

**ROTORUA DISTRICT COUNCIL
WASTEWATER SERVICES
OPERATIONS AND MAINTENANCE
CONTRACT
CONTRACT No. 20/001
AGREEMENT**

DATE: 21 AUGUST 2020

TABLE OF CONTENTS

PARTIES	2
BACKGROUND	2
AGREEMENT	2
1. Scope of Contract	2
1.1 Operations scope.....	2
2. Contract Documents and Ancillary Documents.....	2
2.1 Contract Documents	2
2.2 Ancillary Documents	3
2.3 Contract Conditions	3
3. Agreement	3
3.1 Parties agreement.....	3
4. Entry into Ancillary Documents.....	3
4.1 Obligations to enter into the Ancillary Documents	3
5. Contractor Initial Conditions precedent	3
5.1 Contractor Initial Conditions Precedent.....	3
6. Contract Scope enlargement opportunities	4
6.1 One-off engagements	4
6.2 Further 3 Waters assets.....	4
7. Electronic Execution of Agreement	4
7.1 Electronic execution	4
EXECUTION	5

PARTIES

Rotorua District Council (**Council**)

TRILITY Rotorua Limited (**Contractor**)

BACKGROUND

- A The Council is a Territorial Authority under the Local Government Act 2002 and has as one of its functions the collection, treatment and disposal of wastewater for the Rotorua and Rotomā/Rotoiti communities.
- B The Council owns and operates sewerage reticulation networks and wastewater treatment facilities at Rotorua and Rotomā/Rotoiti and wishes to procure the operation, including maintenance and renewals, of the Rotorua wastewater treatment facility, the Rotomā/Rotoiti facility and the reticulation networks.
- C The Contractor has the expertise, experience and resources to operate the existing Rotorua wastewater treatment facility, the Rotomā/Rotoiti facility and the reticulation networks.
- D The Council and the Contractor have agreed that the Contractor shall operate (and be responsible for ongoing expenditure including replacement of plant and equipment in relation to) the Rotorua wastewater treatment facility, the Rotomā/Rotoiti wastewater treatment facility and the sewerage reticulation networks for a term of 10 years for the remuneration and on the terms and conditions set out in this Contract.

AGREEMENT

1. SCOPE OF CONTRACT

1.1 Operations scope

1.1.1 This Contract provides for the operation of the WWTP Facilities and the Reticulation Networks.

1.1.2 The WWTP Facilities and the Reticulation Networks will remain in the ownership of the Council.

1.1.3 The scope of the Contract includes:

- (a) operation, maintenance and renewals for the Rotorua WWTP Facility;
- (b) operation, maintenance and renewals for the Reticulation Networks (including all connected satellite communities);
- (c) delivery of the Rotorua Reticulation Network Gravity Mains Renewals Programme;
- (d) operation, maintenance and renewals of the Rotomā/Rotoiti WWTP Facility; and
- (e) treatment and disposal of biosolids generated by the WWTP Facilities,

for a term of 10 years (plus further terms if the Contract is extended under clause 2.2.1 of the Contract Conditions), all to be carried out in accordance with the Council's Requirements and the further requirements of this Contract.

1.1.4 The Council will pay the Contractor the Monthly Service Payment and the Gravity Mains Renewals Payments for the carrying out of the Operations over the Contract Term.

2. CONTRACT DOCUMENTS AND ANCILLARY DOCUMENTS

2.1 Contract Documents

2.1.1 The Contract Documents are:

- (a) this Agreement;

- (b) the Contract Conditions;
- (c) all Schedules and Appendices and attachments to the Schedules; and
- (d) the Contractor's Proposal.

2.2 Ancillary Documents

2.2.1 The Ancillary Documents are:

- (a) the Parent Company Guarantee;
- (b) the Subcontracts with the Major Subcontractors;
- (c) the Major Subcontractor Direct Deed(s); and
- (d) the Continuity Deeds.

2.3 Contract Conditions

2.3.1 This Agreement incorporates and is intended to be construed together with the Contract Conditions set out in a separate document dated 21 August 2020 entitled "Rotorua District Council Wastewater Services Operations and Maintenance Contract, Contract No. 20/001, Contract Conditions" and marked "Contract Conditions forming part of the Wastewater Services Operations and Maintenance Contract intended to be entered into by Rotorua District Council and TRILITY Rotorua Limited on or about 21 August 2020" and further marked "Version A: For Execution 21 August 2020" a copy of which is held by each party. References to the Contract Conditions and Schedules to the Contract Conditions in this Agreement are reference to the Contract Conditions and Schedules set out in that document.

