

SM012 State Highway Control Manual

Part 4 - Consolidated Agreements Sections

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Fencing Agreements

Form of agreement

The System Manager shall approve and be party to an agreement before any fence is created in the road reserve. The following table details the three components of an agreement:

N°	Item	Description
1	Licence Form	Standard <i>Licence to Occupy Road</i> form below set out on pages 23 to 30.
2	Plan	A4 size and to scale. Details required are: <ul style="list-style-type: none">• location of road centreline and seal edges;• location of proposed fence line (in red); and,• route positions.
3	Cross Section	To scale. Dimensions are required for: <ul style="list-style-type: none">• road centreline;• lane lines;• seal edge;• water channel and invert;• any service pole line;• proposed fence line; and,• existing boundary fence.

Guidelines for consideration

The following points should be considered and defined in relation to fences encroaching on the road reserve:

1. the type of fence is to be specified in the licence;
2. fences should not obstruct or restrict the width needed to form and maintain adequate surface water channels;
3. where possible fences should be located on the highway side of any service pole;
4. a 5 m clearance from seal edge of road is desirable;
5. abrupt irregularities in the fence are to be avoided; and,
6. strainer posts that may be traffic hazards are not permitted within safety clear zones, as defined in the Geometric Design Manual.

Processing Applications for Services on State Highways

Summary of procedures

The following chart summarises the procedures to be followed in processing applications:

Step	Action	Action Required	Comment
1	NZTA/ NOC	Receive application/Corridor Access Request (CAR).	Establish Fees payable: <ul style="list-style-type: none"> • Ref. pages 105 to 107.
2	NOC	Acknowledge receipt of application/CAR.	Send standard letter, or, if received electronically, standard electronic response.
3	NOC	Inspect and report on application/CAR and prepare Works Access Permit (WAP) and draft Schedule of Reasonable Conditions (including Special and Local Conditions) for approval. Provide advice to NZTA Region on processing and supervision costs.	<ul style="list-style-type: none"> • Use applicant's plan with or without improvements. • Report with recommendations. • Check against Forward Works Programme. • Prepare documents: <ol style="list-style-type: none"> WAP, or Agreement as to Work on State Highways (or Works Access Permit (Motorways) – as appropriate), or Licence to Occupy for Services and Schedule of Reasonable Conditions. • Attach site-specific Special and Local Conditions. • Include a “Works Completion Notice”.
4	NOC	Determine service charges for bridge crossings/reasonable servicing costs.	If applicable. Document waiver if applicable.
5	NOC	Forward documentation to Network Manager for approval	Include all supporting information.
6	NZTA Region	System Manager / Principal Network Manager or Senior Network Manager seeks additional information or approves as appropriate. NZTA Region advises applicant of all costs to be charged.	Following approval-in-principle by GMTS or National Manager Maintenance and Operations, System Manager approves subject to a register of decisions being kept if it is <ul style="list-style-type: none"> • a matter of new services, relocation or repair work on motorways, or • natural gas or flammable liquid in excess of 100 mm diameter or within the range of 500-2000 kPa on all State highways.

Step	Action	Action Required	Comment
			In all other cases Principal Network Manager or Senior Network Manager approves subject to a register of decisions being kept if it is a utility service on non-motorway State highway, for which Utility Operators have a lawful power to locate.
7	NZTA: SD&D	General Manager Transport Services	New installations of natural gas or flammable liquid in excess of 2000 kPa. Electricity lines greater than 110Kv or 100MVA.
8	NZTA Region	<p>a. Forward one signed copy of Works Access Permit for Roads and Motorways and Schedule of Reasonable Conditions to the applicant, or</p> <p>b. Forward two copies of the Agreement to Work on State Highways (ATWOSH) to the applicant for signing.</p>	Include schedules of conditions from either pages 32 to 40 (for a. if the applicant is a Network Operator) or pages 43 to 46 (for b. for other applicants) and invoice for all charges.
9	NZTA Region	Receive signed documents (those documents where the applicant also has to sign) and processing, supervision and bridge charge fees from applicant. Principal Network Manager or Senior Network Manager signs documents.	For applicants subject to a consent, forward one copy of the signed ATWOSH to the applicant together with a Works Completion Notice form. Principal Network Manager or Senior Network Manager keeps the other copy.
10	NOC	<p>All preconditions should be met.</p> <p>Ensure satisfactory compliance with preconditions and issue non-compliance notices and Stop Work Orders as necessary.</p> <p>Receive completed Works Completion Notice from Utility Operator and perform a completion audit at practical completion. 24 months later receive completed Maintenance Notice from Utility Operator and complete maintenance audit and certification.</p>	<p>Consultant to ensure that the authority has completed all prior actions e.g. those approved in TMP are in place.</p> <p>Upon satisfactory practical completion, sign the Works Completion Notice and forward it to NZTA Region.</p> <p>Update NOC processing control database and where applicable, the Highway Information Sheets and Route Data Sheets.</p> <p>Upon satisfactory completion of maintenance period, sign the Maintenance Notice and forward it to NZTA Region.</p>
11	NZTA Region	Finalise invoicing of any remaining processing fees.	Update regional office approval summary register and services inventory

Agreements for Activities Affecting State Highways

Consent for services that belong to recognised Utility Operators

Pages 32 to 40 include the template for preparing a *Schedule of Reasonable Conditions* for utility services on non-motorway State highways, where the Utility Operator is a local authority or authorised in legislation. The preamble in the first paragraph of the notice may need to be amended as appropriate to indicate whether the works being approved relate to maintenance of existing plant only or to new plant installation and on-going maintenance thereof. Appropriate site-specific local and special conditions may be included in this notice.

Consent for works on motorways

Page 31 holds the template for preparing a *Works Access Permit for Roads and Motorways* for utility services on motorways. The description of the Background may need to be amended as appropriate to indicate whether the works being approved relate to maintenance of existing plant only or to new plant installation and on-going maintenance thereof. Appropriate site-specific special conditions may be included in this agreement by adding to the template using the conditions included with the *Agreement as to Work on Motorway* on pages 7 to 12.

Consent for other services

Pages 13 to 22 are the template for preparing a *Licence to Occupy* for utility services, where the applicant is not a recognised service authority. The licence provides for installation of services (or ownership change) plus on-going maintenance on a State highway or motorway. The applicant could be a Government department, private person, private trust, company or other entity that does not have statutory right of access to the State highway corridor. The licence is made at the discretion of the System Manager in accordance with delegated authority. Note that in the case of a Trust, the trustees have to be named as the Licensees as the party named in a Licence cannot be a Trust. Appropriate site-specific special conditions may be included in this licence by adding to the template in the *Agreement as to Work on State Highway* on pages 39 to 43 or the *Agreement as to Work on Motorway* on pages 7 to 12.

Consent for service installation followed by transfer of ownership responsibility to an authorised Utility Operator

Where ownership and on-going responsibility for the newly installed service on a non-motorway state highway is to be transferred to a recognised Utility Operator as from the date of completion, a *Licence to Occupy* for utility services is not appropriate after completion. Consent shall be given to the installer (for the installation only) by means of a *Licence to Occupy* for utility services (pages 13 to 21) and consent for the on-going operation and maintenance of the service after completion shall be given to the utility authority by means of a separate *Works Access Permit* (page 30) and *Schedule of Reasonable Conditions* (pages 31 to 38). Prior written confirmation from the Utility Operator of their acceptance of responsibility will be required.

Consent for new services on a motorway, which involves installation by a private party or government department and subsequent ownership by a Utility Operator, shall be given by means of a single *Works Access Permit for Roads and Motorways* (page 30) in favour of the installer and the long-term operator who shall have rights and obligations chronologically defined in the terms of agreement.

Consents for the use of a part of the road reserve

Pages 23 to 30 are the template for preparing a *Licence to Occupy Road* where consent is given to the Licensee to make certain improvements (e.g. encroachments or stock fencing) on a defined area of land within road reserve

on a non-motorway state highway or on a motorway and the licence includes the on-going use of the demarcated area of land for a fixed or indefinite period. The licence is granted at the discretion of the Manager System Management, in accordance with delegated authority. Appropriate site-specific special conditions may be included in this licence by adding to the template attached to the *Agreement as to Work on State Highway* on pages 43 to 46.

Works Access Permit

Page 31 is the template for notification, requests for access approval and preparing a *Works Access Permit* for any works on non-motorway State highways, where either a Territorial Local Authority or authorized Utility Operator requires NZTA consent for undertaking utility works within the State highway road reserve and the organisation involved has legislative or other authority for requesting consent. Typically, such approvals will include a *Schedule of Reasonable Conditions* as included on pages 31 to 38 and appropriate site-specific local and special conditions may be included.

Consents for improvement works on State highways

Pages 41 to 46 are the template for preparing an *Agreement as to Work on State Highway* for any works on non-motorway state highways, where the Principal requires NZTA consent for undertaking permanent improvements within the state highway road reserve and the Principal has no legislative or other authority for requesting consent. Typically, such agreements provide for alterations to the State highway carriageway where a private developer or other organisation is required to undertake certain State highway improvements as a condition of NZTA's consent for the adjoining private development, in terms of the Resource Management Act. Appropriate site-specific special conditions may be included in this agreement.

Other circumstances in which an *Agreement as to Work on State Highway* may be required, include the following:

- Where particular special conditions need to be included in a *Notice of Conditions* and such conditions would normally be seen as not being reasonable. By including the *Notice of Conditions* as a Schedule within an *Agreement as to Works* the applicant makes a binding commitment to such conditions upon signing the agreement.
- Where a private utility service installation has significant risks attached due to the magnitude or nature of the works and NZTA is concerned about the Principal's ability to expedite the work without undue delay it may sometimes be necessary to include with the *Notice of Conditions* a performance guarantee in the form of a *Contract Bond* with surety provided by an approved bank or insurance company. By including the *Notice of Conditions* as a Schedule within an *Agreement to Work on State Highway*, a *Contract Bond* can properly and legally be scheduled in the agreement.

If the Agreement is not signed by the Principal body or person requesting the approval to work on the State highway and on whose behalf the work will be done, then the Agreement must be altered to record who is signing, in what capacity and under what authority. If the signatory is a contractor, then it must be clear that this Agreement is not in conflict with the contract for the works.

Agreement as to Work on Motorway

Parties:

1. **NEW ZEALAND TRANSPORT AGENCY** (“NZTA”), established as a body corporate under and by virtue of the Land Transport Amendment Act 2008 is responsible for the State Highway System.
2., established as a, is a (“The Owner”).

Background:

- A. The NZTA has the sole powers of control for all purposes including construction and maintenance of all State highways pursuant to the provisions of the Government Rounding Powers Act 1989.
- B. The Owner wishes to carry out certain works described in Schedule One and thereafter have the right to maintain their works situated on the State highway.
- C. The consent of the NZTA is required for the works and the NZTA agrees to provide such consent on the conditions set out below.

Terms of Agreement:

1. The NZTA hereby gives consent for the Owner to install and/or maintain the works specified at Items 1 and 2 of Schedule One hereto subject to the following terms and the conditions specified in Schedules Two and Three hereto.
2. All of the civil engineering work shall meet with the approval of the System Manager. The works shall be laid more or less in the location shown on the attached plans referred to as Item 4 of Schedule One hereto. The exact location and level of all installations are to be made known to the System Manager’s authorised representative and shall be agreed to before work commences.
3. In consideration of the NZTA agreeing to the works specified at Item 3 in Schedule One, the Owner hereby agrees to indemnify the NZTA against all costs, actions, demands, suits, damages and proceedings of any kind for or in respect of any loss, damage or injury that may directly result to or be suffered by any third party or that may directly result to or be incurred by the NZTA by reason of the exercise of the rights conferred under this agreement in relation to the work, or for any costs resulting from the removal of any abandoned components or equipment that belong to the Owner.
4. At the discretion of the System Manager, this agreement may or may not include a requirement for the Owner to provide a Contract Bond in favour of the NZTA or for the contractor to provide a Contract Bond in favour of the Owner, as a performance guarantee.
5. In the event of works involving attachment of a utility service to a NZTA bridge, the Owner shall pay the NZTA a bridge charge for the use of the Bridge, prior to commencing any work on the bridge.
6. The Owner shall pay the reasonable costs of the NZTA and its consultants in connection with the processing of this notice and for the monitoring and auditing of the works.
7. Where the works affect an existing installation that belongs to the Owner, in the event of ambiguity or contradiction between the attached conditions and any prior conditions or specifications, the attached conditions shall take precedence.
8. The Owner understands that any contravention of the agreement, which includes the conditions specified in Schedules Two and Three, may result in the NZTA refusing further access to the State highway.
9. The party specified at Item 5 in Schedule One shall supervise the physical works and the party specified at Item 6 in Schedule One shall perform the works.
10. A full copy of this Agreement shall be kept on site at all times during construction.

11. The Owner and/or their contractors, if when working on the State highway are found not to be complying with the relevant specification and/or does not have permission to be there, are liable to be instructed to leave the site by the System Manager or the System Manager's authorised representative.
12. The works are to be available at all times for inspection by any person authorised by the System Manager . Compliance with the conditions specified herein shall be monitored during construction and audited upon completion by the party specified at Item 7 in Schedule One.
13. The NZTA reserves the right to require the Owner to carry out repairs to the reinstated surface of the road, should these become necessary in the NZTA's opinion, within twelve months of the NZTA's acceptance of the "Advice of Completion of Work" form. These works shall be undertaken within five working days of notification or as directed by the System Manager.
14. Where the Owner fails to comply with any requirement under these conditions the NZTA may arrange for the necessary work to be done and may recover any costs incurred.
15. After satisfactory completion of the works, the Owner shall give prior notification on each separate occasion to the NZTA of any subsequent service maintenance work that may be required and if the works are located in or under a carriageway or road shoulder the NZTA shall re-assess the implications and impose any new or altered conditions deemed necessary to protect the integrity of the State highway.
16. No vested right shall be hereby created and this consent shall not be transferable.
17. Where the NZTA considers that the Owner has breached any condition of this agreement, it shall provide written notice to the Owner specifying the breach and requiring it to be remedied where capable of being remedied. Where the Owner fails to remedy a material breach within ten (10) working days of receipt of such notice or where such material breach is incapable of being remedied, the NZTA may withdraw this consent by giving notice to the Owner who shall remove the works and leave the motorway reserve in good order and condition to the reasonable satisfaction of the System Manager.
18. THE Owner shall not be entitled to any compensation on the withdrawal or termination of this agreement.
19. If the whole of or any part of the works are required to be temporarily or permanently relocated or protected due to the construction of any NZTA works during a two (2) year period as from the date of execution of this licence, then it shall be done by the Owner at no cost to the NZTA.
20. Nothing in this licence shall be construed to derogate from the rights of the NZTA to enter upon the areas occupied by the utility services for the purpose of installing, maintaining, repairing or removing any new or existing road or bridge assets over or under the improvements or for any other lawful purpose. The NZTA shall not otherwise interfere with the rights hereby conferred on the Owner.
21. When any notice is to be given it shall be sufficient in cases where the notice is to be given by the NZTA that the notice be signed by some person acting under the System Manager's express or implied authority and sent by post or telegram addressed to the Owner at the Owner's then or last known address.
22. In the absence of written acceptance from the NZTA for an extension, this agreement shall become invalid if the works do not commence within six months of the date signed to hereunder.

Date:

Signed for and on behalf of the

NEW ZEALAND TRANSPORT AGENCY

(.....)

System Manager, [Auckland]

Acting pursuant to delegated authority

in the presence of

Signature: _____

Occupation: _____

Name: _____

Signed for and behalf of

THE OWNER

Name: _____

in the presence of

Signature: _____

Occupation: _____

Name: _____

Schedule 1

Item 1: THE WORKS:

Item 2: LOCATION:

STATE HIGHWAY:

ROUTE POSITION:

Item 3: THE WORK:

Installation and Maintenance or Maintenance (*delete whichever is not applicable*) of the works specified at Items 1 and 2 above.

Item 4: PLANS:

LOCALITY PLAN:

Attached.

SITE PLAN:

Drawing No. *****,

Attached.

Item 5: OWNER'S REPRESENTATIVE

Item 6: CONSTRUCTION CONTRACTOR:

Item 7: NZTA NETWORK OPERATIONS CONTRACTOR

1) General Conditions

23. All traffic control on State highways shall conform with the requirements in the latest version of the “*Code of Practice for Temporary Traffic Management*” published by the NZTA for all work falling within the State highway road reserve and this shall include activities falling outside the road reserve where such activities affect the normal operating conditions of the State highway. The Owner shall produce an approved Traffic Management Plan (TMP) in accordance with Section A6 of the above-mentioned Code of Practice prior to the works commencing.
24. The Owner shall ensure that the work is carried out under the control of a warranted Site Traffic Management Supervisor (STMS) - Practising, and there shall be sufficient other people on duty specifically to control the flow of traffic through the site in accordance with the Traffic Management Plan while having resources within the State highway road reserve.
25. The NZTA’s Traffic Management Co-ordinator shall be given two clear working days’ notice prior to commencing any work on the State highway. This notice, setting out the timeframes for the work to be undertaken, shall be given by facsimile to the NZTA Network Management Consultant together with a copy of the approved TMP and confirmation must be received that the programme does not conflict with other work and permission to proceed is granted, prior to commencement of any works.
26. The works shall be carried out in a way that minimises disruption to the flow of traffic. In compliance with the Code of Practice, the works affecting traffic flows shall be undertaken outside of peak traffic flow periods as indicated by flow estimations. If the proposed programme provided does not meet this requirement, a revised programme must be submitted. If the works change in any way from those proposed in the notification, the NZTA shall be informed prior to commencement of the changed works, and be provided with a revised proposed programme.
27. All works shall be completed in one continuous operation. Works shall not to be suspended for any period of time greater than 24 hours without NZTA permission.
28. The NZTA have in place a standard restriction for any company working on or near State highways, during, and one day either side of, a public holiday, or public holiday weekend.
29. Instructions concerning the use of traffic control measures from an officer of the police traffic safety branch, or any person authorised by the System Manager, shall be complied with in addition to those stated in the Special Conditions.
30. Lane closures on the motorway carriageways shall not be permitted without the express permission of the System Manager.
31. Access to the site of works shall not be permitted from the operating carriageway of the motorway without the express permission of the System Manager.
32. The Owner and/or their contractor shall prevent visual distraction to motorway traffic. A sight screen shall be erected at exposed work sites where safety barriers are not required in terms of the “*Code of Practice for Temporary Traffic Management*” or if the work zone safety barriers or existing guardrails do not provide sufficient visual screening. Sight screening in absences of safety barriers shall not fully block the view from the work area of any errant motorway vehicle to which workers may be vulnerable.
33. The Owner shall obtain at the Owner’s cost all necessary approvals, consents and permits from all statutory, public or other authorities prior to commencing any work on the State highway and shall comply with all Regional and District Plans and applicable statutes, bylaws, regulations, approvals, permits and consents.
34. The Owner and/or their contractor shall not hold the NZTA liable for any of the costs incurred if the Applicant receives an Environmental Infringement Notice. The Owner and/or their contractor shall ensure that their works comply with all relevant aspects of the Resource Management Act (1991) and subsequent amendments.
35. A plan shall be produced for managing environmental effects such as construction noise, the discharge of contaminants, sediment or litter and this plan shall be made available upon request.

- Special measures shall be employed to avoid or mitigate construction noise that may cause disruption to residents in the vicinity.
 - The Owner and/or their contractor shall take extra precautions during grouting operations to avoid contaminating waterways and stormwater drainage with grouting compound.
36. The Owner and/or their contractor shall be responsible for locating and protecting all underground services the location and/or depth of some of which may not be known and notwithstanding this fact it is the consent holder’s responsibility at their own cost to repair any damage they may cause to any of these services.
 37. All surplus excavated material shall be removed from the site and all surfaces disturbed by any of the work shall be restored to their original condition or better.
 38. The Owner and/or their contractor shall be responsible for protecting and maintaining all NZTA signs and road furniture including edge delineator posts during the period of work and shall replace any items that become damaged or lost.
 39. Where traffic safety facilities (signs, marker posts etc.) are removed in the course of the work these shall be re-erected to the proper standard prior to the removal of the temporary traffic controls required by these conditions.
 40. The Owner shall keep an “As Built” set of drawings in their records showing the location of all of the utility service components of that they have installed. This record shall be available for inspection by the NZTA or their representative as and when the need arises.
 41. All work undertaken by The Owner and/or their contractor working under this approval must comply with the requirements under the “Health and Safety at Work Act 2015” and the “Health and Safety at Work Regulations 2015”.
 42. On completion of the works, the Owner and/or their contractors shall complete an “Advice of Completion of Work” form. For the purposes of the NZTA’s right to require the Owner to carry out repair work, the twelve-month maintenance period shall commence as from the date that the works completion form is completed accurately and submitted to the NZTA and the NZTA has accepted that the work is complete.
 43. All work undertaken by The Owner and/or their contractor working under this approval must comply with the Department of Labour Construction Act 1959 and Construction Regulations 1961, as amended and any applicable industry codes of practice.

2) Special Conditions

See template local and special conditions for utility work on State highways on pages 18 to 22.

Licence to Occupy Road (Long Form)

Dated 2023

Parties

- 1 **New Zealand Transport Agency**, a Crown Entity established under section 93 of the Land Transport Management Act 2003 (**‘Transport Agency’**)
- 2 [*Insert name of Licensee*], [*If company, insert company number here*] (**‘Licensee’**)

Background

- A The Transport Agency has the sole powers of control for all purposes of State highways and motorways under sections 61 and 80 of the Government Roading Powers Act 1989. The Transport Agency is the controlling authority of the area of [*State highway/motorway*] at [*insert description of area*].
- B The Transport Agency has agreed to grant the Licensee a Licence to occupy the Land on the terms and conditions of this Licence, and the Licensee has agreed to accept that grant.

Execution

Signed by the **Transport Agency** by its authorised signatory acting pursuant to delegated authority:

Signature

Full name (please print)

Signed for the **Licensee** by its authorised signatory in the presence of:

Signature

Full name (please print)

Schedule 1 Details and Definitions

In this Licence, the following terms have the following meanings:

Licensee	<i>[Insert name of Licensee. If a company, include the company number.]</i>
Land	That area of State Highway [x] in the position shown marked on the Plan (over the page) and in accordance to the specification approved by the Transport Agency.
Licence Fee	\$(<i>Insert</i>) plus GST (if any) per annum
Permitted Use	<p><i>[Insert description of permitted use, e.g.</i></p> <ul style="list-style-type: none"> • <i>To place a fence on the Land.</i> • <i>To place a Norski toilet adjacent to State Highway 1 at route position 635/0.368 TLS and 635/6.806 TLS.</i> • <i>To install and maintain a water pipe.]</i>
Commencement Date	<i>[Insert date]</i>
Licence	This licence, together with its schedules.
Working Day	<p>Working Day means:</p> <p>(a) in relation to any time period specified under the Property Law Act 2007, has the meaning given in that Act; and</p> <p>(b) in all other cases, any day that is not a Saturday, Sunday, day between 24 December in one year to 10 January in the next year (both days inclusive), or statutory holiday in the area where the Land is located.</p>

Plan

[Insert plan of Land]

Schedule 2 Operative Provisions

1 Grant

- 1.1 The Transport Agency grants to the Licensee a non-exclusive licence to occupy the Land on the terms and conditions set out in this Licence, from the Commencement Date until the date that the Licence is terminated under clause 3.

