreement shall operate as a waiver. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights.
- 12.6. The exercise by a party of any express right set out in this Agreement is without prejudice to any other rights, powers or remedies available to a party in contract, at law or in equity, including any rights, powers or remedies which would be available if the express rights were not set out in this Agreement.
- 12.7. Any provision of this Agreement that is invalid or unenforceable will be deemed deleted, and will not affect the other provisions of this Agreement, all of which remain in force to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 12.8. This Agreement is to be governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

Funding Agreement – Crown Infrastructure Partners Limited

12.9. This Agreement may be executed in any number of counterparts (including scanned and emailed copies). So long as each party has received a counterpart signed by each of the other parties, the

counterparts together shall constitute a binding and enforceable agreement.

END OF PART 2

[s9(2)(a)]



## Funding Agreement – Crown Infrastructure Partners Limited

### PART 3: DEFINITIONS

In this Agreement, unless the context requires otherwise, terms defined in the Key Details have the meanings specified therein and:

**Agreement** means this agreement including Parts 1, 2 and 3 and the schedules and appendices (and any other attachments).

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

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

**Co-Funding** means the “Co-Funding” (if any) or any part of the Co-Funding (as the context requires), described in the Key Details.

**Commencement Date** has the meaning given in clause 5.1 of Part 2.

**Committed Funding** means, at any time, the aggregate of the Funding and the Co-Funding that has not, at that time, been advanced to the Recipient or released from the Construction Bank Account to meet Eligible Costs.

**Completion Date** means, in respect of a Project Milestone, the applicable “Completion Date” specified in Part C of Schedule 1.

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

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

but excludes any information which the Holder can show:

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

Notwithstanding the foregoing, the terms of this Agreement are Confidential Information of which each party is both an Owner and a Holder.

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

- (a) conflicts with:

- i. the obligations of the Recipient (or its personnel or contractors) to CIP under this Agreement; or
  - ii. the interests of the Recipient in relation to this Agreement and/or the procuring of the Project(s); or
- (b) otherwise impairs or might appear to impair the ability of the Recipient (or any of its personnel or contractors) to diligently and independently carry out the Project(s) in accordance with this Agreement.

**Construction Bank Account** means the bank account described as such in Part C of Schedule 1.

**Construction Contract** means each construction contract between the Recipient and a construction contractor relating to works to be carried out for a Project and all the plans, specifications, drawings, details and information forming part of or which are or which are required to be prepared and provided in accordance with or which are referred to or contemplated by the relevant contract or otherwise required to complete the Projects, or any of them (as applicable).

**Contact Person** means, in respect of each party, the applicable “Contact Person” specified in the Key Details.

**Contingency Funding Limit** has the meaning given in Part 1.

**Cost to Complete** means, at any time, the aggregate amount of Project Costs not yet paid but payable or reasonably likely to be payable in order to achieve Practical Completion.

**Cost to Complete Test** means as at any date, the Committed Funding, plus any additional funding committed by the Recipient to the Project(s) (where such additional funding is supported by evidence reasonably satisfactory to CIP) is not less than the Cost to Complete as at that date.

**Eligible Costs** means the actual costs reasonably incurred by the Recipient in delivering the Project(s):

- (a) on or after the Commencement Date (unless expressly agreed to the contrary, in writing, by CIP) and no later than the End Date;
- (b) in good faith for the purpose of carrying out the Project(s) or for purposes incidental to the Project(s), including disbursements and expenses incurred by the Recipient for such purposes (and to the extent the Recipient is carrying out any other activities) reasonably and proportionately allocated towards such purposes; and
- (c) at “arm’s length”, at reasonable market value,

but excludes:

- (d) overhead and management time;
- (e) interest and fees payable in respect of any debt funding; and
- (f) fees and any other payments to a related person of the Recipient.

**End Date** means the date that is three months after the latest Completion Date for Practical Completion set out in Part C of Schedule 1 (as may be amended in accordance with clause 3.22).

**Engineer to Contract** means the professional engineer to contract appointed under a Construction Contract.

**Full Time Equivalent Jobs** means the average number of construction full time equivalent contractor, subcontractor and professional services

[s9(2)(a)]



## Funding Agreement – Crown Infrastructure Partners Limited

employees (based on a 40 hour week) (FTEs) working on the Project(s) over the duration on the construction period from design to completion (noting that the number of FTEs may vary week to week over the construction period).

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

*Head Contractor* means the "Head Contractor" described in the Key Details.

*Initial Funding Limit* has the meaning given in Part 1.

*Initial Funding Milestone* means the Initial Funding Milestone described in Part C of Schedule 1.

*Key Details* means Part 1 of this Agreement.

*NZ GAAP* means generally accepted accounting practice, as defined in section 8 of the Financial Reporting Act 2013.

*Payment Milestones* means the "Payment Milestones" specified in Item 4 (Funding) of Part 1 (Key Details).

*Payment Request* means a request submitted to CIP by the Recipient seeking payment of Funding in a form agreed between CIP and the Recipient.

*Practical Completion* means the date on which the Engineer to Contract provides to CIP a certificate, which is satisfactory to CIP (in its sole discretion), certifying that a Project is practically complete in accordance with the terms of the Construction Contract(s) and that the Project is ready for use or operations.

*Project or Projects* means each "Project" and if more than one "Project", the "Projects" described in the Key Details.

*Project Budget* means a breakdown of budgeted cashflows and costs relating to the Project(s) including details of any Co-Funding and a provision of an acceptable level of contingency sums, broken down on a monthly basis, as set out in Schedule 4.

*Project Costs* means the total budgeted costs of the Project(s) as set out in the milestone table in Part C of Schedule 1, together with the amount of any excess costs that are permitted to be paid out of the Contingency Funding Limit in the circumstances described in clause 1.6.

*Project Milestones* means the "Project Milestones" specified in Item 4 (Funding) of Part 1 (Key Details).

*Recipient* means the Recipient specified in the Key Details.

*related person of the Recipient* means:

- (a) any related company (as defined in section 2(3) of the Companies Act 1993, but as if the word "subsidiary" in that section had the same meaning as "subsidiary" in this Agreement) of the Recipient;
- (b) any person that is treated as an associated company of the Recipient in terms of NZ GAAP;
- (c) (if applicable) any person who beneficially owns (or together with its related persons, determined on the same basis as set out in paragraphs (a) and (b) above, beneficially owns) whether directly or indirectly, 20% or more of the equity share capital in the Recipient;

(d) any related entity (determined on the same basis as set out in paragraphs (a) and (b) above) of any person referred to in paragraph (c) above; and

(e) the beneficiary of a trust under which a trustee of the trust is a related entity in terms of paragraphs (a) to (d) above.

*Site Works Commencement Deadline* means the physical construction works for a Project having materially commenced by the date falling 12 months from the date of this Agreement.

a *subsidiary* of a person includes:

- (a) a subsidiary as defined in section 5 of the Companies Act 1993 (as if the term "company" in those sections includes entities incorporated in a jurisdiction other than New Zealand); and
- (b) an "in substance" subsidiary and any other person treated as a subsidiary under NZ GAAP; and
- (c) a person controlled (whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or otherwise) by that person or any other person whose financial statements are required to be consolidated with the financial statements of that person in accordance with NZ GAAP.

In addition:

- (d) an entity (including, to avoid doubt, a limited partnership) is a subsidiary of another entity if it is controlled by that other entity;
- (e) a trust may be a subsidiary (and a beneficial interest in the trust is to be treated as a share accordingly); and
- (f) an entity is to be treated as a subsidiary of a trust as if that trust were a company.

*Termination Event* means any one or more of the events or circumstances set out in clause 5.2 of Part 2.

*Total Maximum Amount Payable* means the "Total Maximum Amount Payable" specified in Item 4 (Funding) of Part 1 (Key Details), being the aggregate of:

- (a) the Initial Funding Limit; and
- (b) if and to the extent that all or any part of the Contingency Funding Limit may be paid in the circumstances described in clause 1.6, the applicable part of the Contingency Funding Limit.

*Writing*: a reference to "written" or "in writing" includes email and any commonly used electronic document format such as .DOC or .PDF.

END OF PART 3

[s9(2)(a)]

**Schedule 1: Project**

**Part A: Project Description and Project Assets**

*Project Description*

The Project is the construction of the Six Council Owned Social Houses (as defined below).

*Project Assets*

The Project Assets are the six council owned social houses (the **Six Council Owned Social Houses**) on the land located at 11-13 Moore Street, Ohakune 4625 (being a land area of approximately 1,102m<sup>2</sup>). The Six Council Owned Social houses are, subject to final approval, to be made up of:

- five one bedroom units each of approximately 56 square meters in size; and
- one two bedroom unit of approximately 76 square meters in size.

**Part B: Project Benefits**

The public benefits include the provision of additional ‘fit for purpose’ social housing to meet the social housing needs in the area, including the current oversubscribed demand and need for council’s older persons’ social housing.

**Part C: Project Milestones and Project deliverables for each such Project Milestone**

	Completion Date	Project Milestone Heading	Project Milestone	Maximum Payment Milestone NZD\$ plus GST (if any)	Recipient Co-Funding Instalment NZ\$ plus GST (if any)
1	7 May 2021	<b>Resource Consent &amp; Contract for Civils and Build Obtained</b>	Resource Consent Obtained. Develop Design (houses) and Build (Civils and Build) Contract signed	[s9(2)(i)]	Nil
2	30 July 2021	<b>Site Investigations &amp; Civil Design Complete</b>	Additional site works to support the design. All services identified. Civil design, including earthworks, roading, 3 waters, power and communications complete (the <b>Initial Funding Milestone</b> )		Nil
3	16 August 2021	<b>Building Consent Obtained</b>	Building consent obtained – 1 <sup>st</sup> week of June (the <b>Site Works Commencement Milestone</b> )		Nil
4	30 November 2021	<b>Civil Construction complete</b>	Earthworks, build platforms, 3 waters, roading completed		Nil

[s9(2)(a)]



6	31 August 2022	<b>Practical Completion</b>	Practical Completion of the Six Council Owned Social Houses (the <b>Practical Completion Milestone</b> )	[s9(2)(i)]	Nil
<b>Total cumulative</b>				<b>\$2,175,000</b>	<b>Nil</b>
<b>Total Project Costs</b>				<b>\$2,175,000</b>	Plus the amount of any excess costs that are permitted to be paid out of the Contingency Funding Limit in the circumstances described in clause 1.6.

Such Completion Dates are subject to any amendments agreed pursuant to clause 3.22 of **Part 2**.

The additional Project deliverables for the Initial Funding Milestone are:

- evidence that the Co-Funding required for the Project(s) (if any) is available to the Recipient. Such evidence is to comprise either (in respect of Co-Funding directly provided by the Recipient) evidence that such funds have been secured (for example, are deposited in the Construction Bank Account), or, in respect of Co-Funding provided by a third party, a commitment letter (or similar) confirming that such funds are available to the Recipient;
- confirmation from the Chief Executive that the Project(s) can be delivered within the Project Budget or evidence that any costs exceeding the Project Budget can be funded or financed; and
- evidence of the establishment of a Project specific bank account to be used solely for the purpose of receiving the Funding and the Co-Funding (if any) and to pay Eligible Costs (**Construction Bank Account**).

The additional Project deliverables for the Site Works Commencement Milestone are:

- evidence of the appointment of a suitable Engineer to Contract for the Project(s);
- confirmation by the Recipient that the procurement of each Project has been completed in accordance with clause 3.5(d) of Part 2 (General Terms);
- contracts for the construction and delivery of each Project have been entered into by the relevant contractor, with the following to be approved by CIP in its sole discretion:
  - the identity of the Head Contractor(s);
  - the Construction Contract(s) entered into with such Head Contractor(s); and
  - any other construction contract(s) for a material component of the Project(s) with any party in connection with the Project(s) and any other material agreement(s) in connection with the construction of the Project(s); and
- confirmation that the construction works for the Project(s) have commenced on the project site.

The additional Project deliverables for the Practical Completion Milestone are:

- certification by the Engineer to Contract that the Project(s) are practically complete in accordance with the terms of the Construction Contract(s) and that the Project(s) are ready for use or operations.

The total Funding available to be paid by CIP under and on the terms of this Agreement is up to **\$2,405,000** plus GST (if any). This is the **Total Maximum Amount Payable**.

[s9(2)(a)]



**Schedule 2: Payment Request**

Each Payment Request must include the following information:

- (a) the amount of Funding requested, which must not exceed the applicable Payment Milestone set out in **Part C of Schedule 1**;
- (b) confirmation that the Recipient can pay all Project costs as and when they fall due;
- (c) confirmation that the Recipient has applied the instalment of Co-Funding (if any) by the Completion Date for the relevant Project Milestone set out in **Part C of Schedule 1**, in accordance with clause 2.1(a)ii of this Agreement;
- (d) certification (in a format to be agreed between CIP and the Recipient) during the construction phase of each Project, signed by the Engineer to Contract, and prior to the construction phase (where the Engineer to Contract has not yet been appointed), signed by the Recipient's Chief Executive Officer:
  - i. of the Project's progress against the Project Milestones including details of any material projected delay;
  - ii. of the amount of Eligible Costs incurred by the Recipient on the Project, including in respect of the relevant Payment Milestone to which the Payment Request relates (and confirmation that the applicable Project Milestone has been satisfied by the applicable Completion Date and that the Eligible Costs relating to the applicable Project Milestone have been paid or are due and payable to the Recipient's contractors to the Project(s));
  - iii. confirming that the Project is on target to reach Practical Completion by or before the Completion Date for Practical Completion specified in **Part C of Schedule 1**;
  - iv. of any material variations to the Construction Contract(s);
  - v. that, as at the date of the certification, the Cost to Complete Test is met; and
  - vi. of the forecasted Cost to Complete the Project;
- (e) evidence of satisfaction of the Project deliverable(s) applicable to the relevant Project Milestone set out in **Part C of Schedule 1**,
- (f) if the Payment Request includes a GST component, a valid GST invoice complying with the Goods and Services Tax Act 1985;
- (g) confirmation that no Termination Event is subsisting and that each of the warranties under clauses 2 and 6 of this Agreement are correct as at the date of the Payment Request; and
- (h) any other information required by CIP.

[s9(2)(a)]

### Schedule 3: Reporting

**Each monthly report** must include the following information for each Project, in the reporting format specified by CIP:

- (a) description and analysis of actual progress of the Projects against planned progress, including progress against the Project Milestones and Project completion;
- (b) Eligible Costs incurred in the prior month, against budget for the month for each Project;
- (c) a summary of Project costs incurred to date, actual against budgeted for each Project;
- (d) a summary of forecast Project costs to the next Project Milestone for each Project;
- (e) estimated Cost to Complete each Project against the Project Budget, and in respect of the final monthly report, cost at completion for each Project;
- (f) progress on obtaining any necessary Project-related consents;
- (g) any material risks and/or issues arising or expected to arise on each Project, the Project costs or performance of this Agreement, including detail of any issues notified to CIP in accordance with clause 3.11 of **Part 2**;
- (h) actual or proposed mitigations to remedy any risks/issues identified under (g) above;
- (i) actual and forecasted Full Time Equivalent Jobs including broken down by New Zealand residents and non-residents under work visas;
- (j) health and safety performance for each Project, including injuries, hours worked used to calculate TRIFR and TRIFR for each Project; and
- (k) any other information that is requested by CIP in writing to the Recipient.

**Each quarterly report** must be signed by the Chief Executive of the Recipient and must include the following information for each Project, in the reporting format specified by CIP:

- (l) the Cost to Complete Test was met as at the last date of the previous quarter and the Cost to Complete Test is expected to be met at all times until Practical Completion (including confirmation that the Co-Funding (if any) required for the Projects is available to the Recipient, either (in respect of Co-Funding directly provided by the Recipient) by such funds being secured and deposited in the Construction Bank Account, or (in respect of Co-Funding provided by a third party) by a commitment letter (or similar) confirming that such funds are available to the Recipient);
- (m) evidence that any costs exceeding the Project Budget can be funded or financed;
- (n) the Projects are expected to reach Practical Completion by the applicable Completion Date specified in **Part C of Schedule 1**;
- (o) there has been no material change in the scope of the Project as described in **Schedule 1** other than where the requirements of clause 3.1 of **Part 2** have been satisfied, and the Projects are still expected to deliver the Benefits and all of the Project deliverables as set out in **Schedule 1**; and
- (p) an update on media, marketing and communication activities for each Project.