3. AGREEMENT

3.1 Parties agreement

3.1.1 The parties agree as set out in the Contract Documents.

4. ENTRY INTO ANCILLARY DOCUMENTS

4.1 Obligations to enter into the Ancillary Documents

4.1.1 The parties agree to enter into the Ancillary Documents and procure the entry into the Ancillary Documents by the other parties to the Ancillary Documents as set out in this Agreement and the Contract Conditions and if not so set out contemporaneously with the entry by the parties into this Contract.

5. CONTRACTOR INITIAL CONDITIONS PRECEDENT

5.1 Contractor Initial Conditions Precedent

5.1.1 This Contract is conditional upon satisfaction of the following Contractor Initial Conditions Precedent:

- (a) the Contractor entering into the Major Subcontractor Subcontracts in compliance with the requirements of clause 29.3.2 of the Contract Conditions;
- (b) the Major Subcontractors entering into the Subcontracts which are identified as requiring Continuity Deeds pursuant to clause 29.4 of the Contract Conditions;
- (c) the Contractor providing all Major Subcontractor Direct Deeds required pursuant to clause 29.3.1 of the Contract Conditions duly executed by the Contractor and the relevant Major Subcontractor to the Council; and
- (d) the Contractor providing the Operations Continuity Deeds required pursuant to clause 29.4 of the Contract Conditions duly executed by the Contractor and the applicable Major

Subcontractor and Subcontractor to the Council together with a copy of the applicable Subcontract terms

not later than 20 Working Days after the date of execution of this Contract (each a **Deadline Date**).

- 5.1.2 The Contractor Initial Conditions Precedent set out in clause 5.1.1 are included for the benefit of both parties.
- 5.1.3 If any Contractor Initial Conditions Precedent set out in clause 5.1.1 is not satisfied by the applicable Deadline Date or such extended Deadline Date as the parties shall agree in writing, either party may by notice in writing to the other give notice of its intention to terminate this Contract. If the Contractor Initial Conditions Precedent the subject of the notice is not satisfied within a further 15 Working Days of the date the notice of intention to terminate is provided to the other party then either party may by notice in writing to the other terminate the Contract. On termination of this Contract pursuant to this clause, other than as is expressly provided in this Contract, this Contract shall be at an end, no payment will be due by either party to the other nor will either party have any claim against the other under or in respect of this Contract.
- 5.1.4 The parties acknowledge that on the satisfaction of the Contractor Initial Conditions Precedent this Contract becomes effective and the Contractor will commence the provision of the Operations on the Commencement Date.

6. CONTRACT SCOPE ENLARGEMENT OPPORTUNITIES

6.1 One-off engagements

- 6.1.1 The parties acknowledge, without entering into any binding obligations of any nature whatsoever:
- (a) that from time to time the Council may require or desire general scoping or investigative work to be carried out or advice provided relating to the strategic management of the Council's wastewater assets or the delivery of wastewater treatment and management outcomes and the like and as to the management of Council's other 3 Waters assets and outcomes;
 - (b) that the Contractor (either itself or through its parent company group) has experience and expertise in these areas; and
 - (c) the parties may explore opportunities for the inclusion in this Contract of one off engagements whereby the Contractor will provide the services and/or advice required by Council on terms to be agreed on a case by case basis.

6.2 Further 3 Waters assets

- 6.2.1 The parties also acknowledge without entering into any binding obligations of any nature whatsoever, that it may be mutually advantageous to include further 3 Waters assets design and build and/or operations or maintenance as the case may be within the scope of this Contract and that the parties may from time to time enter into discussions around the ways such assets might be incorporated into this Contract.

7. ELECTRONIC EXECUTION OF AGREEMENT

7.1 Electronic execution

- 7.1.1 Any party may execute this Agreement by way of electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017.


EXECUTION

Executed as an agreement.

Dated **21 Aug, 2020** 2020.

Signed for and on behalf of the)
Rotorua District Council)



by:


Authorised Person

Signed by)
TRILITY Rotorua Limited as Contractor)
by:) Director



)
)
)
)
)



in the presence of:

Witness signature:

Witness name:

Occupation:

Address: