

**ROTORUA
LAKES COUNCIL**
Te kaunihera o ngā roto o Rotorua

Contract No. 18/029

**Rotorua Lakefront Redevelopment
– Stage 1 & 1a**

Construction Contract

HEB Construction Limited

\$14,590,516.00

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SECTION A: CONDITIONS OF CONTRACT

CONTRACT AGREEMENT

This contract is made on the 13th day of October, 2019

BETWEEN HEB CONSTRUCTION LTD ("the Contractor")

AND ROTORUA DISTRICT COUNCIL (RDC) a territorial authority under the Local Government Act 2002, and carrying on business under the name of Rotorua Lakes Council (RLC) ("the Principal")

WHEREAS

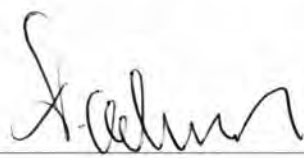
- A. The Principal has engaged the Contractor to perform the Services in respect of the Project (both as defined in the General Conditions) to be or being carried on by the Principal.
- B. The Agreement sets out the terms and conditions on which the Services shall be supplied.

IT IS AGREED AS FOLLOWS:


1. THE Contractor shall construct, complete, deliver and maintain the works described in the Contract Documents.
2. THE Principal shall pay the Contractor the sum of Fourteen million five hundred and ninety thousand five hundred and sixteen dollars (\$14,590,516.00), exclusive of GST, or such greater or lesser sum as shall become payable under the Contract Documents at the times and in the manner provided in the Contract Documents.
3. EACH party shall carry out and fulfil all other obligations imposed on that party by the Contract Documents.
4. **Government Official Information and Meetings Act** The Contractor acknowledges that the Principal is subject to the provisions of the Local Government Official Information and Meetings Act 1987 ("LGOIMA") and shall facilitate the Principal's compliance with its information disclosure requirements pursuant to the LGOIMA. The Contractor shall under no circumstances respond directly to any request for information made under the LGOIMA and must immediately forward any such request to the Principal. The Contractor may mark any information "Commercial: In Confidence" which it reasonably believes may be exempt from disclosure under the LGOIMA, but acknowledges that such marking will be of indicative value only. The Contractor acknowledges that the Principal shall be entitled to determine in its absolute discretion what information, including information marked "Commercial: in Confidence" must be disclosed in order to comply with its obligations under the LGOIMA and may disclose such information without consulting the Contractor. Any information held by the Contractor for the purpose of this contract is treated as if held by the Principal. The Contractor must, immediately on request (or within such period as the Principal may specify), supply to the Principal any such information to enable the Principal to comply with its obligations under LGOIMA, any other relevant statute, and any other reporting or disclosure requirements, and provide all other necessary assistance as reasonably requested.


5. THE Contract Documents are this Contract Agreement (Section A) and the following which form part of this Agreement. The documents comprising the Contract shall be taken as mutually explanatory, but in the case of ambiguity or conflict the priority of documents shall be as listed in clause 4 below, with each document prevailing over a document lower in the list:
- a) The notification of acceptance of tender or award of Contract;
 - b) Post-tender Clarifications: PTC 001 - 008
 - c) Notices to tenderers: 001 – 015
 - d) Schedule 1: Special Conditions of Contract – Specific Conditions of Contract;
 - e) Schedule 2: Special Conditions of Contract – Other Conditions of Contract;
 - f) The General Conditions of Contract based on NZS 3910:2013 (including other Schedules);
 - g) Specifications issued prior to the Date of Acceptance of Tender;
 - h) Drawings issued prior to the Date of Acceptance of Tender;
 - i) The Principal's RFT document;
 - j) The Contractor's tender;

This Contract shall constitute the entire agreement between the parties. This Contract supersedes all prior negotiations, representations, and warranties, except insofar as the same are expressly incorporated herein

SIGNED BY  _____
Authorized Signatory of Contractor

DERRECK ADAMS CEO
Name and Position

In the presence of:
Signature of Witness  _____
Name of Witness Andrew Hiscox

SIGNED BY  _____
Authorized Signatory of Principal

MURRAY STARLING PROCUREMENT LEAD
Name and Position

In the presence of:
Signature of Witness  _____
Name of Witness James Simpson

CONDITIONS OF CONTRACT

1 GENERAL CONDITIONS OF CONTRACT

Except where modified by the Special Conditions of Contract, the Contract shall be governed by the document published by Standards New Zealand and entitled "NZS 3910:2013 Conditions of contract for building and civil engineering".

Copies of this document are available for inspection at the office of the Engineer and may be purchased from Standards New Zealand, Private Bag 2439, Wellington 6020.

2 SCHEDULES TO THE NZS 3910:2013 CONDITIONS OF CONTRACT

NZS 3910:2013 Conditions of contract for building and civil engineering construction

2.1 Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data
1.	INTERPRETATION	
1.2	Definitions	
	The Principal is:	Rotorua Lakes Council
	of:	1061 Haupapa Street, Rotorua 3046
1.2, 10.2, 12.4.4	Separable Portions	
	• Are there any Separable Portions in this Contract?	No
	• If yes, the Separable Portions are as follows and as further defined in the Contract:	N/A
2.	THE CONTRACT	
2.1	Type of Contract	
2.1.1	This Contract is a:	
	(a) Lump sum contract governed by 2.2;	<input checked="" type="checkbox"/>
	(b) Measure and value contract governed by 2.3;	<input type="checkbox"/>
	(c) Cost reimbursement contract governed by 2.4.	<input type="checkbox"/>
2.4	Cost reimbursement contract	N/A
2.4.1	Allowance(s) which are to be added to Net Cost in a cost reimbursement contract or for parts of the Contract Works which are required to be carried out on a cost reimbursement basis: (If percentages are shown as zero or nil, allowances for overheads and profit are deemed to be included in Net Cost.)	
	• Allowance for On-site Overheads:	Nil (%)
	• Allowance for Off-site Overheads and Profit:	Nil (%)
2.4.4	Indicative estimates of the Contract Price:	
	Are indicative estimates required?	No
2.5	Local authority contracts	
2.5.1	Is this Contract a local authority contract to which 2.5.2 applies?	Yes

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data
2.5.3	Is this Contract a contract in a public place to which B1 and B2 of Appendix B apply?	Yes
2.5.4	Is this Contract a road contract to which Appendix B applies?	No
	If yes, the allowance under B3 shall be:	
2.6	Evidence of Contract	
2.6.2	How is the Contract Agreement to be executed?	Three sets of contract documents, signed by an authorised representative of the Principal will be forwarded to the Contractor for signing. Only the Contract Agreement is required to be signed by an authorised representative of the Contractor. The Contractor shall retain one set and return the other two sets to the Principal.
2.7	Documents prepared by the Engineer or Principal	
2.7.1	Copies of the Contract shall be supplied without charge to the Contractor in the following electronic form:	PDF or MS Word/Excel.
3.	BONDS	
3.1	Contractor's Bond	
3.1.1	Is a Contractor's Bond required?	Yes
3.1.2	If yes, the amount of the Contractor's Bond shall be:	10% of Contract Value
3.2	Principal's Bond	
3.2.1	Is a Principal's Bond required?	No
3.2.2	If yes:	
	The amount of the Principal's Bond shall be:	N/A
	The surety for the Principal's Bond shall be:	N/A
4.	SUBCONTRACTS	
4.2	Nominated Subcontractors	
4.2.1	Nominated subcontractors are:	N/A
5.	GENERAL OBLIGATIONS	
5.4	Possession of the Site	
5.4.1	The Contractor shall be given Possession of the Site:	(Select one to apply, (a) or (b))
	(a) 10 Working Days after the Date of Acceptance of Tender	<input type="checkbox"/>
	(b) On the following date: As agreed with the Principal	<input checked="" type="checkbox"/>
5.4.4	Limits on the Contractor's right of entry to adjoining properties are:	Any access to adjoining properties to be arranged by the Contractor with the respective property owner.
5.5	Separate Contractors	
5.5.1	Separate Contractors who may be carrying out work on the Site concurrently with the Contract Works are:	
5.5.2	Are facilities for Separate Contractors required?	No
	If yes, details of facilities required are:	N/A
5.6	Care of the works and Site	
5.6.6(g)	Further risks specifically excepted are:	Nil

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data
5.10	Programme	
5.10.4	Is the programme required to be a Comprehensive Programme?	Yes
5.10.4(e)	If yes, other requirements for the Comprehensive Programme are:	Critical path shall be shown
5.10.5	The Comprehensive Programme shall use the following software:	MS Project or similar
5.10.6	Updates of the Comprehensive Programme shall be provided at the following intervals:	Monthly – on the last day of the month
5.11	Compliance with laws	
5.11.3	Exceptions to the Principal's obligations to obtain licences under 5.11.3 are:	Nil
5.11.4	Exceptions to the Contractor's obligation to give notices and obtain other licences under 5.11.4 are:	Nil
5.17	Safety plan	
	A Contract-specific safety plan is required to be prepared by the Contractor	Yes
5.18	Quality plan	
	Is a quality plan required to be prepared by the Contractor?	Yes
5.19	Traffic management plan	
	Is a traffic management plan required to be prepared by the Contractor?	Yes
5.20	As-built drawings, manuals, and maintenance records	
5.20.1(a)	Are as-built drawings required to be prepared by the Contractor?	Yes – for underground services and ducts (including existing where they have been relocated), stormwater (pipes, cesspits, outlets and swales) streetlight locations, footpaths, bollards, kerbs, pavement, traffic calming, signs, relocated fences and gates, RAMM data
5.20.1(b)	Are operation and maintenance manuals required to be prepared by the Contractor?	Yes
5.20.1(c)	Are maintenance records required to be prepared or updated by the Contractor?	No
6.	ENGINEER'S POWERS AND RESPONSIBILITIES	
6.1	Appointment of Engineer	
6.1.2	The Engineer is:	David Ebbett
	whose professional qualification is:	Bachelor of Construction Management
8.	INSURANCE	
8.1	General	
8.1.1	The party identified below shall arrange the following insurances referred to in the following clauses:	
	8.3 and 8.8 Construction	Contractor
	8.8 Existing structure(s) and contents	Principal
	8.4 Plant	Contractor
	8.5 or 8.9 Public liability	Contractor
	8.5.2 Motor vehicle liability	Contractor

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data
	8.6 Professional indemnity	Contractor
8.1.6	The following forces of nature shall be specifically insured under 8.3, 8.8, or 8.9 as applicable:	
	(a) Landslip:	Yes
	(b) Earthquake:	Yes
	(c) Tsunami:	Yes
	(d) Tornado:	Yes
	(e) Cyclone:	Yes
	(f) Storm:	Yes
	(g) Flood:	Yes
	(h) Lightning strike:	Yes
	(i) Volcanic activity:	Yes
	(j) Hydrothermal activity:	Yes
	(k) Geothermal activity:	Yes
8.3, 8.8	Construction insurance (These items are required to be completed whether the Contractor or the Principal is the insuring party (see 8.1 above))	
8.3.2, 8.8	The following shall have their respective interests noted in the construction insurance policy:	Rotorua Lakes Council
8.3.3, 8.8	Where construction insurance is required (see 8.1 above), the amount of insurance to be effected for the Contract Works and Materials shall be for not less than the sum of the Contract Price, after the acceptance of the offer, plus the following allowances:	
	(a) An allowance for the Cost of demolition, disposal and preparation for replacement work, equal to:	
	(i) The amount in the right hand column:	(\$)
	(ii) The percentage in the right hand column of the Contract Price adjusted as above:	5% of the Contract Price
	(b) An allowance for professional fees including the Cost of clerks of works and inspectors, equal to:	
	(i) The amount in the right hand column:	(\$)
	(ii) The percentage in the right hand column of the Contract Price adjusted as above:	10% of the Contract Price.
	(c) An allowance for items to be incorporated in the Contract Works, the Cost of which is not included in the Contract Price, equal to:	
	(i) The amount in the right hand column	(\$)
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	5% of the Contract Price
	(d) An allowance for an increase in the Contract Price due to Variations equal to:	
	(i) The amount in the right hand column:	\$

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	5% of the Contract Price
	(e) An allowance for increased construction Costs due to inflation equal to:	
	(i) The amount in the right hand column:	(\$)
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	5% of the Contract Price
8.4	Contractor arranged Plant insurance	
	Where Plant is required to be insured (see 8.1 above):	(select one to apply, (a) or (b))
	(a) The Contractor shall insure the following items of Plant on the Site for the amounts stated:	
	(b) The Contractor shall insure each item of Plant on the Site having a current market value of more than:	<input checked="" type="checkbox"/> (\$) 50,000
8.5	Contractor arranged public liability insurance	
8.5.1	Where required (see 8.1 above), public liability insurance shall be effected by the Contractor for an amount not less than:	<input checked="" type="checkbox"/> (\$) 10,000,000 in respect of any one incident
	Such public liability insurance may include sub-limits:	
	<ul style="list-style-type: none"> For liability arising out of vibration, weakening or removal of support, of not less than: 	(\$) N/A
	<ul style="list-style-type: none"> For liability under the Forest and Rural Fires Act 1977, of not less than: 	(\$) 2,000,000
8.5.2	Where required (see 8.1 above), motor vehicle third party liability insurance shall be effected for an amount not less than:	(\$) 2,000,000
8.6	Contractor arranged professional indemnity insurance	
8.6.1	Where required (see 8.1 above), professional indemnity insurance for design by the Contractor shall be effected for an amount not less than:	
	<ul style="list-style-type: none"> For any one claim: 	(\$) 5,000,000
	<ul style="list-style-type: none"> And for an amount in the aggregate of: 	(\$) Nil
8.6.2	Sub-limits of liability for design of parts of the Contract Works by Subcontractors shall be not be less than: (list specific part(s) of Contract Works and applicable \$ sub-limits for any one claim and for an amount in the aggregate, or state if not require(d))	N/A
8.8	Principal arranged construction insurance (refer also to 8.3)	
	In accordance with 8.7.2, the insurance policy wording title is:	N/A
	In accordance with 8.7.2, the extraordinary exclusions, conditions, warranties or endorsements to the policy are:	N/A
8.8.1	Where the Principal is required to effect construction insurance (see 8.1 above):	
	The lead insurer is:	N/A
	Address of lead insurer:	N/A
	The Nominal Deductibles are:	

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data
	<ul style="list-style-type: none"> For damage arising out of the Contract Works: 	N/A
	<ul style="list-style-type: none"> For other claims: 	N/A
	<ul style="list-style-type: none"> For natural perils: 	N/A
8.8.2(a)	The existing structures or properties are:	
	<ul style="list-style-type: none"> The replacement value to be insured is: 	(\$ Nil)
	<ul style="list-style-type: none"> The lead insurer is: 	N/A
	<ul style="list-style-type: none"> Address of lead insurer: 	N/A
	The Nominal Deductibles are:	
	<ul style="list-style-type: none"> For damage arising out of the Contract Works: 	\$
	<ul style="list-style-type: none"> For other claims: 	\$
	<ul style="list-style-type: none"> For natural perils: 	\$
8.8.2(b)	Other structures or property in the vicinity are:	N/A
	<ul style="list-style-type: none"> The replacement value to be insured is: 	(\$ Nil)
	<ul style="list-style-type: none"> The lead insurer is: 	N/A
	<ul style="list-style-type: none"> Address of lead insurer: 	N/A
	The Nominal Deductibles are:	
	<ul style="list-style-type: none"> For damage arising out of the Contract Works: 	N/A
	<ul style="list-style-type: none"> For other claims: 	N/A
	<ul style="list-style-type: none"> For natural perils: 	N/A
8.8.2(c)	Contents insurance:	
	<ul style="list-style-type: none"> The replacement value to be insured is: 	(\$ Nil)
	<ul style="list-style-type: none"> The lead insurer is: 	N/A
	<ul style="list-style-type: none"> Address of lead insurer: 	N/A
	The Nominal Deductibles are:	
	<ul style="list-style-type: none"> For damage arising out of the Contract Works: 	N/A
	<ul style="list-style-type: none"> For other claims: 	N/A
	<ul style="list-style-type: none"> For natural perils: 	N/A
8.9	Principal's option to insure public liability	
8.9.1	Where required (see 8.1 above), the Principal shall effect public liability insurance for an amount not less than:	(\$ Nil)
	The lead insurer is:	N/A
	Address of lead insurer:	N/A
	The Nominal Deductible is:	N/A
	In accordance with 8.7.2:	
	<ul style="list-style-type: none"> the policy wording title is: 	N/A
	<ul style="list-style-type: none"> extraordinary exclusions, conditions, warranties, or endorsements to the policy are: 	N/A

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data
8.9.2	Such public liability insurance may include sub-limits for:	
	<ul style="list-style-type: none"> • Liability arising out of vibration, weakening or removal of support: 	(\$) Nil
	<ul style="list-style-type: none"> • Liability under the Forest and Rural Fires Act 1977: 	(\$) Nil
9.	VARIATIONS	
9.3	Valuation of Variations	
9.3.9	For On-site Overheads:	
	(a) The prices and rates in the Schedule of Prices are inclusive of full allowance for On-site Overheads;	<input checked="" type="checkbox"/>
	(b) The prices and rates in the Schedule of Prices are exclusive of On-site Overheads.	<input type="checkbox"/>
9.3.7, 9.3.9	The allowance for On-site Overheads to be added in accordance with 9.3.9 is:	N/A
	(i) Agreed percentage:	Nil (%)
	(ii) As nominated in the Schedule of Prices;	<input type="checkbox"/>
	(iii) As nominated in the Contractor's tender;	<input type="checkbox"/>
	(iv) A reasonable percentage.	<input checked="" type="checkbox"/>
9.3.10	For Off-site Overheads and Profit:	
	(a) The prices and rates in the Schedule of Prices are inclusive of Off-site Overheads and Profit;	<input checked="" type="checkbox"/>
	(b) The prices and rates in the Schedule of Prices are exclusive of Off-site Overheads and Profit;	<input type="checkbox"/>
9.3.11	For time-related Cost, the Working Day rate in compensation for time-related On-site Overheads and Off-site Overheads and Profit in relation to an extension of time to be applied in accordance with 9.3.11 is:	N/A
	(i) Agreed percentage:	<input type="checkbox"/> Nil (%)
	(ii) As nominated in the Schedule of Prices;	<input type="checkbox"/>
	(iii) As nominated in the Contractor's tender;	<input type="checkbox"/>
	(iv) A reasonable percentage.	<input checked="" type="checkbox"/>
9.3.15	For processing of Variations, the percentage to be paid in accordance with 9.3.15 is:	
	(a) Agreed percentage:	<input type="checkbox"/> Nil (%)
	(b) As nominated in the Schedule of Prices;	<input type="checkbox"/>
	(c) As nominated in the Contractor's tender;	<input type="checkbox"/>
	(d) The reasonable Cost of processing Variations.	<input checked="" type="checkbox"/>
10.	TIME FOR COMPLETION	
10.2	Due Date for Completion	
10.2.1	The periods to be used for calculating the Due Date for Completion are:	

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data
	(a) For the Contract Works:	23 rd March 2021
	(b) For any Separable Portions:	N/A
10.4	Practical Completion Certificate	
10.4.5	Prior to the issue of the Practical Completion Certificate:	
	(a) Producer Statements in the form of Schedule 6 are required;	<input checked="" type="checkbox"/>
	(b) Producer Statements as set out in the following parts of the Contract are required:	<input type="checkbox"/>
	(c) Producer Statements are not required.	<input type="checkbox"/>
10.5	Damages for late completion	
10.5.1	Liquidated damages shall be applied as follows:	
	• In respect of the Contract Works	\$1500 (\$ per Working Day)
	• In respect of any Separable Portion(s):	N/A (\$ per Working Day for each Separable Portion)
10.6	Bonus for early completion	
	Is a bonus to be payable?	No
	• If yes, the bonus for the Contract Works is:	
	• If yes, bonuses for any Separable Portion(s) are:	
11.	DEFECTS LIABILITY	
11.1	Defects Notification Period	
	The Defects Notification Period shall be:	
	• For the Contract Works	12 months
	• For any Separable Portion(s):	
11.3	Final Completion Certificate	
11.3.2(a)	Prior to issue of the Final Completion Certificate:	
	(a) Producer Statements in the form of Schedule 6 are required;	<input checked="" type="checkbox"/>
	(b) Producer Statements as set out in the following parts of the Contract are required:	<input type="checkbox"/>
	(c) Producer Statements are not required.	<input type="checkbox"/>
11.3.2(b)	Prior to the issue of the Final Completion Certificate:	
	(a) As-built drawings and operation and maintenance manuals are required;	<input checked="" type="checkbox"/>
	(b) As-built drawings and operation and maintenance manuals are not required.	<input type="checkbox"/>
11.5	Warranties	
11.5.1	(a) No warranties are required;	
	(b) The Contractor shall provide warranties as set out in the Contract for the following items of work: footpaths, road surface (new works only), streetlights, wheel stops, new gate	<input checked="" type="checkbox"/>
11.6	Guarantees	

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data
11.6.1, 11.6.2	(a) No guarantees are required;	<input type="checkbox"/>
	(b) The Contractor shall provide guarantees in the following form: As per contract documents.	<input checked="" type="checkbox"/>
12.	PAYMENTS	
12.1	Contractor's payment claims	
12.1.3(b) (iii)	Advances for Materials delivered to the Site	
	(a) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall not be made;	<input checked="" type="checkbox"/>
	(b) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall be made, subject to the following conditions:	N/A
12.1.3(b) (iv)	Advances for Temporary Works or Plant	
	(a) Advances for Temporary Works or Plant shall not be made;	<input checked="" type="checkbox"/>
	(b) Advances for Temporary Works or Plant shall be made, subject to the following conditions:	Nil
12.1.3(b) (iv)	Advances for Materials not yet on Site	
	(a) Advances for Materials not on Site shall not be made;	<input checked="" type="checkbox"/>
	(b) Advances for Materials not yet on Site shall be made, subject to the following conditions:	Nil
12.3	Retention monies	
12.3.1, 12.3.2	The percentage to be retained from each progress payment and the limit of the total sums retained shall be in accordance with the following:	
	(a) For the Contract Works, a total retention of: <ul style="list-style-type: none"> • 10% on the first \$200,000, and • 5% on the next \$800,000, and • 1.75% on amounts in excess of \$1,000,000, and • With a maximum total retention when aggregated of \$500,000, and • With a defects liability retention of half the total retention. 	<input checked="" type="checkbox"/>
12.3.3	Bond in lieu of retention	N/A
	(a) The Contractor may provide a bond in lieu of retentions;	<input type="checkbox"/>
	(b) The Contractor may not provide a bond in lieu of retentions.	<input checked="" type="checkbox"/>
12.8	Cost fluctuations	
	(a) Cost fluctuations shall not be paid;	<input checked="" type="checkbox"/>
	(b) Cost fluctuations shall be paid in accordance with the amended Appendix A.	<input type="checkbox"/>

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data
	(c) Cost fluctuations shall be paid in accordance with the method described in	<input type="checkbox"/>
12.13	Goods and services tax	
12.13.2	Payment Schedules provided by the Engineer:	
	(a) Shall not be in the form of a tax invoice;	<input type="checkbox"/>
	(b) Shall be in the form of a buyer created tax invoice and the parties agree not to issue any other tax invoice for items covered by the Payment Schedule.	<input checked="" type="checkbox"/>
13.	DISPUTES	
13.4	Arbitration	
13.4.3	If required, the arbitrator shall be nominated by the following Person:	The Engineer
15.	SERVICE OF NOTICES	
15.1.2	For the purpose of service of written notice:	
	(a) The address of the Principal is:	Rotorua Lakes Council
	Postal address:	Private Bag 3029, Rotorua Mail Centre, Rotorua 3046
	Delivery address:	1061 Haupapa Street, Rotorua
	Mark for the attention of:	Jean-Paul Gaston
	Email address:	jean-paul.gaston@rotorualc.nz
	Other agreed means of electronic communication and address detail:	As mutually agreed by the parties from time to time
	(b) The address of the Contractor is:	Heb Construction
	Postal address:	105 Wiri Station, Auckland 2104
	Delivery address:	
	Mark for the attention of:	Andrew Hiscox
	Email address:	Andrew.Hiscox@heb.co.nz
	Other agreed means of electronic communication and address detail:	As mutually agreed by the parties from time to time
	(c) The address of the Engineer is:	Veros Property Services
	Postal address:	PO Box 324 Tauranga
	Delivery address:	78 Second Ave, Tauranga
	Mark for the attention of:	Dave Ebbett
	Email address:	Dave@veros.co.nz
	Other agreed means of electronic communication and address detail:	As mutually agreed by the parties from time to time

Schedule 2: Special Conditions of Contract – Other Conditions of Contract (replaces Schedule 2 of NZS 3910:2013)

The General Conditions of Contract, NZS 3910:2013 Conditions of contract for building and civil engineering construction, are amended as set out herein.

Clause numbers refer to the General Conditions, or additional clause numbers.

1. INTERPRETATION

1.2 Definitions

Add new definitions

Probity Event means:

- (a) where the Principal considers (acting reasonably) that an inducement or reward has been offered or provided to any employee, agent or representative of the Principal by or on behalf of the Contractor in return for showing or not showing favour or disfavour to any person in relation to this contract; or
- (b) committing any offence under any laws creating offences in respect of fraudulent acts; or
- (c) defrauding or attempting to defraud or conspiring to defraud the Principal; or
- (d) an event, matter or thing for which the Contractor is responsible that in the opinion of the Principal (acting reasonably) is or is likely to have a material adverse effect on the reputation of the Principal.

2. THE CONTRACT

2.11 Add new 2.11 Accuracy of information

- 1. All information made available by or on behalf of the Principal whether prior to, with or subsequent to, this Contract Agreement is made available on the basis that the Principal makes no representation or warranty, whether express or implied, as to the completeness, correctness or accuracy of such information. The Contractor shall check the completeness and correctness of any such information prior to carrying out the work to which the information relates and undertake all such further investigations as it may consider appropriate.

2.12 Add new 2.12 – Reliance

2.12.1 The Contractor acknowledges that the Principal is relying on the advice, skill and judgement of the Contractor in the construction of the Contract Works.

2.12.2 It is the responsibility of the Contractor to identify, assess, quantify and allow for any risk associated with completing the design and construction of the Contract Works, unless specifically indicated otherwise in the Contract Documents.

3. BONDS

3.1 Contractor's Bond

3.1.6 In 3.1.6(a) and (b) delete "up to Practical Completion" and replace with "up to the date of issue of the Practical Completion Certificate"

3.1.9 Delete 3.1.9

4. SUBCONTRACTS

4.1 General

4.1.3 Add to the end of 4.1.3

and the Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor or Subcontractor's agents, employees or consultants as fully as if they were the acts, defaults and neglects of the Contractor or the Contractor's agents, employees or consultants.

4.1.4 Add new 4.1.4

The Contractor must engage the key Subcontractors stated in the Contractor's tender or in the Special Conditions. The Contractor shall not terminate any such engagement or in any other way replace the named Subcontractor without the prior written consent of the Engineer whose consent shall not be unreasonably withheld. Such key Subcontractors shall not be Nominated Subcontractors.

4.1.5 Add new 4.1.5

The Contractor shall, promptly upon execution of any key subcontract named in the Special Conditions, procure from the key Subcontractor a continuity guarantee in favour of the Principal in the form set out in Schedule 17. No payment otherwise due under the Contract shall become payable until the key Subcontractor has executed the continuity guarantee and the Contractor has delivered the continuity guarantee to the Principal.

4.1.6 Add new 4.1.6

Where work is required on the Principal's live water mains, wastewater pipes and storm-water pipes as indicated in the Special Conditions, the Contractor, or Subcontractor who will do the work, shall hold a current approval from the Principal in the appropriate category as defined in the Special Conditions. The Engineer's consent required by 4.1.2 for subcontracting part of the Contract Works will not be required where the Contractor is using an approved Subcontractor for works pursuant to this clause 4.1.6.

5. GENERAL OBLIGATIONS

5.1 General Responsibilities

Add the following additional clauses

5.1.7 The Contractor acknowledges that the Principal has reporting obligations to the Ministry of Business, Innovation and Employment ("MBIE") pursuant to the Funding Agreement between the Principal and MBIE dated 15 January 2019. The Contractor must, promptly on request (or within such period as the Principal may specify), supply to the Principal such information relating to the Contract Works or the Contract in the possession and control of the Contractor to enable the Principal to comply with its obligations to MBIE.

5.3 Control of employees

5.3.2 Number the existing "5.3.1" and add new 5.3.2:

The Contractor must employ the key personnel named in the Special Conditions in the positions nominated in the Contractor's tender or in the Special Conditions. The Contractor shall not remove any such key personnel from their stated position without the prior written consent of the Engineer whose consent shall not be unreasonably withheld.

5.7 Protection of Persons and property

Delete 5.7.1 – 5.7.7 and replace with:

5.7.1 So far as the Site, Materials and the Contract Works are under the Contractor's management or control, the Contractor shall ensure so far as is reasonably practicable that the Site, Materials and Contract Works, including the means of entering and exiting the Site and anything arising from the Site are without risks to the health and safety of any persons.

5.7.2 The Contractor shall ensure so far as is reasonably practicable that the health and safety of any:

- (a) workers involved in carrying out the Contract Works;
- (b) workers whose activities in carrying out work are influenced or directed by the Contractor; and
- (c) other person;

is not put at risk from the carrying out of the Contract Works.

5.7.3 The Contractor must have in place and operate throughout the carrying out of the Contract Works:

- (a) ongoing hazard and risk identification and mitigation processes;
- (b) proper procedures for dealing with emergencies that may arise; and
- (c) an effective drug and alcohol policy that applies to its workers, which must provide for a valid random testing programme.

5.7.4 The Contractor shall:

- (a) keep a record of all deaths, injuries, illnesses and notifiable incidents which are required by law to be notified ("**Notifiable Events**") to WorkSafe or the relevant designated regulatory agency under the health and safety legislation ("**HSWA Regulator**") for at least 5 years from the date on which notice of the relevant event is given to the public authority;
- (b) as soon as possible after becoming aware that a Notifiable Event arising out of the carrying out of the Contract Works has occurred, ensure that the HSWA Regulator is notified of the event; and
- (c) so far as the Site and the Contract Works at which any Notifiable Event has occurred are under the Contractor's management or control, take all reasonable steps to ensure that the Site or the Contract Works where the Notifiable Event occurred is not disturbed until authorised by the HSWA Regulator.

5.7.5 Following any Notifiable Event the Contractor shall:

- (a) give to the Principal through the Engineer a copy of any information or notice which the Contractor is required to provide or make to the HSWA Regulator relating to that Notifiable Event;
- (b) provide the Principal through the Engineer a report giving complete details, including results of investigations, into the cause of the Notifiable Event and any recommendations or strategies for prevention of any similar Notifiable Event in the future; and
- (c) provide the Principal with such assistance as may be reasonably necessary to conduct a Notifiable Event, incident or accident investigation.

5.7.6 The Contractor must, as soon as possible, notify the Principal through the Engineer of any proceedings and/or enforcement action it is issued with.

5.7.7 The Contractor shall provide the Principal with access to the Site in order to review, monitor or audit the Contractor's health and safety procedures and practices as deemed appropriate by the Principal. The Contractor shall participate in any health and safety audits conducted by the Principal or any person appointed by the Principal. The Contractor shall rectify any issues raised in any such audit

5.7.8 The Principal shall notify the Contractor through the Engineer of any safety hazards or risks associated with the Contract Works or the Site, or special safety measures required, of which the Principal or the Engineer are aware, and with which an experienced contractor may not reasonably be expected to be familiar.

5.7.9 The Contractor shall provide all watching and provide, erect, maintain and when no longer required remove all barricades, fencing, temporary roadways and footpaths, signs, and lighting necessary for the effective protection of property, for traffic, and for the safety of persons.

5.7.10 The Contractor shall, so far as is reasonably practicable, engage with workers (including all workers of the Contractor and Subcontractors and any workers who are likely to be directly affected by the work) involved in carrying out the Contract Works in relation to health and safety matters concerning the Site or the Contract Works. The Contractor shall have procedures in place that provide reasonable opportunities for such workers to participate effectively in improving health and safety in respect of the Site and the Contract Works on an ongoing basis.

5.7.11 The Contractor shall so far as is reasonably practicable co-ordinate, consult and cooperate with all other duty-holders in relation to the Contract Works, including the Principal. The Contractor shall facilitate engagement between the Contractor, the Engineer and the Principal (and where requested by the Principal, its designers) in relation to health and safety matters.

5.7.12 If during the term of the Contract the Engineer considers the Contractor is:

- (a) not conducting the Contract Works in compliance with the Site-specific safety plan, relevant legislation, applicable codes of practice or standards, or any other requirements for health and safety set out in the Contract; or
- (b) conducting the Contract Works in such a way as to endanger the health and safety of the Contractor's employees or Subcontractors, or any other person,

the Engineer may instruct the Contractor to suspend the Contract Works until the Contractor has rectified its failure to comply with its obligations to the satisfaction of the Engineer.

5.7.13 The Contractor shall hold health and safety accreditations which have been approved by the Principal and which satisfy any national management system standards stated in the Special Conditions.

5.7.14 Without limiting any other provision in the Contract, the Contractor shall comply with the Health and Safety Requirements and shall be responsible for any non-compliance by any Subcontractor with the Health and Safety Requirements. *"Health and Safety Requirements" means the Health and Safety at Work Act 2015, all regulations made under that Act, all legislation, regulations, rules, standards, approved codes of practice and any other regulatory requirements relating to health, safety and the environment."*

5.7.15 Where required by the Special Conditions, the Contractor shall provide to the Principal through the Engineer a monthly health and safety report, in a form reasonably acceptable to the Principal. The format and content of the monthly health and safety reports shall be detailed in the Contractor's Site-specific health and safety management plan. If Practical Completion occurs within a month of the commencement of the Contract, then the health and safety report shall be provided on Practical Completion.

5.7.16 If the Contractor fails to comply with any of the Health and Safety Requirements after having been given reasonable notice to comply, or if the Contractor is issued with an improvement or prohibition notice by Worksafe NZ or the HSWA Regulator and fails to implement suitable remedies promptly, or is prosecuted for a breach of any relevant legislation, such failure or prosecution shall be deemed to be a Contractor default which will entitle the Principal to terminate the Contract or resume possession of the Site, in accordance with 14.2.1(d). Alternatively, where the default is capable of remedy the Engineer may instruct the Contractor to suspend the Contract Works until the Contractor has rectified its failure to comply with its obligations to the satisfaction of the Engineer.

5.7.17 The Contractor shall take all reasonable steps to avoid nuisance to prevent damage to property.

5.10 Programme

5.10.1 Add to the end of 5.10.1

The programme shall include a forecast of all anticipated monthly payments, excluding retentions, to be made under the Contract. This forecast shall be updated monthly.

5.11 Compliance with laws

5.11.9 In the first line of 5.11.9 delete "Final Completion Certificate" and replace with "Practical Completion Certificate", and in 5.11.9(a) delete "11.3.2" and replace with "10.4.5".

5.11.10 In the first line of 5.11.10 delete "date of closing of tenders" and replace with "Date of Acceptance of Tender".

Add the following additional clauses

- 5.11.11** The Contractor shall not do anything or omit to do anything, or use materials, substances or processes which:
- (a) would or is likely to discharge a contaminant into the environment that is not in compliance with any licences applicable to the Contract Works; or would or is likely to cause the total emission of noise from the Site to exceed prescribed boundary noise levels; or that would or is likely to cause any adverse effect on the environment; or
 - (b) is a breach of any duty or obligation of the Contractor under the Resource Management Act 1991 ("RMA"); or
 - (c) does or is likely to give rise to the issue of an abatement notice, enforcement proceedings or an excessive noise direction under the RMA against the Principal, Contractor or Subcontractor.
- 5.11.12** Before a Subcontractor commences work the Contractor shall obtain similar undertakings as those stated in 5.11.11 from that Subcontractor in relation to the subcontract works.
- 5.11.13** The Contractor shall indemnify and keep indemnified the Principal from all costs, damages, fines, penalties, loss and expense incurred or suffered by the Principal in respect of any breach of the RMA directly or indirectly related to a breach by the Contractor of any of the warranties set out in 5.11.11 except that the Contractor's liability shall be reduced proportionately to the extent that the Principal or any person for whose acts or omissions the Principal is as between itself and the Contractor responsible, caused or contributed to that liability.
- 5.11.14** If the Contractor becomes aware that it is or may be in breach, or is likely to be in breach of any of its obligations under 5.11.11 or any Subcontractor is or may be in breach of or is likely to breach the matters set out in the agreement between the Contractor and Subcontractors pursuant to 5.11.12 then the Contractor shall immediately notify the Engineer of such breach or anticipated breach.
- 5.11.15** The Contractor shall hold the environmental accreditations which have been approved by the Principal and which satisfy any national management system standards stated in the Special Conditions.

5.12 Intellectual Property

Add the following additional clauses

- 5.12.3** The Contractor acknowledges that the Principal has granted a royalty-free license (including the right to sublicense) to MBIE to use all reports, documents, information and other materials provided by the Principal to MBIE under or in connection with the project to which this Contract relates, and the Contractor hereby grants an equivalent license to the Principal to enable the Principal to grant the preceding license (including information received by the Principal from the Contractor) to MBIE (including the right for MBIE to sublicense).

5.13 Underground and above-ground utilities

5.13.3 Add to the end of 5.13.3

The Contractor shall be alone liable for the costs of repair or replacement of any damage to or loss of underground utilities identified by the Principal or known to the Contractor and aboveground utilities howsoever caused including by the negligence of the Contractor's Subcontractors and the Contractor hereby indemnifies and holds harmless the Principal against all claims made for actual or alleged loss or damage to underground utilities identified by the Principal or known to the Contractor and aboveground utilities.

5.17 Safety plan

Delete 5.17.1 to 5.17.5 and replace with:

- 5.17.1** Where required by the Special Conditions, the Contractor shall prior to commencement of the Contract Works on Site:
- (a) undertake a Site-specific risk assessment; and
 - (b) prepare and submit to the Engineer a Site-specific health and safety management plan ("Plan") for the execution of the Contract Works.

- 5.17.2** The Plan shall:
- (a) address the means by which the Contractor intends to meet its obligations under 5.7 and any other requirements for the Plan set out in the Contract; and
 - (b) detail how the Contractor will maintain a healthy and safe work environment and ensure legislative and best practice compliance.
- 5.17.3** Within 5 Working Days of receipt of the Plan, or revised Plan, the Engineer shall notify the Contractor in writing whether or not the Plan is accepted. Such acceptance shall not be unreasonably withheld. Where the Engineer does not accept the Plan, the notice shall include the Engineer's reasons, and the Contractor shall submit a revised Plan.
- 5.17.4** The Contractor shall not commence any part of the Contract Works on Site unless the Engineer has accepted the Plan or revised Plan.
- 5.17.5** The Contractor shall comply with the Plan accepted by the Engineer under 5.17.4. Compliance with the Plan shall not relieve the Contractor from any of its duties, obligations, and liabilities under the Contract.

5.20 As-built drawings and operation and maintenance manuals

5.20.4 Add new 5.20.4

Where required by the Special Conditions, the documents and information required to be provided by the Contractor under 5.20 shall be in sufficient detail and in a form appropriate to allow the Principal to accurately update the Principal's records, including Geographical Information System (GIS) records.

5.20.5 Add new 5.20.5

Where draft information comprising as-built drawings, operation and maintenance manuals or producer statements are required at time of Practical Completion then an additional retention amount shall apply until such are supplied in final form and consented to.

5.21 Advance Notification

5.21.1(b) Add "or any Separable Portion" to the end of 5.21.1(b).

Add the following additional clause:

5.22 Environmental compliance plan

- 5.22.1** Where required by the Special Conditions, the Contractor shall prepare and submit to the Engineer an environmental compliance plan for execution of the Contract Works.
- 5.22.2** The environmental compliance plan shall address the means by which the Contractor intends to meet its obligations under 5.11 and any other requirements for environmental compliance set out in the Contract or in any licences obtained or to be obtained by the Principal or the Contractor under 5.11.
- 5.22.3** Within 5 Working Days of receipt of the Contractor's environmental compliance plan, or revised environmental compliance plan, the Engineer shall notify the Contractor in writing whether or not the plan is accepted. Such acceptance shall not be unreasonably withheld. Where the Engineer does not accept the plan, the notice shall include the Engineer's reasons, and the Contractor shall submit a revised environmental compliance plan.
- 5.22.4** The Contractor shall not commence any part of the Contract Works unless the Engineer has accepted the environmental compliance plan or revised environmental compliance plan.
- 5.22.5** Compliance with the environmental compliance plan shall not relieve the Contractor from any of its duties, obligations, and liabilities under the Contract.

7. INDEMNITY

7.1 Indemnity

7.1.1(a) and (b) Add the words "design (by the Contractor)", before the words "construction of"

8. INSURANCE

8.1 General

8.1.2 Delete 8.1.2 and replace with

If any insurer makes or attempts to make any material alteration to the terms of any insurance required by this Contract during the currency of the insurance or its renewal, the party first notified by the insurer shall promptly give notice to the other insured parties. Any costs associated with a failure to notify the other insured parties of any such alteration will be the responsibility of the party first notified.

8.1.3 Add to end of 8.1.3

"provided that a copy of the policy has been provided to all insured parties prior to the works commencing."

8.2 Contractor arranged insurances – General

8.2.3 Add sub-paragraph (c)

The insurances are primary to and will respond in priority to any policy of insurance effected by the Principal which covers the same or similar interests.

8.2.8 Add to end of 8.2.8

Nothing in this provision shall limit the liability of the Contractor to the Principal, should the Principal fail for any reason whatsoever to pay any insurance premium under the provisions of this subclause.

8.2.9 Add new 8.2.9

The Contractor shall be responsible for ensuring that Subcontractors maintain public liability insurance to the same extent as is required to be provided by the Contractor.

8.5 Contractor arranged public liability insurance

8.5.1 In the fourth line of 8.5.1 after the words "for an amount not less than that stated in the Special Conditions," **add the words "and in the aggregate for products liability,"**

Add new sub paragraphs to the end of 8.5.1 as follows

- (d) Products liability insurance;
- (e) Liability for damage to underground services;
- (f) Liability arising from the use of construction machinery, including hired Plant, except when being used as a motor vehicle as defined in the Land Transport Act 1998; and
- (g) Liability for loss or damage to any existing structures, or other structures in the vicinity and the contents of any of them, that are not specifically identified in Schedule 1 under 8.8.2 (a), (b) and (c).

8.5.2 Add to end of 8.5.2:

The insurance shall be extended to include any vicarious liability of the Principal for loss or damage arising out of the use of the Contractor's motor vehicles in connection with the Contract Works.

8.7 Principal arranged insurances – General

8.7.8 Add new 8.7.8

All claims proceeds under the insurances arranged by the Principal will be payable to the Principal. The Principal will reimburse the Contractor in respect of any progress payment claim approved by the Engineer for reinstatement or repairs to the Contract Works, or any part of the Contract Works, including loss or damage to any Materials.

9. VARIATIONS

9.1 Variations permitted

9.1.1(b) Add to the end of 9.1.1(b)

"... whether or not any such work omitted is subsequently carried out by a Separate Contractor or by the Principal itself."

9.4 Daywork

9.4.3 In the last sentence of 9.4.3 delete "in such case" and replace with "in the case of records signed by the Engineer"

10 TIME FOR COMPLETION

10.3 Extension of time

10.3.1(c) Delete 10.3.1(c) and replace with

Any strike, lockout or other industrial action except where caused or to the extent contributed to by the Contractor or it's Subcontractors;

10.3.1(d) Delete 10.3.1(d) and replace with

Loss or damage to the Contract Works or Materials other than loss or damage caused by any act or omission of the Contractor or of any person for whose acts or omissions the Contractor is as between itself and the Principal responsible;

10.3.1 Add to the end of 10.3.1

No extension of time will be granted unless the delay has affected the critical path of the Contract Works such that Practical Completion cannot be achieved by the Due Date for Completion.

10.3.6 Delete first sentence of 10.3.6 and replace with

The Engineer may where practicable in lieu of granting an extension, taking into account the resources available to the Contractor, require the Contractor to accelerate the rate of working to offset in part or in total any delay in respect of which the extension would otherwise be granted under this 10.3.

10.3.8 Add new 10.3.8

Where there has been a delay to the Contract Works which does not entitle the Contractor to an extension of time pursuant to 10.3.1, the Contractor shall take all reasonable steps to expedite progress.

10.4 Practical Completion Certificate

10.4.5 Add sub paragraph (c)

"Anything else required by the Special Conditions".

10.4.7 Add new 10.4.7

Particular works which the Contractor must carry out prior to the issue of the Practical Completion Certificate are as stated in the Special Conditions.

11. DEFECTS LIABILITY

11.3 Final Completion Certificate

11.3.2 Add sub paragraph (c)

"Anything else required by the Special Conditions".

12. PAYMENTS

12.2 Progress Payment Schedules

12.2.8 Add to the end of 12.2.8:

"... or as otherwise provided in the Special Conditions."

12.3 Retention Monies

12.3.2 Add to the end of 12.3.2(a)

... less the Engineer's assessment of the value of any Contract Works remaining to be completed other than minor omissions and minor defects under 10.4.1.

12.3.2 Add new sub-paragraph (b) and re-number existing subparagraphs (c) and (d)

(b) By payment, as part of the first progress payment after the Contractor provides all of the information required to be provided under 11.3.2 for the whole of the Contract Works or for the Separable Portion, of one third of the defects liability retention;

12.3.2 In the third line of new subparagraph (c) add the word "remaining" before the words "defects liability retention".

12.5 Final Payment Schedule

12.5.9 Add to end of 12.5.9

"... or as otherwise provided in the Special Conditions."

12.6 Effect of Final Payment Schedule

12.6.2 Add new 12.6.2

Notwithstanding the issue of the Final Payment Schedule the Contractor shall remain liable for fulfilment of any obligation of the Contractor under the Contract which then remains unperformed or not properly performed.

12.13 Goods and services tax

12.13.2 Delete 12.13.2 and replace with

Any payment claim or final payment claim prepared by the Contractor shall not be a GST Invoice. The Principal shall create a buyer created GST Invoice after the Engineer provides Progress Payment Schedules under 12.2 or Final Payment Schedules under 12.5 and the parties agree not to issue any other GST Invoice for items covered by the Payment Schedules.

Add new 12.14

12.14 Set off

The Principal shall be entitled to set off against any sums that would otherwise be due to the Contractor, whether certified by the Engineer or otherwise, amounts in respect of any claims against the Contractor, including damages for breach of contract by the Contractor.

14. FRUSTRATION AND DEFAULT

14.2 Default by the Contractor

14.2.1 Delete 14.2.1 and replace with

The Principal may at its option after giving notice to the Contractor either terminate the Contract or resume possession of the Site in the event of:

- (a) The Contractor failing to execute the Contract Agreement under 2.6 or to provide the Contractor's Bond under 3.1 where required by the Contract;
- (b) The Contractor assigning or subletting the whole or substantially the whole of the Contract Works without the consent in writing of the Principal;
- (c) A Probity Event;
- (d) The Engineer certifying in writing to the Principal that in his or her opinion the Contractor:
 - (i) has abandoned the Contract;
 - (ii) is in substantial breach of the Contract;
 - (iii) has failed to commence the Contract Works in accordance with 10.1.2; or
 - (iv) is persistently, flagrantly or wilfully neglecting to carry out its obligations under the Contract; or
- (e) The Engineer certifying in writing to the Principal that in his or her opinion the Contractor is in breach of any of its obligations under 5.7 or 5.17,

and the Contractor's default under (a), (b), (d) or (e) has not been remedied to the satisfaction of the Engineer within 10 Working Days of receiving the notice.

Schedule 3: Form of Contractor's performance bond (replaces Schedule 3 of NZS 3910:2013)

Contract for: [Contract Name & Contract Number]

THIS DEED is made on

BY

of ('the surety')

..... (Address of surety for service)

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES:

- A ('the Contractor') has entered into an agreement with ('the Principal') to carry out and fulfil the obligations imposed on the Contractor ('the Contract').
- B The Contract requires the Contractor to provide the Principal with security in the form of a bond to ensure performance of the Contractor's obligations under the Contract.
- C Words and phrases with capital initial letters that are not otherwise defined in this bond shall have the meaning set out in the Contract.

BY THIS DEED:

- 1. **THE** surety is held and bound to the Principal in the sum of \$NZ..... and binds its successors and assigns for the payment of that sum.
- 2. **THE** surety irrevocably and unconditionally undertakes to pay to the Principal any sum or sums which may, from time to time, be demanded in writing by the Principal, up to an aggregate amount not exceeding the sum stated in clause 1 above. The surety shall make payment forthwith upon demand by the Principal, without enquiry as to, and without having regard to, the position as between the Contractor and the Principal, or whether or not the Contractor is in default under the Contract. Payment will be made without reference to, and notwithstanding any instruction from the Contractor to the surety to the contrary.
- 3. **ANY** notice by the Principal under this bond shall be deemed to have been properly given if signed by the Principal or on behalf of the Principal by any of its agents, directors, or employees and sent by registered mail or delivered by hand to the surety at the address for service stated in this bond.
- 4. **THE** conditions of this bond are that it shall be released if and when:
 - (a) A Practical Completion Certificate has been issued for the Contract Works in accordance with 10.4 of the General Conditions; or
 - (b) The surety receives a notice from the Principal releasing the surety from this bond.
- 5. **EXCEPT** as provided in clause 4 above this bond shall be and remain in full force and effect.

- 6. **THE** surety shall not be released from any liability under this bond:
 - (a) By any alteration in the terms of the Contract;
 - (b) By any alteration in the extent or nature of the Contract Works to be completed, delivered, and having defects remedied;
 - (c) By any allowance of time by the Principal or by the Engineer appointed by the Principal under the Contract; or
 - (d) By any forbearance or waiver by the Principal or by the Engineer in respect of any of the Contractor's obligations or in respect of any default on the part of the Contractor.
- 7. **NOTWITHSTANDING** any other provision of this bond, the surety may at any time without being required, pay to the Principal an amount equal to the sum stated in clause 1 above (less any moneys previously paid pursuant to this bond by the surety), or such lesser amount as the Principal may specify. Any such payment will result in the surety's liability under this bond immediately ending and this bond shall be null and void.
- 8. **THIS** bond shall be governed by New Zealand law.

In witness of which this deed has been executed and delivered

SIGNED on behalf of the surety by:

.....
Director

.....
Director

NOTE – This bond shall be executed by the Contractor and by the surety in the manner required for execution of a deed. Any of these parties which are a company shall execute the bond by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. In the case of a party who is an individual, the party shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.

Schedule 6: Form of Producer Statement – Construction (as per NZS 3910:2013)

ISSUED BY (Contractor)

TO (Principal)

IN RESPECT OF (Description of Contract Works)

AT (Address)

..... (Contractor) has contracted to (Principal)

to carry out and complete certain building works in accordance with a Contract titled ('the Contract')

(Project)

I (Duly Authorised Agent)

a duly authorised representative of (Contractor)

believe on reasonable grounds that (Contractor)

has carried out and completed:

All

Part only as specified in the attached particulars of the building works in accordance with the Contract

.....

.....

.....

..... Date

(Signature of Authorised Agent on behalf of)

.....

(Contractor)

.....

.....

(Address)

Schedule 7 – Information on Contractor arranged construction insurance

To Rotorua Lakes Council
Private Bag 3029
Rotorua Mail Centre
ROTORUA 3046

From Click to enter text (Name of insurance company)
Click to enter text (Branch)
Click to enter text (Address)

We confirm having effected construction insurance for:

Click to enter text (The Contractor)

Click to enter text (The Principal)

In respect of Click to enter text (Project title)

Policy wording title is Click to enter text

The following provisions apply:

- Annual policy
- Annual run-off policy
- Annual cut-off policy

We advise that special terms, copy attached, have been specifically applied to this project Select yes or no

8.1.6

The following forces of nature are insured:

- | | | |
|--|--|--|
| <input type="checkbox"/> landslip | <input type="checkbox"/> earthquake | <input type="checkbox"/> tsunami |
| <input type="checkbox"/> tornado | <input type="checkbox"/> cyclone | <input type="checkbox"/> storm |
| <input type="checkbox"/> flood | <input type="checkbox"/> lightning strike | <input type="checkbox"/> volcanic activity |
| <input type="checkbox"/> hydrothermal activity | <input type="checkbox"/> geothermal activity | |

8.3.3

The sums insured are (GST exclusive):

Contract Price	\$	<u>Click to enter amount</u>
(a) Costs of demolition	\$	<u>Click to enter amount</u>
(b) Professional fees	\$	<u>Click to enter amount</u>
(c) Value of items to be incorporated	\$	<u>Click to enter amount</u>
(d) An allowance for an increase in construction costs	\$	<u>Click to enter amount</u>
(e) An allowance for increased reconstruction costs	\$	<u>Click to enter amount</u>
TOTAL SUM INSURED		\$ <u>Click to enter amount</u>

The policy deductibles are (GST inclusive):

Non-earthquake \$.....
 Natural disaster% of.....minimum of \$.....
 Other (name) \$.....

8.2.3(a)

Construction period from..... to.....
 Insurance maintenance period
 Policy expiry date *Click to enter a date*

Policy cover terms included are:

- 8.2.2 Discretionary cancellation clause *Select yes or no*
- 8.2.3 Reinstatement provision on building and consents *Select yes or no*
- 8.2.3 Severally insured *Select yes or no*
- No settlement delay due to exercise of subrogation *Select yes or no*
- 8.2.4 Void ab initio for non-payment of premium without prior notification *Select yes or no*

Policy extensions included are:

Sub-limit (if applicable)

- 8.3.1 Transit (in New Zealand) *Select yes or no* \$.....
- 8.3.1 Materials in storage (in New Zealand) *Select yes or no* \$.....
- 8.2.3 Testing and commissioning *Select yes or no* \$.....
- Expediting expenses *Select yes or no* \$.....
- Overseas airfreight *Select yes or no* \$.....

We undertake that this policy will not be cancelled or amended by us without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp *Click to enter text* _____ **Date** *Click to enter a date* _____

(Or name of insurance broking company confirming cover)

SIGNED BY *Click to enter text or paste signature* _____

SIGNATORY TITLE *Click to enter text* _____

(Clause numbers refer to NZS 3910:2013 and are for information only.)

Schedule 8 – Information on Contractor arranged Plant insurance

To Rotorua Lakes Council
Private Bag 3029
Rotorua Mail Centre
ROTORUA 3046

From Click to enter text (Name of insurance company)
Click to enter text (Branch)
Click to enter text (Address)

We confirm having effected Plant insurance for:

Click to enter text (The Contractor)
In respect of Click to enter text (Project title)
Policy wording title is Click to enter text

We advise that special terms, copy attached, have been applied to this policy Select yes or no

The following provisions apply:

- Annual policy
- Project specific policy

Policy expiry date Click to enter a date

8.4 The sums insured are (GST exclusive):

- All items of Plant Sum insured \$ Click to enter amount
OR
- Valued schedule of construction Plant insured (copy attached)

The policy deductible (GST inclusive) is: \$ Click to enter amount

Policy cover terms included are:

- 8.2.2 Discretionary cancellation clause Select yes or no
- 8.2.3(a) Reinstatement provision Select yes or no
- 8.2.4 Void *ab initio* for non-payment of premium without prior notification Select yes or no
No settlement delay due to exercise of subrogation Select yes or no

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp Click to enter text Date Click to enter a date

(Or name of insurance broking company confirming cover)

SIGNED BY Click to enter text or paste signature

SIGNATORY TITLE Click to enter text

(Clause numbers refer to NZS 3910:2013 and are for information only.)

Schedule 9 – Information on public liability insurance

To Rotorua Lakes Council
Private Bag 3029
Rotorua Mail Centre
ROTORUA 3046

From Click to enter text (Name of insurance company)
Click to enter text (Branch)
Click to enter text (Address)

We confirm having effected public liability insurance to indemnify the Principal and the Contractor against legal liability to third parties for damage, loss or injury caused by an act or omission of the Contractor arising out of the performance of the Contract Works.

Click to enter text (The Contractor)
Click to enter text (The Principal)
In respect of Click to enter text (Project title)
Policy wording title is Click to enter text

We advise that special terms, copy attached, have been specifically applied to this project Select yes or no

The following provisions apply:

- Annual policy
- Project specific policy

Policy expiry date Click to enter a date

8.5, 8.9

The limit of indemnity (GST exclusive)	\$	<u>Click to enter amount</u>
Sub-limit insured for (GST exclusive)		
Vibration, removal, or weakening of support	\$	<u>Click to enter amount</u>
Forest and Rural Fires Act 1977	\$	<u>Click to enter amount</u>
Underground services	\$	<u>Click to enter amount</u>
Deductible (GST inclusive) is	\$	<u>Click to enter amount</u>
Deductible for vibration, removal, or weakening of support (GST inclusive)	\$	<u>Click to enter amount</u>
Deductible for underground services (GST inclusive)	\$	<u>Click to enter amount</u>

The policy also covers liability arising out of:

- The ownership/use of Plant not required to be registered for road use Select yes or no
- The use of hired Plant Select yes or no
- The ownership/use of watercraft over 8 m Select yes or no
- The ownership/use of aircraft Select yes or no
- The use of explosives Select yes or no

8.2, 8.7

Policy cover terms included are:

Reinstatement provisions	Select yes or no
Number of reinstatements	Click to enter number
Discretionary cancellation clause	Select yes or no
Void <i>ab initio</i> for non-payment of premium without prior notification	Select yes or no
Severally insured	Select yes or no
No settlement delay due to exercise of subrogation	Select yes or no

We undertake that this policy will not be cancelled or amended by us without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp Click to enter text **Date** Click to enter a date

(Or name of insurance broking company confirming cover)

SIGNED BY Click to enter text or paste signature

SIGNATORY TITLE Click to enter text

(Clause numbers refer to NZS 3910:2013 and are for information only.)

Schedule 10 – Information on Contractor arranged motor vehicle insurance

To Rotorua Lakes Council
Private Bag 3029
Rotorua Mail Centre
ROTORUA 3046

:

From Click to enter text (Name of insurance company)

Click to enter text (Branch)

Click to enter text (Address)

We confirm having effected motor fleet insurance for Click to enter text (The Contractor)

In respect of Click to enter text (Project title)

Policy wording title is Click to enter text

We advise that special terms, copy attached, have been applied to this policy Select yes or no

The following provisions apply:

- Annual policy
- Project specific policy

Policy expiry date Click to enter a date

8.5.2

The limits of liability are (GST exclusive):

Section 2 – Liability Click to enter amount

For any one occurrence arising out of the same event

The policy deductibles are:

Section 2 – Liability (GST inclusive) Click to enter amount

Plus under age penalties

8.2

Policy cover terms included are:

Section 2 Liability automatic reinstatement Select yes or no

Discretionary cancellation clause Select yes or no

Void ab initio for non-payment of premium without prior notification Select yes or no

No settlement delay due to exercise of subrogation Select yes or no

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp Click to enter text **Date** Click to enter a date

(Or name of insurance broking company confirming cover)

SIGNED BY Click to enter text or paste signature

SIGNATORY TITLE Click to enter text

(Clause numbers refer to NZS 3910:2013 and are for information only.)

Schedule 13: Form of Subcontractor Warranty (replaces Schedule 13 of NZS 3910:2013)

THIS AGREEMENT is made on..... (insert date)

BETWEEN..... ('the Principal')

AND..... ('the Warrantor')

DEFINITIONS

'Warranted Works'.....

'Warranty Period'.....years from the date of completion of the Contract Works

BACKGROUND

- A** The Principal has entered into a contract with [insert name of Contractor] ('Contractor') for carrying out the Contract Works (the 'Contract'). The Warranted Works are part of the Contract Works.
- B** Under the Contract, the Contractor has agreed to arrange for the provision of a warranty in respect of the Warranted Works for the Warranty Period on the terms set out in this warranty.
- C** The Warrantor has agreed to provide a warranty in respect of the Warranted Works for the Warranty Period on the terms set out in this warranty.
- D.** Words and phrases with capital initial letters that are not otherwise defined in this warranty shall have the meaning set out in the Contract.

IT IS HEREBY AGREED

- 1** The Warrantor warrants to the Principal that the Warranted Works are as required in the Contract. If not otherwise specified the works shall be in accordance with good trade practice.
- 2** This warranty shall be in addition to and shall not derogate from any manufacturer's warranty or any warranty implied by law or the Defects Notification Period in the Contract, attaching to any part of the Warranted Works.
- 3** **Warrantor's obligations**
 - 3.1** The Warrantor agrees that, if within the Warranty Period the Warrantor is advised by the Principal in writing of any defect in the Warranted Works for which the Warrantor is liable under the terms of this warranty, the Warrantor will promptly take steps to remedy the defect.
 - 3.2** Any remedial work which the Warrantor is liable to undertake under this warranty shall be carried out:
 - (a) To the standard required by the Contract;
 - (b) In a prompt and timely manner;
 - (c) Without unnecessary inconvenience to any occupants;
 - (d) At the Warrantor's Cost; and
 - (e) Subject to reasonable access being provided to the Warrantor for the purpose of carrying out the remedial work.

- 3.3** Where the Cost of replacement of work and/or Materials is out of all proportion to the consequences of the defect, or where the defect may not be reasonably capable of rectification without substantial expense which is out of all proportion to the Cost of the Warranted Works:
- (a) If the defect is reasonably able to be rectified by repair rather than by replacement, the Warrantor's obligation under this warranty shall be only to repair or otherwise make good the defect;
 - (b) The Warrantor may propose reasonable monetary compensation in lieu of remedying the defect; or
 - (c) The Warrantor may propose a combination of both repair and compensation.
- 3.4** The Principal shall consider the Warrantor's reasonable proposals and the parties shall endeavour in good faith to reach agreement. Where agreement cannot be reached, the dispute shall be resolved in accordance with clause 7.

4 Failure by Warrantor to perform remedial work

- 4.1** If the Warrantor fails to promptly, adequately and satisfactorily carry out the remedial work or to propose acceptable repair or compensation, the Principal may then arrange for the remedial work to be carried out by others.
- 4.2** The Principal shall first give the Warrantor 10 Working Days' notice, or such other reasonable time as agreed by the Principal, to carry out and complete the remedial work. If the Warrantor does not do so within that time, the Principal may then advise the Warrantor in writing that the work will be carried out by other Persons.
- 4.3** In such an event, the Warrantor is not released from its obligations under this warranty, which continue in full force and effect, except for the defect remedied by the Principal or by another Person contracted by the Principal.
- 4.4** The reasonable Cost of remedial work carried out by such other Persons including all reasonable Costs of the Principal shall be paid to the Principal by the Warrantor on demand.

5 Exclusions

The Principal agrees that the Warrantor is not liable for any defect or damage caused by:

- (a) Wilful act or negligence of the Principal or any Person other than the Warrantor;
- (b) Fire, explosion, earthquake, war, subsidence, slips, faulty materials, or workmanship other than caused by the defect in the Warranted Works;
- (c) Any force of nature which the Warrantor could not have reasonably foreseen;
- (d) Any neglect or unnecessary delay by the Principal in giving notice to the Warrantor of a defect in the Warranted Works becoming apparent;
- (e) Design faults, errors, or discrepancies, unless the Warrantor undertook the design of the part of the Warranted Works that is the subject of the defect;
- (f) Use of the Warranted Works by the Principal or any other Person in any manner or for any purpose not being the intended manner of use or purpose of the Warranted Works;
- (g) Failure by the Principal or other Person to maintain the Warranted Works in accordance with good practice and any manufacturer's stated or recommended instructions or requirements; or
- (h) Fair wear and tear.

6 Assignment

The Principal may assign the benefit of this warranty to any Person.

7 Disputes

Any dispute between the Principal and the Warrantor arising out of this warranty is to be referred to arbitration before a sole arbitrator. If, within 15 Working Days of notice of dispute, the Principal and the Warrantor cannot agree on a single arbitrator, either party may request the President of the Arbitrators' and Mediators' Institute of New Zealand to appoint an arbitrator.

In witness of which this deed has been executed and delivered.

SIGNED on behalf of the Warrantor by:

.....

Director

.....

Director

SIGNED on behalf of the Principal by:

.....

Director

.....

Director

NOTE – The warranty shall be executed by the Warrantor and the Principal in the manner required for execution of a deed. Any of these parties which are a company shall execute the warranty by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the Warranty is signed under the name of the company by that director, but the signature shall be witnessed by another Person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) shall execute by affixing its seal, which shall be attested in the manner provided for in the rules of, or applicable to, the body corporate. In the case of a party who is an individual, the party shall sign and the signature shall be witnessed by another Person. The witness shall not only sign but shall also add his or her occupation and address.

Schedule 14: Agreement for Off-site Materials (as per NZS 3910:2013)

THIS AGREEMENT is dated the day of 20.....

BETWEEN ('the Principal')

AND ('the Contractor')

AND ('the Subcontractor')

INTRODUCTION

- A** By a contract dated the day of20..... and known as ('the Contract') made between the Principal and the Contractor, the Contractor agreed to carry out the work and obligations imposed on the Contractor by the Contract ('the Contract Works').
- B** The Contractor and the Subcontractor have entered into a subcontract for the performance of part of the Contract Works and/or the supply of Materials described in Schedule A to this agreement ('the Materials') and intended to be used by the Contractor and/or the Subcontractor in the Contract Works.
- C** The Contractor or the Subcontractor (as nominated in Schedule C) ('the Bailee') proposes to store the Materials at the premises of the Bailee ('the Premises') as identified in Schedule B as bailee for the Principal, for the purpose of storage, fabrication, sub-assembly, or as otherwise required for the Contract Works prior to being delivered to the Site for incorporation into the Contract Works.
- D** The Contractor has requested the Principal to authorise the Engineer to certify payment for the Materials notwithstanding that the Materials have not been delivered to the Site.
- E** The Principal has agreed to authorise the Engineer to certify payment for the Materials, notwithstanding that the Materials have not been delivered to the Site, subject to all the provisions of this agreement having been fulfilled.

SCHEDULE A

Description of Materials inclusive of work performed on them:

.....

SCHEDULE B

The location in New Zealand at which the Materials will be stored is:

.....

SCHEDULE C

'The Bailee' shall be:

The
Contractor

OR
The
Subcontractor

IT IS AGREED as follows:

1. **THE** Materials to which this agreement relates are those described in Schedule A to this agreement, all of which Materials are currently on the Premises identified in Schedule B.
2. **THE** Premises identified in Schedule B are in the sole control of the party identified in Schedule C and that party shall act as bailee of the Materials until such time as the Materials are delivered to the Site or taken possession of by the Principal.
3. **THE** undertakings, warranties, covenants, agreements and other obligations of the Contractor or the Subcontractor shall bind and be deemed to have been given or assumed by each of them severally and by both of them jointly.
4. **THE** Contractor and the Subcontractor agree that they will cause the Materials to be set apart at the Premises and be clearly and visibly marked individually or in sets as being the property of the Principal and their destination as being the Site. The method used to mark the Materials and the procedures by which the mark is applied to the Materials shall be as required by the Contract or as otherwise approved by the Principal.
5. **NEITHER** the Contractor nor the Subcontractor will permit, allow, or cause the Materials to be taken away from the Premises, except:
 - (a) For the purpose of being transported to the Site and used in the Contract Works; or
 - (b) That the Principal may at its sole discretion take possession of the Materials for use other than for the Contract Works; provided that:
 - (c) Where the Principal takes possession of any Materials under clause 5(b) above, and the Contractor thereby suffers delay or the Contractor or the Subcontractor incurs additional cost, the taking of possession shall be treated as a Variation under the Contract, unless the taking of possession is pursuant to clauses 14.2.1 or 14.2.2 of the Contract; and
 - (d) Where the Principal takes possession of any Materials under clause 5(b) above, and additional work has been carried out on those Materials since being paid for by the Principal, the Principal shall pay the Contractor for that additional work in accordance with the Contract before taking possession of the Materials.
6. **THE** Engineer, upon being satisfied that the Materials have been set apart and marked as required by this agreement, and upon the Contractor providing satisfactory evidence that the requirements of clauses 12 and 20 below have been fully satisfied, shall include in any Payment Schedule issued by the Engineer under the Contract a sum representing the reasonable value of such Materials calculated in accordance with the Contract.
7. **UPON** the Principal having made payment for the Materials, less any retentions or deductions prescribed in the Contract, title to such Materials shall immediately vest in the Principal free of all security interests, charges and encumbrances of any nature whatsoever.
8. **WHERE** the Contractor receives payment for Materials and the Subcontractor is entitled to some or all of the Principal's payment, the Contractor shall promptly pay the Subcontractor for such Materials.
9. **UPON** the request of the Subcontractor, the Engineer shall advise the Subcontractor whether the Contractor has received any payment from the Principal for such Materials.

10. **THE** Contractor and the Subcontractor agree that the Materials will be held by the Contractor or the Subcontractor solely as bailee for the Principal and such bailment will constitute a security interest in favour of the Principal for the purpose of the Personal Property Securities Act 1999 ('the PPSA').
11. **THE** Principal shall (at the Contractor's reasonable cost) register a financing statement on the Personal Property Securities Register ('the PPSR') listing the Principal as secured party and the Contractor and the Subcontractor as debtors for any security interest arising from the bailment of the Materials referred to in this agreement.
12. **THE** Bailee shall promptly do all things including executing any documents and providing all information which the Principal requires to ensure that the Principal receives and maintains at all times a first ranking security interest in the Materials. This shall include procuring from any third party who has registered a financing statement against the Bailee, a waiver, in a form acceptable to the Principal, of any security interest or claim which might otherwise extend to the Materials or their proceeds.
13. **THE** Bailee shall not discharge or amend any financing statement registered under clause 11 above without the prior written consent of the Principal.
14. **NOTHING** in sections 114(1)(a), 133, and 134 of the PPSA shall apply to this agreement.
15. **ANY** rights of the Contractor and the Subcontractor as debtors under sections 116, 120(2), 121, 125, 126, 127, 129, 131, and 148 of the PPSA shall not apply to this agreement.
16. **THE** Bailee hereby grants to the Principal reasonable, free, and unencumbered right of access to the Premises to:
 - (a) Inspect the Materials, and verify or undertake the marking and setting apart of the Materials;
 - (b) Take possession of the Materials for the purpose of delivery to the Site and inclusion in the Contract Works;
 - (c) Remove the Materials from the Premises for the purpose of delivery to the Site and inclusion in the Contract Works; and
 - (d) Take possession of the Materials for use other than for the Contract Works,and in each case in a manner that does not cause damage to any other property at the Premises. The Bailee shall take all steps and do all things as shall be necessary to ensure that the Principal obtains access to the Premises for the purposes of this agreement.
17. **THE** Bailee shall not, except as permitted in clause 5, remove or cause or permit the Materials to be moved from the Premises. The Bailee shall nevertheless be responsible to the Principal for any loss or damage thereto and for any costs of storage or handling.
18. **THE** Bailee shall, when required to do so by the Contractor or the Principal, arrange for the transportation of the Materials to the Site. Such transportation shall be at the cost of the Bailee in all things including loading, unloading, and freight.
19. **WHERE** the Materials are not insured under the construction policy provided in accordance with 8.3.1 or 8.8.1 of the Contract, the Bailee shall, at its expense:
 - (a) Effect a material damage insurance policy covering all of the Materials subject to this agreement in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-site storage. Such insurance may include an exclusion for loss or damage sustained during processing; and
 - (b) Effect a transit insurance policy for transit of all the Materials from the Premises to the Site in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-site storage.
20. **WITHIN** 15 Working Days of the date of this agreement, the Bailee shall furnish the Principal and the Contractor with evidence of such insurance.
21. **THE** Bailee represents and warrants to the Principal and to the Contractor (where applicable) that:
 - (a) It has good and clear title to the Materials;
 - (b) It has the ability to assign and transfer the Materials to the Principal or the Contractor; and
 - (c) The Materials will be transferred to the Principal or the Contractor free of any security interest.

- 22. **THE** Bailee undertakes that, if it charges or mortgages all or any part of its property (either real or personal), assets, or undertaking, it will obtain written confirmation from the chargee or mortgagee that the charge or the mortgage over such property, assets, or undertaking does not extend to the Materials once they have been paid for by the Principal or the Contractor (as applicable).
- 23. **NOTHING** in this agreement shall be deemed to limit, waive, or affect the Engineer's powers under the Contract to order the removal from the Site or the Premises of Materials which are not in accordance with the Contract and the substitution by the Contractor at its own risk and expense of proper Materials. Nothing in this agreement shall be deemed to limit, waive or affect any other powers conferred on the Engineer and/or the Principal under the Contract.
- 24. **EACH** party shall pay its own costs of and incidental to the negotiation, preparation, execution, and any amendment of this agreement.
- 25. **WORDS** and phrases in this agreement shall have the same meanings as are ascribed to them under the Contract except where the context or any express provision of this agreement requires otherwise.

SIGNED BY..... (Authorised Signatory)

of (Principal)

SIGNED BY..... (Authorised Signatory)

of (Contractor)

SIGNED BY..... (Authorised Signatory)

of (Subcontractor)

Schedule 15: Practical Completion Certificate (as per NZS 3910:2013)

This Practical Completion Certificate is issued under 10.4.3(a) or 10.4.4.

Contract for
.....
..... (Contract name and number if applicable)

Principal (Insert name of Principal)

Contractor (Insert name of Contractor)

This certificate relates to:

(a) The whole of the Contract Works referred to above;

(b) The following Separable Portion (specify)

Receipt of the Contractor's notice dated and issued in accordance with 10.4.2 is acknowledged.

In accordance with 10.4.3(a) or 10.4.4 (*select one*), the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Practical Completion Certificate under 10.4, notwithstanding that there may be minor omissions and/or minor defects (as listed in the attached schedule) which satisfy the criteria in 10.4.1 (a), (b), and (c).

The Contractor is required to remedy all of the listed omissions or defects within the period stated in the attached schedule against the relevant omission or defect, or at the latest within Working Days of the date of this certificate.

Practical Completion was achieved

on (insert date) at (insert time)

Signed by the Engineer

.....

Name

.....

Date

.....

SCHEDULE

The following omissions and/or defects have been assessed as being of a minor nature satisfying the criteria in 10.4.1(a), (b), and (c) and were identified during an inspection carried out by the Engineer or Engineer's Representative on (insert date)

(list minor omissions and defects)

.....

...

.....

...

.....

...

Schedule 16: Final Completion Certificate (as per NZS 3910:2013)

This certificate is a Final Completion Certificate issued under 11.3.1.

Contract for
..... (Contract name and number if applicable)

Principal (Insert name of Principal)

Contractor (Insert name of Contractor)

This certificate relates to:

(a) The whole of the Contract Works referred to above;

(b) The following Separable Portion (specify)

In accordance with 11.3.1, the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Final Completion Certificate issued under 11.3

on (insert date) at (insert time).

Signed by the Engineer

Name

Date

Schedule 17: Form of Continuity Guarantee (added new Schedule 17)

Contract for: [Contract Name & Contract Number]

THIS DEED is made on day of 20.....

BY ('the Subcontractor')

IN FAVOUR OF ('the Principal')

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A. By an agreement dated the day of 20..... ('the Contract') made between the Principal and ('the Contractor'), the Contractor agreed to carry out the obligations imposed upon the Contractor by the Contract.
- B. The Contractor has, with the consent of the Principal, subcontracted part of the work to be carried out under the Contract to the Subcontractor ('the Subcontract Works').
- C. The Contractor has agreed to procure a continuity guarantee in respect of the Subcontract Works on the terms set out in this guarantee.
- D. The Subcontractor has agreed to provide a continuity guarantee in respect of the Subcontract Works on the terms set out in this guarantee.

BY THIS DEED

- 1. **THE** Subcontractor agrees that in the event of the employment of the Contractor being terminated under the Contract, the Subcontractor will, if required by the Principal, complete the Subcontract Works under the same conditions and for the same consideration as originally agreed between the Contractor and the Subcontractor. The Principal's obligations for payment under those conditions shall apply from the date of issue of the requirement by the Principal under this clause.
- 2. **THE** Subcontractor acknowledges that he has read and fully understands the provisions of the Contract.
- 3. **ANY** dispute between the Principal and the Subcontractor arising out of this guarantee, shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification of that Act.
- 4. **THE** dispute shall be referred to a sole arbitrator agreed by both the Principal and the Subcontractor. If the Principal and Subcontractor cannot agree then a sole arbitrator shall be appointed pursuant to the procedures set out in the Arbitration Act 1996.

In witness of which this deed has been executed and delivered.

SIGNED on behalf of the Subcontractor by:

.....

Director

.....

Director

NOTE – This guarantee shall be executed by the Subcontractor in the manner required for execution of a deed. If the Subcontractor is a company it shall execute the guarantee by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the guarantee is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. If the Subcontractor is an individual, the person shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.

SECTION B: PROJECT SPECIFICATIONS & DRAWINGS

In accordance with the attached documentation (Refer Appendix A for full copies of drawings & Specifications):

File Name	File Title
Preliminary and General Specification	145 07B RLC Lakefront RFT P&G specification
Isthmus Group Ltd Landscape Drawings	190218_IGL_4010_Rotorua Lakefront Development_Landscape Package_Tender Issue_Plans and Sections And 190218_IGL_4010_Rotorua Lakefront Development_Landscape Package_Tender Issue_Details
Isthmus Group Ltd Specification	190218_IGL_4010_Rotorua Lakefront Redevelopment_Landscape Specification_Tender Issue
Tonkin & Taylor Ltd Geotech Report	20190211 RLC.GIR
Tonkin & Taylor Ltd Civil & Structural Drawings	20190219 1007467.3000
Tonkin & Taylor Ltd Specification	190211_RLC_Technical_Specification_Tender Issue
SEG Ltd Electrical drawings	2019.02.21_SEG_Rotorua Lakefront_Electrical Drawings
SEG Ltd Lighting drawings	S18-037 Rotorua Lakefront_Lighting
SEG Ltd Specifications	2019.02.21_SEG_Rotorua Lakefront_Electrical Specification