The **Post Contract Outcomes Report** must include the following information:

- (a) an analysis of how the Funding has enabled the Recipient to achieve the key outcomes of the Project(s);
- (b) the number of jobs that were created during and resulting from the Project(s) (including local/national employment);
- (c) how the Project(s) have contributed to the social, environmental and economic wellbeing of the local region;
- (d) how the Project(s) have increased regional/national resilience by improving critical infrastructure and/or growth and diversification of the economy;
- (e) how the Project(s) have contributed to New Zealand's climate change commitments and environmental sustainability (as applicable); and
- (f) any other information that is requested by CIP in writing to the Recipient.

[s9(2)(a)]



Funding Agreement – Crown Infrastructure Partners Limited

Schedule 4: Project Budget

Project Budget	Dec-21	Feb-21	Mar-21	Apr-21	May-21	Jan-21	Aug-21	Oct-21	Dec-21	Feb-22	Totals
Project Management and Project Establishment, CIP agreement finalisation, ITP, Due Diligence, Site Investigations, Resource Consent - includes site due diligence - these are costs that are already related to House Street (approx 20% of overall cost)	\$ 65,000										\$ 65,000
Resource Consent		\$ 20,000	\$ 20,000								\$ 40,000
Further Site Investigations - including geotechnical, site survey, planning etc			\$ 20,000								\$ 20,000
Civil Design - including util-in and engineering design			\$ 15,000	\$ 35,000							\$ 50,000
Building Consent				\$ 30,000							\$ 30,000
Construction Civils - including site enabling works (Physical works)					\$ 100,000						\$ 100,000
Construction Civils (Professional Services)					\$ 20,000	\$ 20,000					\$ 40,000
Construction - Houses (Physical Works)						\$ 350,000	\$ 350,000	\$ 350,000	\$ 350,000	\$ 350,000	\$ 1,400,000
Construction - Houses (Professional Services)						\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 80,000
Construction Completion - including engineering certification, as built, survey, GRC, lining, assessments and remediation, snagging, handover, Commissioning, start-up, Programme, project management, governance & procurement, reporting etc.							\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 60,000
Contingency (15% of \$14 construction costs and \$200k start costs)											\$ 210,000
<b>Total</b>	<b>\$ 65,000</b>	<b>\$ 27,500</b>	<b>\$ 62,500</b>	<b>\$ 72,500</b>	<b>\$ 147,500</b>	<b>\$ 147,500</b>	<b>\$ 385,000</b>	<b>\$ 445,000</b>	<b>\$ 445,000</b>	<b>\$ 607,500</b>	<b>\$ 2,405,000</b>

[s9(2)(a)]



**AMENDMENT LETTER 1 RELATING TO FUNDING AGREEMENT**

Between (1) Crown Infrastructure Partners Limited, company number 2346751 (**CIP**)

and (2) Ruapehu District Council (the **Recipient**)

Date 2021

**Background**

1. CIP and the Recipient are party to a funding agreement dated 26 May 2021, relating to Social Housing (project reference Q1282) (the **Agreement**).
2. CIP and the Recipient have agreed to enter into this letter to amend the Agreement.
3. Unless the context otherwise requires, terms defined or construed in the Agreement have the same definition or construction when used in this letter.

**Amendments to Funding Agreement**

4. With effect from the date of this letter, the Agreement is amended as follows:

- (a) The table in 'Part C: Project Milestones and Project deliverables for each such Project Milestone' in Schedule 1: Project is deleted and replaced with the following:

	<b>Completion Date</b>	<b>Project Milestone Heading</b>	<b>Project Milestone</b>	<b>Maximum Payment Milestone NZD\$ plus GST (if any)</b>	<b>Recipient Co-Funding Instalment NZD\$ plus GST (if any)</b>
1	7 May 2021	<b>Resource Consent &amp; Contract for Civils and Build Obtained</b>	<i>Resource Consent Obtained. Develop Design (houses) and Build (Civils and Build) Contract signed</i>	[s9(2)(i)]	<i>Nil</i>
2	30 July 2021	<b>Site Investigations &amp; Civil Design Complete</b>	<i>Additional site works to support the design. All services identified. Civil design, including earthworks, roading, 3 waters, power and communications complete (the <b>Initial Funding Milestone</b>)</i>		<i>Nil</i>
3	16 August 2021	<b>Building Consent Obtained</b>	<i>Building consent obtained – 1<sup>st</sup> week of June (the <b>Site Works Commencement Milestone</b>)</i>		<i>Nil</i>
4	30	<b>Civil Construction</b>	<i>Civil – site clearance, bulk</i>		<i>Nil</i>

[s9(2)(a)]



	November 2021	<b>and Housing Construction - progress 1</b>	earthworks for foundations complete Construction - Foundations and floor structure complete, Wall framing complete		
5	28 February 2022	<b>Civil Construction and Housing Construction - progress 2</b>	Civil – Drainage work complete Construction - Roofing and exterior wall linings complete.	[s9(2)(i)]	Nil
6	31 May 2022	<b>Civil Construction and Housing Construction - progress 3</b>	Civil – car parking and roading complete Construction – Interior linings complete and kitchens / bathrooms installed		Nil
7	31 August 2022	<b>Practical Completion</b>	Practical Completion of the Six Council Owned Social Houses (the <b>Practical Completion Milestone</b> )		Nil
<b>Total cumulative</b>					<b>\$2,175,000</b>
<b>Total Project Costs</b>				<b>\$2,175,000</b>	<i>Plus the amount of any excess costs that are permitted to be paid out of the Contingency Funding Limit in the circumstances described in clause 1.6.</i>

(b) References in the Agreement to “this Agreement” shall be references to the Agreement as amended by this letter.

**Miscellaneous**

5. Other than as amended by this letter, the Agreement remains in full force and effect.
6. This letter is to be governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
7. This letter may be executed in any number of counterparts (including scanned and emailed copies). So long as each party has received a counterpart signed by each of the other parties, the counterparts together shall constitute a binding and enforceable agreement. Where the Recipient has transmitted to CIP an electronic copy of this letter (whether by email or otherwise) CIP is entitled to rely on the contents of that electronic copy as accurately reproducing the original and on that electronic copy (including the signatures) being authentic and complete.

[s9(2)(a)]

**SIGNATURES** SIGNED for and on behalf of  
**CROWN INFRASTRUCTURE PARTNERS  
LIMITED** by the persons named below, being  
persons duly authorised to enter into  
obligations on behalf of Crown Infrastructure  
Partners Limited:

[s9(2)(a)]

Name: *Graham Mitchell*

Position: *CEO*

Date: *19/11* 2021

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

[s9(2)(a)]

Name:

Position:

Date: 2021



**AMENDMENT LETTER 2 RELATING TO FUNDING AGREEMENT**

Between (1) Crown Infrastructure Partners Limited, company number 2346751 (**CIP**)  
 and (2) Ruapehu District Council, a territorial authority listed in Part 2 of Schedule 2 to the Local Government Act 2002 (the **Recipient**)

Date 8 February 2023 ~~2022~~

**Background**

1. CIP and the Recipient are party to a Funding Agreement dated 26 May 2021, relating to the Social Housing (project reference Q1282) as varied by amendment letter 1 dated 19 November 2021 (the **Agreement**).
2. CIP and the Recipient have agreed to enter into this letter to amend the Agreement.
3. Unless the context otherwise requires, terms defined or construed in the Agreement have the same definition or construction when used in this letter.

**Amendments to Funding Agreement**

4. With effect from the date of this letter, the Agreement is amended as follows:
  - (a) Item 4 (funding) of Part 1: Key Details is amended by adding the following to the end of this item:

*The parties acknowledge that they have agreed that all of the available Contingency Funding (being \$230,000 plus GST (if any)) may be paid in accordance with the terms of this Agreement (the **Utilised Contingency**). The Utilised Contingency has been included in the Maximum Payment Milestone NZD\$ plus GST (if any) figures set out in the table in Part C: Project Milestones and Project deliverables for each such Project Milestone.*

- (b) The table in 'Part C: Project Milestones and Project deliverables for each such Project Milestone' in Schedule 1: Project is deleted and replaced with the following:

	<b>Completion Date</b>	<b>Project Milestone Heading</b>	<b>Project Milestone</b>	<b>Maximum Payment Milestone NZD\$ plus GST (if any)</b>	<b>Recipient Co-Funding Instalment NZ\$ plus GST (if any)</b>
1	7 May 2021	<b>Resource Consent &amp; Contract for Civils and Build Obtained</b>	Resource Consent Obtained. Develop Design (houses) and Build (Civils and Build) Contract signed	[s9(2)(i)]	Nil
2	30 July 2021	<b>Site Investigations &amp; Civil Design Complete</b>	Additional site works to support the design. All services identified. Civil design, including earthworks, roading, 3 waters, power and		Nil



			<i>communications complete (the <b>Initial Funding Milestone</b>)</i>		
3	16 August 2021	<b>Building Consent Obtained</b>	<i>Building consent obtained – 1<sup>st</sup> week of June (the <b>Site Works Commencement Milestone</b>)</i>	[s9(2)(i)]	Nil
4	30 November 2021	<b>Civil Construction and Housing Construction - progress 1</b>	<i>Civil – site clearance, bulk earthworks for foundations complete Construction - Foundations and floor structure complete, Wall framing complete</i>		Nil
5	28 February 2022	<b>Civil Construction and Housing Construction - progress 2</b>	<i>Civil – Drainage work complete Construction - Roofing and exterior wall linings complete.</i>		Nil
6	31 May 2022	<b>Civil Construction and Housing Construction - progress 3</b>	<i>Civil – car parking and roading complete Construction – Interior linings complete and kitchens / bathrooms installed</i>		Nil
7	31 August 2022	<b>Practical Completion</b>	<i>Practical Completion of the Six Council Owned Social Houses</i>		Nil
8	28 February 2023	<b>Upgrading of Existing 8 Units (Progress 1)</b>	<i>The supply and installation of double glazed windows and doors, and progress on other items (wheelchair access, upgrading wet areas, floor covering).</i>		Nil
9	31 April 2023	<b>Upgrading of Existing 8 Units (Completion)</b>	<i>Practical Completion of the Eight existing Council Owned Social Houses (the <b>Practical Completion Milestone</b>)</i>		Nil
<b>Total cumulative</b>				<b>\$2,405,000</b>	<b>Nil</b>
<b>Total Project Costs</b>				<b>\$2,405,000</b>	

(c) References in the Agreement to “this Agreement” shall be references to the Agreement as amended by this letter.

#### Miscellaneous

5. Other than as amended by this letter, the Agreement remains in full force and effect.

6. This letter is to be governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
7. This letter may be executed in any number of counterparts (including scanned and emailed copies). So long as each party has received a counterpart signed by each of the other parties, the counterparts together shall constitute a binding and enforceable agreement. Where the Recipient has transmitted to CIP an electronic copy of this letter (whether by email or otherwise) CIP is entitled to rely on the contents of that electronic copy as accurately reproducing the original and on that electronic copy (including the signatures) being authentic and complete.

**SIGNATURES** **SIGNED** for and on behalf of  
**CROWN INFRASTRUCTURE PARTNERS**  
**LIMITED** by the persons named below, being  
persons duly authorised to enter into  
obligations on behalf of Crown Infrastructure  
Partners Limited:

[s9(2)(a)]

Name: Graham Mitchell

Position: CEO

Date: 8 February 2023

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

[s9(2)(a)]

Name: Clive A Manley

Position: Chief Executive, Ruapehu District Council

Date: 8 February ~~2022~~ 2023