2 Licence Fee

- 2.1 The Licensee will pay the Transport Agency the Licence Fee (if demanded) on each anniversary of the Commencement Date.

3 Termination

- 3.1 Either party may terminate this Licence at any time by giving the other party at least [3] months' written notice (*Termination Notice*). [*The default notice period is 3 months, but this can be extended if required.*]
- 3.2 From the expiry of the period specified in the Termination Notice, every estate and interest of the Licensee in the Land and in this Licence will determine and cease absolutely, but without prejudice to the rights of either party in relation to any prior breach.
- 3.3 The Licensee will not be entitled to any form of compensation, damages or claim of whatever kind for any early termination by the Licensor pursuant to clause 3.1, on account of any inconvenience or loss suffered by the Licensee, or for any other reason, as a consequence of such termination.

4 Licensee's obligations on termination

- 4.1 The Licensee must, no later than 14 days after the termination of this Licence:
- a remove all structures and improvements permitted under this Licence, making good any damage caused (unless requested otherwise by the Transport Agency); and
 - b otherwise leave the Land in the same condition it was in at the Commencement Date.

If the Licensee fails to restore the Land to its original condition by the due date, then the Transport Agency may at its option commence its own works to restore the Land and recover all costs from the Licensee. This clause is without prejudice to the Transport Agency's other rights and remedies.

5 Maintenance

- 5.1 The Licensee will keep and maintain the Land, and take all reasonable steps to protect the Land, including buildings, fixtures or fittings, installations, fences, hedges, trees (including shelter belts), gates and any sealed areas or other property of the Transport Agency, free from any damage by the Licensee and the Licensee's employees, agents or invitees.
- 5.2 The Licensee will not bring about the cause of any waste of the Land or any contamination to the Land, and will not disturb the surface of the Land, apart from such disturbance as is necessary for the construction and maintenance of any improvements or structures permitted under this Licence.
- 5.3 If the Licensee defaults in any of its obligations to maintain or repair under this Licence, the Transport Agency may arrange for such repair or maintenance to be undertaken at the cost of the Licensee, but without prejudice to the Transport Agency's other rights and remedies under this Licence. The Licensee must immediately reimburse the Transport Agency for such expense.

6 Permitted Use

- 6.1 The Licensee will not use the Land for any purpose other than the Permitted Use.
- 6.2 If the Permitted Use is permissible only with the consent, permit or permission of any authority, or under or in pursuant to any statute, Regional and District Plans, regulation, other enactment or order of Court, the Licensee must obtain:
- a such consent, permit, permission or order at the sole cost and expense of the Licensee including, but not limited to, any costs or financial contributions involved in complying with any conditions of such consent, permit, permission or order obtained; and
 - b the approval of the Transport Agency to the conditions of that consent, permit, permission or order.

7 Damage

- 7.1 The Licensee must, at its cost, promptly repair any damage to the Land or any of the Transport Agency's improvements or property on the Land caused by the Licensee or any person using the Land under this Licence.

8 No access

- 8.1 The Licensee shall not be entitled to any form of compensation, damages, or claim of whatever kind in the event that there is an emergency and the Licensee is unable to gain access to the Land.

9 No interference with public use

- 9.1 The Licensee shall ensure that no interference is caused to the use of the State highway by the public when carrying out any works to repair, maintain, remove, or replace any improvement, utility, fence or other structure on the Land.

10 Compliance

- 10.1 The Licensee must comply with all relevant legislation, regulations and bylaws affecting the Land and the Licensee's use of the Land, and must not cause or allow any act on the Land that would cause nuisance or annoyance to any neighbouring property.

11 Transport Agency approvals

- 11.1 The Licensee must obtain all necessary approvals from the Transport Agency for works in the road corridor, including approval under section 51 of the Government Roadway Powers Act 1989. The granting of this Licence does not constitute the granting of such approval and does not guarantee that any such approval will be granted.

12 Health and Safety

- 12.1 Without limiting the Licensee's obligations under clause 10, the Licensee must do all things necessary as the occupier of the Land to comply with the Health and Safety at Work Act 2015 ('**HSWA**'). The Licensee:
- a acknowledges that the Land forms part of the Transport Agency's State highway network, and that there are hazards associated with working in, on, and around the State highway (including without limitation hazards posed by fast-moving vehicles);

- b will ensure the health and safety of its workers and all other persons affected by work carried out by or for the Licensee in connection with the Permitted Use;
- c will, prior to the commencement of any works permitted by this Licence, provide a site management plan for the intended works to the Transport Agency for its approval (not to be unreasonably withheld);
- d will consult, cooperate, and coordinate its work on the Land with the Transport Agency and any persons conducting a business or undertaking (as defined in section 17 of the HSWA) who is accessing the Land;
- e will promptly notify the Transport Agency of any accident, injury, illness, near miss, or exposure that the Licensee becomes aware of in the course of, or arising from, its work on the Land (an **'incident'**), and provide the Transport Agency with such assistance and information as the Transport Agency considers necessary to conduct an investigation into any such incident;
- f if requested by the Transport Agency, will promptly give the Transport Agency copies of any documents related to or created in respect of any investigation by the Licensee into any such incident; and
- g will promptly give the Transport Agency copies of any notices and correspondence the Licensee receives from WorkSafe New Zealand or any other authority (including the Licensee's responses to any such notices or correspondence) concerning the Licensee's compliance with the HSWA or any other health and safety legislation or regulations.

13 Transport Agency access

- 13.1 The Transport Agency and its agents, contractors and employees will have access to the Land at all times and for all purposes.

14 Transport Agency works

- 14.1 The Transport Agency may carry out any works on land adjacent to or near the Land. The Transport Agency will take all reasonable steps to ensure that the works are carried out in a way that causes minimal inconvenience to the Licensee.

15 No assignment

- 15.1 This Licence is personal to the Licensee, and the Licensee may not assign, transfer, sub-licence or otherwise share the Licensee's rights under this Licence to or with any other person.
- 15.2 Where the Licensee is an unlisted company, then any change in the legal or beneficial ownership of any of its shares, or any issue of new capital without the prior consent of the Licensor, will be a breach of this Licence.

16 Indemnity

- 16.1 To the fullest extent permitted by law, the Licensee:
 - a indemnifies the Transport Agency from and against all costs, actions, demands, suits, damages and proceedings of any kind and in respect of any loss or damage that may directly or indirectly result to or be suffered by any person or property by reason of this Licence or the exercise of the rights under this Licence; and

- b releases the Transport Agency from all claims and demands of any kind and from all liability which, in the absence of any negligence on the Transport Agency’s part, may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land.

17 No warranty

17.1 The Transport Agency makes no warranty or representation that the Land is fit for any particular use. The Licensee acknowledges that it has entered into this Licence completely in reliance upon the Licensee’s own skill and judgment. The Licensee agrees to occupy and use the Land at the Licensee’s own risk.

18 No Lease

18.1 This Licence does not create any lease, tenancy, or interest in the Land.

19 Notices

19.1 Any notice or document required or authorised to be given or served under this Licence must be in writing and delivered or served by personal delivery, post, or email to the address or fax number specified for the relevant party below:

Licensee	Transport Agency
Name: [Insert]	Name: [Insert]
Address: [Insert]	Address: [Insert]
Email: [Insert]	Email: [Insert]

19.2 Any notice or other document is deemed to have been served:

- a in the case of personal delivery, when received by the addressee;
- b in the case of post, 3 Working Days following the date of posting to the addressee’s last known address in New Zealand; and
- c in the case of email, when acknowledged by the addressee orally, by return email, or otherwise in writing. Return emails generated automatically shall not constitute an acknowledgement.

20 Transport Agency’s Statutory Role

20.1 Nothing in this Licence will override the Transport Agency’s statutory and regulatory role under the Government Rounding Powers Act 1989, the Land Transport Management Act 2003 or any other Act, regulation or by-law, and the performance by the Transport Agency of that role and as a Crown entity (the *Transport Agency’s Role*).

20.2 Nothing in this Licence is to be taken to imply any approval under the Transport Agency’s Role, other than an approval expressly recorded in this Licence.

20.3 If there is a conflict between the provisions of this Licence and the Transport Agency’s Role, then the Transport Agency’s Role will prevail.

21 Waiver

21.1 No waiver or failure to act by the Licensor in respect of any breach by the Licensee will operate as a waiver of another breach.

22 Dispute resolution

22.1 The parties acknowledge that they wish to avoid or minimise any differences or disputes arising out of and from the terms of this Licence. The parties therefore agree that if any difference or dispute arises between them they will actively, openly and in good faith negotiate that difference or dispute with a view to achieving a quick resolution.

Schedule 3 Special Conditions

[Delete the provisions which do not apply.]

FENCING

- 1 **Fence:** The Licensee will erect a fence on the Land, in the position shown on the Plan and to the satisfaction of the Transport Agency. The Licensee shall maintain the fence in good order and repair, and remove the fence immediately on termination of the Licence.
- 2 **No disturbance:** The Licensee will not disturb the surface of the Land beyond a depth of 200mm, or do anything to cause change in the surface of the Land.
- 3 **Occupier:** The Licensee is deemed to be the occupier of the Land for the purposes of the Local Government (Rating) Act 2002 and the Biosecurity Act 1993, including for animal and vegetation pest control measures.

STRUCTURES [Use if a structure will be placed aboveground, e.g. Portacom, Norski toilet.]

- 1 **Maintenance:** The Licensee will maintain all structures upon the Land in good order and condition, and otherwise to the satisfaction of the Transport Agency, and subject to any directions and conditions stipulated by the Transport Agency.

PRIVATE UTILITIES [Use if a private utility will be laid underground.]

- 1 **Works:** The Licensee will install and maintain the [utility] (**Utility**) to the satisfaction of the Transport Agency, and subject to any directions and conditions stipulated by the Transport Agency. The Transport Agency may require the whole or part of any such works to be carried out by or under the supervision of a person authorised by the Transport Agency, at the Licensee's cost. The Licensee will pay such cost to the Transport Agency upon receipt of an invoice from the Transport Agency.
- 2 **Maintenance:** The Licensee will maintain the Utility in good order and condition, with as little interference as possible to the surface of the State highway above the Utility. The Licensee will make good any damage caused to the State highway within the boundaries of the legal road reserve during any works.
- 3 **Minimum Covering:** The Licensee will place the Utility at a depth to ensure a cover of at least [insert] millimetres (**Minimum Covering**) below the road surface and below the level of surface water channels. The placement must cause minimal disturbance to the State highway and be to the satisfaction of the Transport Agency. The Licensee must maintain the Minimum Covering throughout the term of the Licence, subject to Special Condition 4 below.
- 4 **New minimum covering:** The Transport Agency may give the Licensee 24 hours' notice requiring the Licensee to lower and cover the Utility to a depth specified in the notice, at the Licensee's cost. Special Condition 3 will apply from the notice date as if the specified depth were the Minimum Covering.
- 5 **Breakage/Leakage:** The Licensee is liable to the Transport Agency for the cost of repairing any damage which may occur to the State highway from any breakage or leakage in the Utility.
- 6 **Realignment:** In the event that the State highway is realigned, the Licensee will reinstall the Utility under the new realignment, at the Licensee's cost and as directed by the Transport Agency.
- 7 **Inspection and modification of works:** Any works in relation to the Utility will at all times be open to inspection by a person authorised by the Transport Agency. The authorised person may request that the works be modified or improved or carried out with different materials, provided that such request is for the purpose of preserving and safeguarding the State highway. Upon receiving the request, the Licensee shall carry out the works subject to such modification or improvement, at the Licensee's cost.

- 8 **Indemnity:** Where the Licensee engages a contractor to carry out any works to the Utility, the Licensee shall procure an indemnity from the contractor in favour of the Transport Agency. The indemnity must apply to any loss, claim, damage, expense, liability, costs or proceeding suffered or incurred at any time by the Transport Agency in relation to the works, to the fullest extent permitted by law. The existence of such indemnity shall not relieve the Licensee of any liability to the Transport Agency.

Licence to Occupy Road (Letter Form)

[Date]

[Name]

[Address]

Dear [Name],

LICENCE TO OCCUPY ROAD – [INSERT DESCRIPTION OF AREA, INCLUDING RELEVANT STATE HIGHWAY AND TOWN/CITY]

The NZ Transport Agency (*Transport Agency*) has the sole powers of control for all purposes of State highways and motorways under sections 61 and 80 of the Government Roading Powers Act 1989. The Transport Agency is the controlling authority of the area of [*State highway/motorway*] at [*insert description of area*].

The Transport Agency is willing to grant you a licence to occupy the Land. This letter, together with the Standard Terms and Special Conditions, forms the terms and conditions of the licence (*Licence*).

If you wish to accept the terms of this Licence, please sign this letter below where indicated and return a copy to [*insert contact details*].

Yours sincerely

[*Insert name of signatory*]

[*Insert role*]

NZ Transport Agency

I/We have read the terms and conditions of this Licence, and agree and accept those terms and conditions.

[*Use if Licensee is an individual*]

Name: *[Insert name]*

Name: *[Insert name]*

[Use if Licensee is a company]

Name: *[Insert name]*

For and on behalf of *[Name of company in full]*

SCHEDULE 1

STANDARD TERMS

4 **Definitions:** In this Licence, the following terms have the following meanings:

Licensee	<i>[Insert name of Licensee. If a company, include the company number.]</i>
Land	That area of State Highway [x] in the position shown marked on the Plan and in accordance to the specification approved by the Transport Agency.
Plan	The plan attached as Schedule 3 of this letter.
Licence Fee	\$1.00 plus GST (if any) per annum
Permitted Use	<i>[Insert description of permitted use, e.g.</i> <ul style="list-style-type: none">• <i>To placing a fence on the Land.</i>• <i>To place a Norski toilet adjacent to State Highway 1 at route position 635/0.368 TLS and 635/6.806 TLS.</i>• <i>To install and maintain a water pipe.]</i>
Commencement Date	<i>[Insert date]</i>

5 **Grant:** The Transport Agency grants to the Licensee a non-exclusive licence to occupy the Land on the terms and conditions set out in this Licence, from the Commencement Date until this Licence is terminated under clause 4.

6 **Licence Fee:** The Licensee will pay the Transport Agency the Licence Fee (if demanded) on each anniversary of the Commencement Date.

7 **Termination:** Either party may terminate this Licence at any time by giving the other party at least [3] months' written notice. *[The default notice period is 3 months, but this can be extended if required.]* The Licensee will not be entitled to any compensation, damages or claim of any kind on the termination of the Licence.

8 **Licensee's obligations on termination:** The Licensee must, no later than 14 days after the termination of this Licence, leave the Land in the same condition it was in at the Commencement Date. If the Licensee fails to comply with this obligation, then the Transport Agency may at its option commence its own works to restore the Land and recover all costs from the Licensee. This clause is without prejudice to the Transport Agency's other rights and remedies.

9 **Maintenance:** The Licensee will keep and maintain the Land, and take all reasonable steps to protect the Land, including buildings, fixtures or fittings, installations, fences, hedges, trees (including shelter belts), gates and any sealed areas or other property of the Transport Agency, free from any damage by the Licensee and the Licensee's employees, agents or invitees.

10 **Permitted Use:** The Licensee will not use the Land for any purpose other than the Permitted Use.

11 **Damage:** The Licensee must, at its cost, promptly repair any damage caused to the Land or any of the Transport Agency's improvements or property on the Land by the Licensee or any person using the Land under this Licence.

12 **No access:** The Licensee shall not be entitled to any form of compensation, damages, or claim of whatever kind in the event that there is an emergency and the Licensee is unable to gain access to the Land.

- 13 **No interference with public use:** The Licensee shall ensure that no interference is caused to the use of the State highway by the public when carrying out any works to repair, maintain, remove, or replace any improvement, utility, fence or other structure on the Land.
- 14 **Compliance:** The Licensee must comply with all relevant legislation, regulations and bylaws affecting the Land and the Licensee's use of the Land, and must not cause or allow any act on the Land that would cause nuisance or annoyance to any neighbouring property.
- 15 **Transport Agency approvals:** The Licensee must obtain all necessary approvals from the Transport Agency for works in the road corridor, including approval under section 51 of the Government Roadway Powers Act 1989. The granting of this Licence does not constitute the granting of such approval and does not guarantee that any such approval will be granted.
- 16 **Health and Safety:** Without limiting the Licensee's obligations under clause 14, the Licensee must do all things necessary as the occupier of the Land to comply with the Health and Safety at Work Act 2015 (*HSWA*). The Licensee:
- a acknowledges that the Land forms part of the Transport Agency's State highway network, and that there are hazards associated with working in, on, and around the State highway (including without limitation hazards posed by fast-moving vehicles);
 - b will ensure the health and safety of its workers and all other persons affected by work carried out by or for the Licensee in connection with the Permitted Use;
 - c will, prior to the commencement of any works permitted by this Licence, provide a site management plan for the intended works to the Transport Agency for its approval (not to be unreasonably withheld);
 - d will consult, cooperate, and coordinate its work on the Land with the Transport Agency and any persons conducting a business or undertaking (as defined in section 17 of the HSWA) who is accessing the Land;
 - e will promptly notify the Transport Agency of any accident, injury, illness, near miss, or exposure that the Licensee becomes aware of in the course of, or arising from, its work on the Land (an *incident*), and provide the Transport Agency with such assistance and information as the Transport Agency considers necessary to conduct an investigation into any such incident;
 - f if requested by the Transport Agency, will promptly give the Transport Agency copies of any documents related to or created in respect of any investigation by the Licensee into any such incident; and
 - g will promptly give the Transport Agency copies of any notices and correspondence the Licensee receives from WorkSafe New Zealand or any other authority (including the Licensee's responses to any such notices or correspondence) concerning the Licensee's compliance with the HSWA or any other health and safety legislation or regulations.
- 17 **Transport Agency access:** The Transport Agency and its agents, contractors and employees will have access to the Land at all times and for all purposes.
- 18 **Transport Agency works:** The Transport Agency may carry out any works on land adjacent to or near the Land. The Transport Agency will take all reasonable steps to ensure that the works are carried out in a way that causes minimal inconvenience to the Licensee.
- 19 **No assignment:** This Licence is personal to the Licensee, and the Licensee may not assign, transfer, sub-licence or otherwise share the Licensee's rights under this Licence to or with any other person.

- 20 **Indemnity:** To the fullest extent permitted by law, the Licensee:
- a indemnifies the Transport Agency from and against all costs, actions, demands, suits, damages and proceedings of any kind and in respect of any loss or damage that may directly or indirectly result to or be suffered by any person or property by reason of this Licence or the exercise of the rights under this Licence; and
 - b releases the Transport Agency from all claims and demands of any kind and from all liability which, in the absence of any negligence on the Transport Agency’s part, may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land.

21 **No warranty:** The Transport Agency makes no warranty or representation that the Land is fit for any particular use. The Licensee acknowledges that it has entered into this Licence completely in reliance upon the Licensee’s own skill and judgment. The Licensee agrees to occupy and use the Land at the Licensee’s own risk.

22 **No Lease:** This Licence does not create any lease, tenancy, or interest in the Land.

23 **Notices:** Any notice or document required or authorised to be given or served under this Licence must be in writing and delivered or served by personal delivery, post, or email to the address or email specified for the relevant party below:

Licensee	Transport Agency
Name: [Insert]	Name: [Insert]
Address: [Insert]	Address: [Insert]
Email: [Insert]	Email: [Insert]

Any notice or other document is deemed to have been served:

- a in the case of personal delivery, when received by the addressee;
 - b in the case of post, 3 working days following the date of posting to the addressee’s last known address in New Zealand; and
 - c in the case of email, when acknowledged by the addressee orally, by return email, or otherwise in writing. Return emails generated automatically shall not constitute an acknowledgement.
- 24 **Transport Agency’s statutory role:** The Licensee acknowledges that the Land is controlled and managed by the Transport Agency as part of its statutory responsibilities, including under the Government Roding Powers Act 1989 and the Land Transport Management Act 2003, which prevail over the terms of this Licence.

SCHEDULE 2 SPECIAL CONDITIONS

[Delete the provisions which do not apply.]

FENCING

- 25 **Fence:** The Licensee will erect a fence on the Land, in the position shown on the Plan and to the satisfaction of the Transport Agency. The Licensee shall maintain the fence in good order and repair, and remove the fence immediately on termination of the Licence.
- 26 **No disturbance:** The Licensee will not disturb the surface of the Land beyond a depth of 200mm, or do anything to cause change in the surface of the Land.
- 27 **Occupier:** The Licensee is deemed to be the occupier of the Land for the purposes of the Local Government (Rating) Act 2002 and the Biosecurity Act 1993, including for animal and vegetation pest control measures.

STRUCTURES *[Use if a structure will be placed aboveground, e.g. Portacom, Norski toilet.]*

- 2 **Maintenance:** The Licensee will maintain all structures upon the Land in good order and condition, and otherwise to the satisfaction of the Transport Agency, and subject to any directions and conditions stipulated by the Transport Agency.

PRIVATE UTILITIES *[Use if a private utility will be laid underground.]*

- 1 **Works:** The Licensee will install and maintain the *[utility]* (**Utility**) to the satisfaction of the Transport Agency, and subject to any directions and conditions stipulated by the Transport Agency. The Transport Agency may require the whole or part of any such works to be carried out by or under the supervision of a person authorised by the Transport Agency, at the Licensee's cost. The Licensee will pay such cost to the Transport Agency upon receipt of an invoice from the Transport Agency.
- 2 **Maintenance:** The Licensee will maintain the Utility in good order and condition, with as little interference as possible to the surface of the State highway above the Utility. The Licensee will make good any damage caused to the State highway within the boundaries of the legal road reserve during any works.
- 3 **Minimum Covering:** The Licensee will place the Utility at a depth to ensure a cover of at least *[insert]* millimetres (**Minimum Covering**) below the road surface and below the level of surface water channels. The placement must cause minimal disturbance to the State highway and be to the satisfaction of the Transport Agency. The Licensee must maintain the Minimum Covering throughout the term of the Licence, subject to Special Condition 4 below.
- 4 **New minimum covering:** The Transport Agency may give the Licensee 24 hours' notice requiring the Licensee to lower and cover the Utility to a depth specified in the notice, at the Licensee's cost. Special Condition 3 will apply from the notice date as if the specified depth were the Minimum Covering.
- 5 **Breakage/Leakage:** The Licensee is liable to the Transport Agency for the cost of repairing any damage which may occur to the State highway from any breakage or leakage in the Utility.
- 6 **Realignment:** In the event that the State highway is realigned, the Licensee will reinstall the Utility under the new realignment, at the Licensee's cost and as directed by the Transport Agency.
- 7 **Inspection and modification of works:** Any works in relation to the Utility will at all times be open to inspection by a person authorised by the Transport Agency. The authorised person may request that the works be modified or improved or carried out with different materials, provided that such request is for the purpose of preserving and safeguarding the State highway. Upon receiving the request, the Licensee shall carry out the works subject to such modification or improvement, at the Licensee's cost.

- 8 **Indemnity:** Where the Licensee engages a contractor to carry out any works to the Utility, the Licensee shall procure an indemnity from the contractor in favour of the Transport Agency. The indemnity must apply to any loss, claim, damage, expense, liability, costs or proceeding suffered or incurred at any time by the Transport Agency in relation to the works, to the fullest extent permitted by law. The existence of such indemnity shall not relieve the Licensee of any liability to the Transport Agency.

SCHEDULE 3 PLAN

[Insert plan of Land, showing any relevant markings]

Works Access Permit for Roads and Motorways

Registration No:	
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1. The Parties

..... being a body corporate in accordance with the Local Government Act 2002/Land Transport Management Act 2003* (* delete as appropriate) or a licensed access provider in accordance with the Railways Act 2005 ('the Corridor Manager');

..... being an approved Utility Operator in accordance with the Telecommunications Act 2001/Electricity Act 1992/Gas Act 1992* (* delete as appropriate) submitting a request for access in accordance with that Act);

..... being the agent of the Utility Operator, submitting this request on behalf of the Utility Operator and in accordance with the Utility Operator's statutory rights ('the Applicant').

2. Attachments (delete as appropriate)

Attachment 1 being the Corridor Access Request.

Attachment 2 being the Schedule of Reasonable Conditions.

Attachment 3 being plan showing the agreed service location.

3. Background

a. In accordance with the Code: Utilities Access to the Transport Corridors and on behalf of the Corridor Manager, I give my written consent for access to the Road Corridor as specified in CAR Number

and attach my schedule of Reasonable Conditions; and

b. In the case of State Highways this Works Access Permit serves as the approval required under S51 and S78 of the GRP Act.

Signed		Date	
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Acting pursuant to delegated authority.

FOR Corridor Manager APPROVAL USE ONLY

Time spent processing:	
------------------------	--

Approved Contractor

Route Plan Submitted

TMP Submitted

Stockpiling arrangements

REASONABLE CONDITIONS

Where a Road Corridor Manager has received a CAR from a Utility Operator, the Road Corridor Manager may request the Utility Operator comply with Reasonable Conditions placed on the Works in accordance with the governing legislation (being the Telecommunications Act, Electricity Act, Gas Act, Auckland Council Act and/or Government Roadway Powers Act).

Reasonable Conditions

(In compliance with the Code, these are mandatory with every WAP)

1. The Utility Operator must:
 - a) carry out all Work in Transport Corridors in accordance with the Code and KiwiRail's Specifications for Working in Railway Corridors;
 - b) undertake all Works in compliance with the Acts of Parliament and mandated codes of practice that relate to their industry and the type of Work described within the plans and methodology submitted;
 - c) install assets more or less in the location shown on the attached plans, and agree the exact location and position with the Road Corridor Manager before Work commences;
 - d) locate any Utility Structures in the Road Corridor in the agreed position shown on the drawings and clear of the Carriageway, Road Corridor furniture and kerbs, drains, manholes, etc. Utility Structures agreed to be within the trafficable part of the Road are to be flush with the surface and designed to withstand full heavy Traffic loading (NZTA's HN-HO-72 Traffic Loading);
 - e) provide a full description of the construction methodology, reinstatement, resurfacing and compaction and agree this with the Road Corridor Manager prior to Work commencing;
 - f) make the Works available at all times for inspection by any person representing the Road Corridor Manager;
 - g) if requested, pay the reasonable costs of the Road Corridor Manager in connection with the processing of this notice and for the monitoring and auditing of the works (see NZ Transport Agency Cost Structure under Clause 23);
 - h) keep a full copy of the Works Access Permit/ Permit to Enter and Reasonable Conditions on the Work Site at all times during the Works;
 - i) undertake remedial action on non-conforming Work within the timeframe set by the Road Corridor Manager, where reasonable and practicable;
 - j) gain all the necessary consents, approvals and permits from the relevant statutory and regulatory authorities at its own cost;
 - k) keep plans of the installed Work and make them available to the Road Corridor Manager (in all cases) and Road Corridor Manager (on request);
 - l) compensate the Road Corridor Manager for any damage or costs incurred to the Road Corridor due to the Work or for costs resulting from the removal of abandoned installations, Utility

Structures, components and equipment that belong to the Utility Operator;

- m) repair all Road Corridor assets damaged as a result of the Works, should the Road Corridor Manager determine these are necessary prior to the end of the Warranty period;
 - n) in accordance with the requirements of this Code or as otherwise agreed between the Corridor Manager and Utility restore to their original condition any surface or Utility Structure that was damaged or removed as a result of the Works;
 - o) control the surface water channels so as to cause minimal interference to existing flows;
 - p) fully restore the surface water channels at the completion of the Works;
 - q) notify the Road Corridor Manager of any maintenance Work it proposes to undertake within the two-year Warranty period;
 - r) have in place an approved TMP for Roads and Motorways at least two days prior to Work commencing on the Work Site;
 - s) provide the Road Corridor Manager with two Working Days' notice before commencement of Work on the Work Site;
 - t) ensure that the Work is carried out under the control of a warranted supervisor as required by the Code of Practice for Temporary Traffic Management and ensure that there are sufficient people on site specifically to control the flow of Traffic through the site in accordance with the TMP;
 - u) comply with instructions from an officer of the NZ Police Traffic Safety Branch or a duly authorised agent of the Road Corridor Manager in respect of Traffic management and safety;
 - v) complete Works in the Road Corridor in one continuous operation (suspension of Works over five continuous days requires the prior written permission of the Road Corridor Manager);
 - w) protect and maintain all Road Corridor signs, markers, signals, barriers and associated marking and replace them to the appropriate industry standard where they have been damaged by the Works;
 - x) complete and submit a Works Completion Notice form when the Works are complete; and
 - y) stop Work as necessary to meet the requirements of section 42 of the Heritage New Zealand Pouhere Taonga Act 2014.
2. Work must not take place on or near a State highway during and one day either side of a public holiday or public holiday weekend.
 3. Where otherwise required due to Traffic volumes or specific residential or Central Business District requirements, the hours of Work must be as specified in the Local Conditions and Special Conditions.
 4. The Warranty period starts from the date the Road Corridor Manager has given signed acceptance that the Work is complete or otherwise as provided in Section 4.7.1.7 of the Code.

5. Unless the Works stated in the WAP have started on the Work Site, the agreement relating to the Works will only remain valid for six months from the date of approval on the Works Access Permit.
6. The Road Corridor Manager must manage all applications relating to Road Corridor access in accordance with the timeframes and processes in the Code.
7. The Corridor Manager may:
 - a) assess the suitability of any action proposed by the Utility Operator during the Warranty period and impose Reasonable Conditions that will maintain the integrity of the Road assets;
 - b) arrange for remedial Work to be done and recover the costs incurred from the Utility Operator, if the Utility Operator fails to take action within the agreed timeframe; and
 - c) instruct the Utility Operator to stop Work and leave the Work Site (having made the site safe) if the Works are not complying with the relevant Reasonable Conditions including any plans, relevant conditions or specifications contained in the Code, or permission requirements.
8. In granting this WAP, no vested right is created.
9. This WAP is not transferable without the written permission of the Road Corridor Manager.

NZ Transport Agency Local Conditions

10. The approval under this WAP applies only to services and works that are to be located within the boundaries of road or road reserve land that is under the control of the New Zealand Transport Agency (NZTA).
11. Nothing in this WAP shall be construed to derogate from the rights of the NZTA to enter upon the areas occupied by the Works for the purpose of installing, maintaining, repairing or removing any new or existing assets over or under the Works or for any other lawful purpose.
12. Overhead services shall be erected with a clearance of 6.5 metres above the road carriageway. Where a lesser clearness is requested, it must be agreed by the Corridor Manager and will be considered on a case by case basis, taking into account the clearances for other adjacent Utility Assets on the route. Where a greater clearance is required, such as an overdimension route, the minimum height will be set in the Special Conditions.
13. All poles are to be installed as close to the boundary as practicable, in accordance with Section 53 of the Government Rounding Powers Act 1989.
14. On motorways a cover depth of at least 2.0 metres is required. On State highways a cover depth of at least 1.0 metre in the berm and 1.5 metres under the surface of the carriageway and shoulder is required. Where this is not practicable, the minimum depths shall be determined using the process described in section 3.2.3 of the Utilities' Code and shall be as specified in the **Special Conditions attached**.
15. Underground services installed across the carriageway, under vehicle access ways or crossings shall be placed by trenchless construction in accordance with s. 5.1.4 of the Code, unless it can be demonstrated that this is not reasonable or practicable and is approved otherwise in the Special Conditions.

16. The Utility Operator shall ensure the temporary construction pits shall be as close to the boundary as practicably possible, and these pits are to be kept to a practical minimum size. At the end of the Works all construction pits are to be backfilled and reinstated.
17. The NZTA has an agreed Accidental Discovery Protocol (ADP) with Historic Places Trust and Iwi covering all works performed within the State highway road reserve. The steps indicated in the protocol shall be observed in any situation where there is an “accidental discovery” of archaeological matter, including human remains. Where contact or consultation is required due to the level of risk of an accidental discovery, this is to be undertaken by the Utility Operator, in association with the ADP signatory organisations, at no cost to the NZTA. (www.nzta.govt.nz/resources/state-highway-professional-services-contract-proforma-manual/standards/docs/Z22.pdf)
18. Further to clause 5.1.2.4 of the National Code of Practice, the Utility Operator must report to the Corridor Manager all unexpected damage to assets and/or property resulting from the works as soon as practicable after the damage occurs.
19. The utility operator must comply with NZTA’s Personal Protection Equipment requirements as a minimum standard in accordance with section 2.5, clause 2a of the Code. NZTA Link; www.nzta.govt.nz/resources/health-and-safety-ppe
20. The Utility Operator shall give the Road Corridor Manager 48 hour’s written notice of completed surface preparation to allow a site inspection prior to surfacing. If after 48 hours no inspection has been undertaken, surfacing can proceed.
21. Where there is any likelihood that construction noise or ground vibration due to the works will affect local residents or adjacent businesses, the Utility Operator shall comply with the State Highway Construction Noise Guide V0.4: February 2012 (www.acoustics.nzta.govt.nz) or subsequent amendments, setting out the best practicable option that will meet the criteria relevant to the worksite.

22. New – ConstructSafe

All State highway work sites have a minimum entry requirement of ConstructSafe Tier 1 (or alternative approved independent competency assessment scheme aligned to ConstructSafe) for all workers entering the site. Workers who have not attained ConstructSafe Tier 1 are not authorised to enter the site unless they are approved to do so and supervised at all times while on site by appropriately trained supervisors. For more information, visit www.constructionsafetycouncil.co.nz

23. Cost Recovery and Charges

The NZTA has determined that it will recover a portion of the costs it incurs in relation to the level of work requested on a State highway. While the National Code of Practice defines all work on State highways as major work, the NZTA separates works into different levels as follows:

23.1 State Highway Minor Works

- State highway minor works are those Works where activities have a MINOR effect on the road corridor, such as:
 - a) Maintenance of above ground utility structures (i.e. power poles, lighting poles, cabinets and pedestals)

- b) Where there is NO VARIATION to the normal flow of traffic/pedestrians.
- c) Minor Excavation in the berm is >2m from edge of seal.
- d) Excavation in sealed shoulder or parking lane where area is <1m² (for potholing existing services)
- o For State highway minor works no cost recovery will incur.

23.2 State Highway Major Works

- o State highway major works are those Works where activities AFFECT the normal flow of traffic/pedestrians on any part of the State highway corridor; surface, pavement or berm, such as:
 - a) Any excavation, boring, trenching or digging in the road carriageway or dedicated traffic lane other than that in 23.1 above.
 - b) Aerial crossings that are not covered under 23.1 above.
 - c) Works that require pedestrians to walk in the carriageway or cross the road.
- o For State highway major works a cost recovery of \$500 will incur.

23.3 Project Work on State Highways

Project Work on State highways has the same definition as set out in the National Code of Practice. The Utility Operator shall pay the reasonable costs in connection with the processing of this Permit and for the monitoring and auditing of the Works. The initial processing fee will be determined in accordance with the unit hourly rates of the Transport Agency personnel and appointed agents. Please discuss this with Corridor Manager prior to starting work.

Following submission of the **Works Completion Notice (WCN)** and the Corridor Manager’s completion audit, should the Works not fully comply, the Transport Agency reserves the right to recover any additional costs incurred due to time and administration expenses during on-going inspection of outstanding defects.

Local Conditions Methodology – these should appear as Tick Items in a List. You can select or deselect items that are appropriate to each application. So offices have these as a separate document they upload according to what work is being done.

- 24. Further to condition 1(e), depending on the completeness of the submitted methodology, any or all conditions may be omitted from this schedule if the agreed methodology provides for the condition, or agreed alternative, to be met.
- 25. **General** - Where the Corridor Manager is aware of issues with the existing ground conditions and requires a higher duty of care to maintain the structural integrity of the road, the Utility Operator shall provide additional details of the construction methodology and comply with any restrictions imposed on the placement of any works and/or submit the timings and exact location and levels of the works to be undertaken. The methodology is to include an assessment of the ground conditions, traffic effects and perceived risks and a contingency plan to monitor and manage such risks during and after construction. Approval for the work to commence is subject to the Corridor Manager being satisfied that the construction methodology is compatible with the existing ground condition.
- 26. **General** - It is not normal practice for the NZTA to require a bond unless required as a result of persistent non-performance. If stated in the Special Conditions, a performance bond will be required by the NZTA to ensure remediation of poor surface reinstatement or negating unacceptable response

times for carriageway surface repairs. Where a performance bond is required by the NZTA, evidence of the bond must be provided by the applicant before a WAP for the proposed service installation or works is issued.

27. **Construction** - Where there is any potential for the construction activity to have more than a minimal effect on an adjoining property, particularly the access to the property, the Utility Operator must consult with the landowner or resident and confirm that appropriate measures will be undertaken to address any valid concerns that are raised.
28. **Construction** - The Utility Operator must consult with the relevant District or City Council about all Works behind the kerb line on a State highway in an urban area. The NZTA has a partnership with the Council for management of State highways in urban areas and will take into account the requirements of the Council, to protect their assets, as included in the Special Conditions.
29. **Standards** - The mole ploughing method of laying services will require a methodology that includes measures for ensuring that the likelihood of direct or consequential damage to pavements, drainage systems, ground anchors, geotextiles and other underground assets is minimised, noting that hidden damage that occurs from using this method remains the responsibility of the Utility Operator.
30. **Standards** - The method of installation of all services attached to bridges or other structures must have the approval of the Corridor Manager prior to work commencing.
31. Further to condition 14 above, in those berm areas where future State highway widening will occur, the Utility Operator's services shall be placed at a level that would achieve a practicable depth beneath the surface of such future road widening suitable to both parties.
32. **Trenchless Construction** - The construction methodology shall include an assessment of the existing ground conditions and possible effects of the construction work on the integrity of the State highway carriageway. When requested in the Special Conditions, the Utility Operator shall demonstrate that the actual ground conditions are consistent with the stated construction methodology by pilot holes/test-hole drilling at strategic locations on the site.
33. **Trenchless Construction** - If trenchless construction fails due to sufficiently hard material being encountered, then the approval of the Corridor Manager shall be obtained prior to embarking on an alternative installation method, in which case additional special conditions that may be imposed by the Corridor Manager must be complied with.
34. **Trenching, Excavation and Backfilling** - Trenched installations through high cuttings and across fill embankments must be in trenches located a minimum of 1.0m from the seal edge, unless agreed separately and stipulated otherwise in the Special Conditions.
35. Trench width shall be kept to the minimum necessary to complete the work.
36. **Trenching, Excavation and Backfilling** - Excavation more than 1.5 metres deep must be notified to Occupational Safety and Health Services at least 48 hours prior to excavation.
37. **Trenching, Excavation and Backfilling** - Trench reinstatement must ensure a dense compact surface that will discourage surface scouring and be free of rocks and stones so as to allow safe grass mowing.
38. **Trenching, Excavation and Backfilling** - During the hours of darkness and/or when no work is

being carried out on site the maximum amount of sealed carriageway that can be safely provided shall be made available to the travelling public.

39. **Drainage** - The Utility Operator shall manage any groundwater effects caused by the excavating/ drilling/ thrusting operation. Any potential for scour shall be managed by suitable prevention work.
40. **Drainage** - Works undertaken in the surface water channels shall be carried out in such a manner as to cause minimal interference to the existing drainage pattern and the water channel shall be fully restored at the completion of the works to permit the free draining of the area.
41. **Drainage** - Ensure excavated surfaces are provided with scour protection with reinstatement to prevent storm water scouring and to protect and preserve the new utility asset and associated drainage facilities.
42. **Drainage** - Trenching in wet ground shall have subsoil drainage (Highway Drain Coil or similar in accordance with TNZ F/2 Specification) installed with the cable pipeline. The subsoil drain shall be reticulated outside the highway formation and into existing drainage outlets or structures with suitable capacity. All inlets and outlets are to be exposed and identified on site and dimensioned on the Utility Operator's as-built plans.
43. **Structures** - Further to clause 3.2.4 of the National Code of Practice, Utility Structures such as manholes, chambers, pedestals, poles, cabinets, etc. shall be located in the positions detailed on the agreed drawings or, if not detailed, positioned so that they and their lids are within two metres of the State highway boundary and, unless otherwise agreed, clear of the carriageway, any kerbs, storm water structures and side drains and any road furniture.
44. **Structures** – Further to clause 5.6.6.3 of the National Code of Practice, buried Utility Structures with surface boxes or access lids shall be finished flush with the footpath surface when in the footpath or conform to the surrounding ground surface shape and level when in the berm.
45. **Pavement Markings** – Further to clause 5.6.6.1 of the National Code of Practice, reinstatement of Pavement Markings and Reflectorised Raised Pavement Markers must comply with NZTA specifications and match existing marking in type and material.
46. **Maintenance** - All defects must be repaired by the Utility Operator within the time specified in the notice or be deemed non-compliant. All defects affecting driver safety must be repaired and roadworthy within 48 hours of the defect becoming apparent.
47. **Maintenance** - All areas must be reinstated to original condition or better including footpaths, kerbing, gardens, plants, grass, drainage facilities and ground shape. Any exposed ground requiring regrassing must be seeded and maintained to ensure permanent grass regrowth.
48. **Maintenance** - After satisfactory completion of the works, the Utility Operator shall give prior notification to NZTA on each separate occasion of any subsequent maintenance works that may be required and if the works are located in or under a carriageway or sealed road shoulder, no works shall be performed without prior signed consent from the Corridor Manager.
49. **Hours of Work** - The designer of the Traffic Management Plan shall determine that the hours of work are appropriate so as to avoid peak traffic flow periods and ensure that traffic delays are minimised. Calculations to support the proposed hours of work shall be prepared in accordance with Section C15 of the Code of Practice for Temporary Traffic Management for inclusion in the Traffic

Management Plan. Traffic flow volume predictions shall be estimated using hourly counts provided by the NZTA.

50. **Environmental** - A Utility Operators Environmental Management Plan (EMP) shall be produced for managing environmental effects such as noise and vibration, discharge of contaminants including sediment, ground disturbance, vegetation removal, or litter such that they are dealt with in a manner that meets any NZTA commitments under relevant legislation. The EMP plan shall be made available to the NZTA upon request. The plan shall address in particular:
- a. Any requirements set out in the NZTA Network Operations Consultant/Contractor Environmental Management Plan as appropriate;
 - b. Noise and Vibration through a specific plan as detailed in clause 21 above;
 - c. Measures taken to contain spills or other discharges of contaminants;
 - d. Precautionary measures to avoid contaminating waterways and stormwater drainage from all activities, especially grouting and concrete cutting;
 - e. Discovery protocols as detailed in clause 17 above where ground disturbance of archaeological places or sites is likely or has occurred;
 - f. Reducing the impacts on, and reinstating vegetation established for landscaping or ecological reasons.
51. Further to condition 21, if the effects of construction noise or ground vibration due to the works are likely to exceed the calculated maximum levels the Utility Operator must prepare a written communications strategy as required by clause 5.3.6 of the National Code of Practice.
52. **Notifications** - For major and project works, the Utility Operator is to regularly advise the Corridor Manager of construction progress in order that the Corridor Manager can arrange for a reasonable level of inspections and testing.
53. **Notifications** - The Utility Operator shall give 48 hours' notice of completed surface preparation to allow a site inspection prior to sealing. After 48 hours, if no inspection has been undertaken, sealing can proceed.
54. **Notifications** - The Utility Operator shall contact the nominated Network Operations Contractor at least one week prior to the commencement of work on the site to effect handover of the site to the Utility Operator.
55. **Bridges** - At the discretion of the Corridor Manager, this agreement may or may not include a requirement for the owner to pay a bridge charge based on the loss of dead load capacity from the structure by attaching the utility in a full condition where the works involve attachment or inclusion of a utility service in/onto a NZTA bridge. The Utility Operator shall pay the bridge charge to NZTA prior to commencing any work on the bridge, which shall be determined using a fair and reasonable cost recovery method. The requirement for a bridge charge will be specified in the Special Conditions.

56. **Fencing** - All boundary fencing removed to enable the works to proceed shall be replaced to as good as or better condition than existed at the time of removal.
-

Special Conditions

Type any other special conditions about site into here.

Agreement as to Work on State Highways

DATE:

PARTIES:

- 1. The NEW ZEALAND TRANSPORT AGENCY, a body corporate established under and by virtue of the Land Transport Management Amendment Act 2008 (“NZTA”).
- 2. **AND** the Body or Person requesting the works, being _____

BACKGROUND:

- A. The NZTA has the sole powers of control for all purposes including construction and maintenance of all State highways pursuant to the provisions of the Government Roading Powers Act 1989.
- B. _____ wishes to carry out certain work specified in the Schedule hereto which involves or affects a State highway (“the work”).
- C. The consent of the NZTA is required for the work and the NZTA agrees to provide such consent on the conditions set out.

TERMS OF AGREEMENT:

- 1. IN consideration of the NZTA agreeing to the work being done, _____ hereby agrees to indemnify the NZTA against all claims, losses, damages and costs incurred by the NZTA in relation to the work.
- 2. _____ hereby agrees to compensate the NZTA for damage to any state highway or structures on the state highway (including but not limited to bridges and safety barriers) incurred in relation to the work.
- 3. _____ agree to abide by all the conditions and specifications stated under this agreement and understand that any contravention of the agreement may result in the NZTA refusing further access to the state highway.

Signed for and on behalf of the
NEW ZEALAND TRANSPORT AGENCY

by _____
System Manager

Signed for and on behalf of

by _____

SCHEDULE (THE WORK INFORMATION)

THE WORK: _____
(Description of Work) _____

LOCATION:
State Highway: _____
Route Position: _____
Address (House No): _____

TIMING:
Commencement Date: _____
Expected Duration: _____

CONTRACTOR:
Name: _____
Site Representatives Name: _____
Contact Numbers: *day:* _____ *night:* _____

RESURFACING CONTRACTOR:
Name: _____
Contact Numbers: *day:* _____ *night:* _____

Notice of Conditions for Works on State Highway

Applicant:

Address:

Owner of the Work or their authorised agent (Owner):

State Highway:

Route Position:

Reference:

Location/Property:

Description of Work:

Plans:

PURSUANT to Sections 51, 52 and 54 of the Government Roading Powers Act 1989 the consent of the New Zealand Transport Agency (the NZTA) is hereby given for the above works requested by you in your notification dated....., as shown on your attached plan/s, subject to the following conditions and the *Code of Practice for Temporary Traffic Management*:

22. The NZTA shall not be liable for any costs, actions, demands, suits, damages and proceedings of any kind for any loss, damage or injury that may result from the works that are undertaken by or on behalf of the Owner of the utility service.
23. The Owner shall compensate the NZTA for any damage or costs incurred to State highway assets due to the work or for costs resulting from the removal of abandoned installations, structures, components or equipment that belong to the Owner.
24. The NZTA shall not be liable for loss or damage to the installed works due to damage to or loss of any road asset through any cause.
25. All of the civil engineering work shall meet with the approval of the NZTA System Manager and the installation shall be laid more or less in the location shown on the attached plans. The exact location and level of all installations are to be made known and agreed before work commences.
26. At the discretion of the System Manager, this agreement may or may not include a requirement for the Owner to provide a Contract Bond in favour of the NZTA or for the contractor to provide a Contract Bond in favour of the Owner, as a performance guarantee.
27. If requested, the Owner shall pay the reasonable costs of the NZTA and its consultants in connection with the processing of this notice and for the monitoring and auditing of the works.
28. Where the works affect an existing installation that belongs to the Owner, in the event of ambiguity or contradiction between the conditions herewith and any prior conditions or specifications relating to the installation, or to the Code of Practice for Temporary Traffic Management, the conditions contained herein shall take precedence.
29. A full copy of this Notice of Conditions shall be kept on site at all times during construction.
30. The Owner and/or their contractors, if when working on the State highway are found not to be complying with the relevant conditions or specifications and/or does not have permission to be there, are liable to be instructed to leave the site by the NZTA System Manager or his/her authorised representative.
31. Access to the site of the works from a motorway carriageway or motorway ramp, is not permitted without special permission of the System Manager.

32. The works are to be available at all times for inspection by any person authorised by the NZTA System Manager.
33. The Owner shall repair road assets made defective as a result of the works, should such repairs become necessary in the opinion of the NZTA System Manager or his/her authorised representative within twelve months of works completion. Remediation works shall be undertaken within two working days of being notified or as directed by the NZTA System Manager.
34. Where the Owner fails to comply with any requirement under these conditions, the NZTA may arrange for the necessary work to be done and may recover any costs incurred.
35. After satisfactory completion of the works, the Owner shall give prior notification to the NZTA on each separate occasion of any subsequent maintenance works that may be required and if the works are located in or under a carriageway or road shoulder The NZTA reserves the right to re-assess the implications and either decline the application or impose new or amended conditions to protect the integrity of the State highway.
36. If, during a period of two years from the above date, the whole of or any part of the works are required to be temporarily or permanently relocated or protected to enable the construction of any NZTA works that appear on the NZTA's future works programme as at the date of execution of this consent, then it shall be done by the Owner at no cost to the NZTA.
37. Nothing in this Notice shall be construed to derogate from the rights of the NZTA to enter upon the areas occupied by the works for the purpose of installing, maintaining, repairing or removing any new or existing road or bridge assets over or under the works or for any other lawful purpose.
38. The requirements made with regard to construction methodology, reinstatement, materials used, compaction and surfacing shall be complied with, as set out in the Special Conditions attached.
39. All traffic control on state highways shall conform with the requirements in the latest version of the "*Code of Practice for Temporary Traffic Management*" published by the NZTA for all work falling within the State highway road reserve and this shall include activities falling outside the road reserve where such activities affect the normal operating conditions of the State Highway. The Owner shall produce an approved Traffic Management Plan (TMP) in accordance with Section A7 of the above-mentioned Code of Practice prior to the works commencing.
40. The Owner shall ensure that the work is carried out under the control of a warranted Site Traffic Management Supervisor (STMS) - Practising, and there shall be sufficient other people on duty specifically to control the flow of traffic through the site in accordance with the Traffic Management Plan while having resources within the State highway road reserve.
41. The NZTA's Traffic Management Co-ordinator shall be given two clear working days' notice prior to commencing any work on the State highway. This notice, setting out the timeframes for the work to be undertaken, shall be given by facsimile to the NZTA Network Operations Contractor together with a copy of the approved TMP and confirmation must be received that the programme does not conflict with other work and permission to proceed is granted, prior to commencement of any works.
42. The works shall be carried out in a way that minimises disruption to the flow of traffic. In compliance with the Code of Practice, the works affecting traffic flows shall be undertaken outside of peak traffic flow periods as indicated by flow estimations. If the proposed programme provided does not meet this requirement, a revised programme must be submitted. If the works change in any way from those proposed in the notification, the NZTA shall be informed prior to commencement of the changed works, and be provided with a revised proposed programme.
43. All works shall be completed in one continuous operation. Works shall not to be suspended for any period of time greater than 24 hours without the NZTA permission.

44. No work shall take place on or near State highways during, and one day either side of, a public holiday, or public holiday weekend.
45. Instructions concerning the use of traffic control measures from an officer of the police traffic safety branch, or any person authorised by the NZTA System Manager, shall be complied with in addition to those stated in the Special Conditions.
46. The Owner shall obtain at his/her cost all necessary approvals, consents and permits from all statutory, public or other authorities prior to commencing any work on the State highway and shall comply with all Regional and District Plans and applicable statutes, bylaws, regulations, approvals, permits and consents.
47. The Owner and/or their contractor shall not hold the NZTA liable for any of the costs incurred if the Owner receives an Environmental Infringement Notice. The Owner and/or their contractor shall ensure that their works comply with all relevant aspects of the Resource Management Act (1991) and subsequent amendments.
48. If necessary, a plan shall be produced for managing environmental effects such as construction noise, the discharge of contaminants, sediment or litter and this plan shall be made available upon request.
 - i. Special measures shall be employed to avoid or mitigate construction noise that may cause disruption to residents in the vicinity.
 - ii. The Owner and/or their contractor shall take extra precautions during any grouting operations to avoid contaminating waterways and stormwater drainage with grouting compound.
49. The Owner and/or their contractor shall be responsible for locating and protecting all underground services the location and/or depth of some of which may not be known and notwithstanding this fact it is the consent holder's responsibility at their own cost to repair any damage they may cause to any of these services.
50. All surplus excavated material shall be removed from the site and all surfaces disturbed by any of the work shall be restored to their original condition or better.
51. The Owner and/or their contractor shall be responsible for protecting and maintaining all NZTA signs and road furniture, including edge delineator posts, during the period of work and shall replace any items that become damaged or lost.
52. Where traffic safety facilities (signs, marker posts etc.) are removed in the course of the work these shall be re-erected to the proper standard prior to the removal of the temporary traffic controls required by these conditions.
53. The Owner shall keep an "As Built" set of drawings in their records showing the location of all of the utility service components of that they have information about or have uncovered. This record shall be available for inspection by the NZTA or their representative as and when the need arises.
54. All work undertaken by the Owner and/or their contractor working under this approval must comply with the requirements under the "Health and Safety at Work Act 2015" and the "Health and Safety at Work Regulations 2015", as amended.
55. All work undertaken by the Owner and/or his/her contractor working under this approval must comply with the Department of Labour Construction Act 1959 and Construction Regulations 1961, as amended, and any applicable industry codes of practice.
56. On completion of the works, the Owner and/or their contractors shall complete an "Works Completion Notice" form. The twelve-month maintenance period during which the NZTA has the right to require the Owner to carry out repair work shall commence as from the date that the NZTA or its authorised representative have given signed acceptance that the work is complete.

57. In the absence of a written agreement from the NZTA for an extension, this agreement shall become invalid if the works do not commence within six months of the above date.

Stock Underpass Construction Agreement

BETWEEN NEW ZEALAND TRANSPORT AGENCY ("NZTA")

AND
("the GRANTEE")

STOCK UNDERPASS CONSTRUCTION AGREEMENT

Dated

20

Stock Underpass Construction Agreement

This agreement is made on the day of 20.....

BETWEEN

- A. **New Zealand Transport Agency**, a statutory authority established by the Land Transport Management Amendment Act 2008 (herein after referred to as the "NZTA")

AND

..... of
..... (herein after referred to as "the Grantee")

BACKGROUND

- A. The NZTA having the statutory responsibility and control of all matters in relation to the State highway network has authority to agree to the construction of a stock underpass.
- B. Ownership of the stock underpass will be vested in the NZTA.
- C. The NZTA and the Grantee have agreed to the construction of a stock underpass on State Highway at or near Route Position/..... and as shown on Plan No.
- D. The parties agree that the stock underpass shall meet the requirements of relevant NZTA policies, design criteria and construction specifications.
- E. Cost Sharing - the parties agree, as applicable and as set out herein, to cost sharing in relation to the construction of the stock underpass and the NZTA undertakes to make a maximum payment of
..... \$
(words) (figures)
to the Grantee on meeting the conditions of this agreement herein.
- F. The parties have agreed to enter into a separate agreement in conjunction with this agreement, for the stock underpass use, to formalise the rights of the parties concerning the ongoing use of the stock underpass.

Now therefore in consideration of the above the parties wish to record the terms and conditions relating to the agreement as follows:

1.0 Defined Terms

- 1.1 In this agreement, unless the context requires otherwise:

Stock underpass means a stock access structure together with associated fencing, drainage and safety facilities, over or under a State highway, connecting two parts of a property or properties.

Grantee means the property owner, whose property or properties is/are bisected by the State highway, or whose property is afforded access across the State highway, at the position where the stock underpass is proposed or is constructed, who is party to this agreement or any other document.

Parties means New Zealand Transport Agency and the Grantee, their personal representatives/successors and permitted assigns.

Cost Sharing means that, subject to the terms of this agreement, the NZTA will share with the Grantee the cost of construction of the stock underpass by making a financial contribution to the Grantee in accordance with the provisions of the current NZTA Planning, Programme and Funding Manual.

AADT means the current annual average daily traffic passing the stock underpass site as ascertained by the NZTA.

Words of the singular are deemed to include the plural.

2.0 Title

2.0 Ownership of the stock underpass shall be vested in the NZTA.

3.0 The parties mutually

3.1 Confirm the contents of BACKGROUND.

3.2 Agree that they shall each carry out and fulfil all their respective obligations set out in this document.

4.0 Terms of Agreement

The parties agree and confirm that:

- 4.1 The Grantee shall engage appropriate engineering consultants acceptable to the NZTA for the necessary design, estimating, tender documentation and evaluation, contract administration and construction supervision. Where the NZTA agrees to cost sharing, the requirements of the NZTA Procurement and Contract Procedures Manuals (or their replacement publications) shall be observed, and all tender documentation and specifications shall conform to NZTA requirements.
- 4.2 The NZTA will consult with the Grantee but reserves the right to determine the location of the stock underpass, the consultants and contractors engaged, and the suitability of design and construction standards. Where the NZTA agrees to cost sharing, the NZTA reserves the right to confirm final acceptance of any tender without obligation to approve the lowest or any particular tender.
- 4.3 Where there is no cost sharing, the Grantee shall pay the NZTA actual and reasonable processing and supervision costs (a minimum \$100 plus GST) associated with the construction of the stock underpass.
- 4.4 Where cost sharing applies, following the NZTA's approval of the tender, the Grantee may accept the same.
- 4.5 The NZTA financial contribution, as determined under "Cost Sharing", shall be payable to the Grantee upon the NZTA's receipt of the Building Code Compliance Certificate and appropriate invoice together with certified copies of all payments.
- 4.6 In the event of any subsequent variation to the tendered sum and/or the associated engineering fees, the Grantee shall be responsible for the cost of such variations.
- 4.7 In particular in the construction of the stock underpass the Grantee shall satisfy the NZTA of the following:
- 4.7.1 liaison with service authorities to determine services location and relocation.
 - 4.7.2 compliance with the Building Act 2004 and the Building regulations 1992.
 - 4.7.3 Site Safety Plan, including the provisions of the Health and Safety in Employment Act 1993 and temporary traffic control, to be approved by the NZTA.
 - 4.7.4 provision of State highway detours shall require local authority consent together with appropriate public notification noting that temporary closure of the State highway can only be authorised by the NZTA System Manager.

- 4.7.5 compliance with the NZTA's construction standards.
 - 4.7.6 The NZTA's Special Conditions - Requirements for Trenching Across State Highways.
 - 4.7.7 public liability insurance with a limit of indemnity to \$2,000,000.00, or such lesser sum as the NZTA may approve, for the period of construction. The NZTA shall approve both the insurer and the terms and conditions of the policy.
 - 4.7.8 a six-month Period of Defects Liability commencing from the date of Practical Completion of the Contract Works.
- 4.8 The Grantee shall rearrange the farm layout and farm management to eliminate any existing stock crossing immediately on practical completion of the stock underpass.
- 4.9 The Grantee shall, if required by the NZTA, provide a bond, with sureties acceptable to the NZTA that will become null and void on fulfilment of all obligations under this agreement, satisfactory and timely completion of the stock underpass construction and, rectification of any defects within the Period of Defects Liability. The form and amount of bond shall be as determined by the NZTA.

5.0 Documentation

- 5.1 Copies of documentation including all notices, plans, specifications, building and resource consents, payment certificates, inspection reports and compliance certificates shall be sent to the NZTA as they become available.

6.0 Design and Installation Certification

- 6.1 The design and construction of the stock underpass shall be executed in accordance with all relevant building codes, resource consents and the NZTA's standards. The NZTA shall receive a copy of an Engineer's certifying statement and a copy of the Building Code Compliance Certificate to this effect on completion.

7.0 Agreement Conditional

- 7.1 This agreement is conditional upon the parties entering into an agreement for the Stock Underpass Use.

SIGNED for and on behalf of the
New Zealand Transport Agency by

System Manager

}.....
}

(acting pursuant to delegated authority

).....

In the presence of:

Witness' Signature

Name

Occupation

Address

.....
.....

SIGNED by the Grantee

}.....
}

In the presence of:

Witness' Signature

Name

Occupation

Address

.....
.....

The Common seal of

.....

was hereto affixed in the presence of:

.....

Stock Underpass Use Agreement

BETWEEN NEW ZEALAND TRANSPORT AGENCY ("NZTA")

AND
("the GRANTEE")

STOCK UNDERPASS USE AGREEMENT

Dated

20

Stock Underpass Use Agreement

This agreement is made on the _____ day of _____ 20____

BETWEEN

B. New Zealand Transport Agency, a statutory authority established by the Land Transport Management Amendment Act 2008 (herein after referred to as the "NZTA").

AND

_____ of

(herein after referred to as "the Grantee").

BACKGROUND

- A. The NZTA having the statutory responsibility and control of all matters in relation to the State highway network has authority to agree to the stock underpass use.
- B. Ownership of the stock underpass will be vested in the NZTA.
- C. The NZTA and the Grantee have agreed to the use of a stock underpass on State Highway _____ at or near Route Position _____ / _____ and as shown on Plan No. _____.
- D. The parties have agreed to enter a separate agreement in conjunction with this agreement for the stock underpass construction and cost sharing (if any) in relation to the construction, to formalise the rights of the parties concerning the stock underpass construction.

Now therefore in consideration of the above the parties wish to record the terms and conditions relating to the agreement as follows:

1.0 Defined Terms

1.1 In this agreement, unless the context requires otherwise:

Stock underpass means a stock access structure together with associated fencing, drainage and safety facilities, over or under a State highway, connecting two parts of a property or properties.

Grantee means the property owner, whose property or properties is/are bisected by the State highway, or whose property is afforded access across the State highway, at the position where the stock underpass is proposed or is constructed, who is party to this agreement or any other document.

Parties means New Zealand Transport Agency and the Grantee, their personal representatives/ successors and permitted assigns.

Words in the singular are deemed to include the plural.

2.0 Title

2.1 Ownership of the stock underpass shall be vested in the NZTA.

3.0 The parties mutually

3.1 Confirm the contents of BACKGROUND.

3.2 Agree that they shall each carry out and fulfil all their respective obligations set out in this document.

4.0 The Grantee

4.1 The Grantee agrees and confirms that:

- 4.1.1 the Grantee shall have the right to use the stock underpass in consideration of the payment to the NZTA of an annual fee of one dollar (\$1.00) if demanded.
- 4.1.2 the Grantee shall not do anything or allow anything to be done that will affect the structural integrity of the stock underpass.
- 4.1.3 the Grantee shall maintain, at the Grantee's cost, the stock underpass, including associated fencing, drainage and safety facilities, in good order and condition at all times, and immediately make safe and repair damage to the stock underpass caused through direct or indirect use or activity, and in any event shall carry out such maintenance or repair as may be reasonably be required, in writing, by the NZTA.
- 4.1.4 the Grantee shall advise the NZTA when any maintenance or repair, other than that of a routine nature, is required. The Grantee shall effect such maintenance or repair in accordance with the instructions of and to the satisfaction of the NZTA.
- 4.1.5 the Grantee shall be responsible for the cost of maintenance of the access through or over the structure.
- 4.1.6 the Grantee shall obtain the consent of the NZTA before entering onto the State highway to effect maintenance or repairs to the stock underpass.
- 4.1.7 the Grantee shall immediately make good any damage caused by the Grantee, his servants, agents or visitors, to the State highway or legal road reserve.

4.2 On receipt of advice under Clause 4.1.4, or as determined through its own inspection, the NZTA may elect to carry out all or part of any maintenance or repairs at the Grantee's cost or otherwise. The NZTA will, in such case, notify the Grantee accordingly within 14 days of receipt of advice or inspection.

4.3 The Grantee shall indemnify the NZTA against all costs, actions, demands, suits, damages and proceedings of any kind for any loss or damage that might result to any property of any person or any agency of the Crown directly or indirectly by reason of the exercise of the rights under this agreement.

5.0 The NZTA

5.1 Notwithstanding the provisions of Clause 4.0, the NZTA shall meet the cost of repairs of any structural defect in the stock underpass where the NZTA is satisfied such defect is not directly or indirectly attributable to the use of the stock underpass by the Grantee.

6.0 Removal of Stock Underpass

6.1 The Grantee shall have the right to have the stock underpass removed at any time subject to the following conditions:

- 6.1.1 Two months written notice to the NZTA of the Grantee's exercise of right.
- 6.1.2 The NZTA shall undertake removal of the stock underpass and reinstate the State highway to its satisfaction. The NZTA will ensure that its consultants and contractors take all reasonable care in removal of the stock underpass but the NZTA will not be responsible for any damage that may occur to the stock underpass as a result of its removal.
- 6.1.3 The Grantee shall reimburse the NZTA for the costs of such removal and reinstatement. Upon receipt of notice under Clause 6.1.1, the NZTA will provide the Grantee with an estimate of

cost of such removal. The estimated amount shall be paid to the NZTA, pending completion of the removal and reinstatement, and then applied to the cost of removal and reinstatement.

6.1.4 Ownership of the stock underpass structure shall pass to the Grantee upon removal and reinstatement.

6.1.5 Consent may not be given to the grantee, upon removal of the stock underpass, to allow access to and stock to traverse the State highway at or near the stock underpass location.

7.0 Termination

7.1 The NZTA may terminate this agreement and may remove the stock underpass:

7.1.1 at the expiration of three months written notice of intention to terminate if the land under which the stock underpass is constructed ceases to form part of the State highway network or is otherwise removed from NZTA control; or

7.1.2 without notice if the Grantee fails, within twenty-eight (28) days of receiving notice requiring the Grantee to remedy any default on the Grantee's part under this agreement; or

7.1.3 immediately without notice if any default on the Grantee's part under the terms of this agreement in the opinion of the NZTA interferes or may interfere with the safe and/or efficient operation of the State highway.

7.2 The Grantee shall not be liable for any compensation on termination of this agreement.

8.0 Assignment

8.1 The rights of the Grantee shall not be assigned under this agreement without prior written consent of the NZTA, which shall not unreasonably be withheld.

9.0 Notices

9.1 All notices under this agreement shall be sent to the following addresses by hand, post or facsimile or to such other addresses as are from time to time nominated in writing by the parties:-

NZTA:- The System Manager
New Zealand Transport Agency

.....
.....
.....

Facsimile:

Phone:

Grantee:
.....
.....
.....

Facsimile:

Phone:

9.2 It will be sufficient in cases where notice is to be given by the NZTA that some person acting under the NZTA’s express or implied authority signs such notice.

SIGNED for and on behalf of the
 New Zealand Transport Agency by

 System Manager

}.....

(acting pursuant to delegated authority) }.....

In the presence of:

Witness' Signature
Name
Occupation
Address

SIGNED by the Grantee }

.....

.....

.....

In the presence of:

Witness' Signature

Name

Occupation

Address

.....

.....

The Common seal of

.....

was hereto affixed in the presence of:

.....

.....

Standard Bailey Bridge Hire Agreement

In this Section

This section contains the standard agreement for Bailey Bridge Hire.

[*Date*]

Parties

NEW ZEALAND TRANSPORT AGENCY (NZTA)

[*Insert full legal name of Hirer] (Hirer)

Bailey Bridge Hire Agreement

PARTIES 1

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Date:

Parties

- C. **NEW ZEALAND TRANSPORT AGENCY** (as Bailey Bridge owner) together with its assigns and successors (*NZTA*)
- D. [* *Insert full legal name of Hirer and the city/town of its principal place of business*] together with its permitted assigns and successors (*Hirer*)

Background

- A. The NZTA, in its role as the owner of Bailey bridges and the provider of services relating to the provision of Bailey bridges for hire, has agreed to hire the Bridge to the Hirer on the terms contained in this Hire Agreement.
- B. The NZTA administers its Bailey bridge programme through [Insert name of service contractor].

1 Interpretation

1.1 Defined Terms

In this Hire Agreement, unless the content otherwise requires:

“**Bridge**” means the Bailey bridge superstructure and bearings the NZTA agrees to hire to the Hirer under this Hire Agreement, the specifications for which are set out in item 1 of the Schedule, or such other specifications as the parties agree in writing;

“**Bridge Hire**” means the hire of the Bridge from the NZTA to the Hirer under this Hire Agreement;

“**Default Rate**” means the rate per annum that is 1.5 times the prevailing 90-day rate referred to as BKBM on the due date for payment of the outstanding amount;

“**Early Termination Hire Fee**” means the Hire Fee applicable if the NZTA can terminate the Bridge Hire under *clause 11.2*, prior to the Termination Date as set out in item 3 of the Schedule;

“**Hire Fee**” means the Hire Fee set out in item 2 of the Schedule;

“**Hirer’s Contractor**” means each consultant, agent or contractor who is, or will be, working on or in the vicinity of the Bridge and who was engaged by:

(a) the Hirer;

(b) any consultant, agent or contractor engaged by the Hirer;

(c) any consultant, agent or contractor engaged by any of the persons described in paragraph (b) of this definition;

“**Government Entity**” means an entity that is a regional council or district council (each as defined in the Local Government Act 1974), or a Crown entity or department (as defined in the Public Finance Act 1989), except where the NZTA has specified in writing to the entity concerned that the entity is not a Government Entity for the purposes of this Hire Agreement;

“**Termination Date**” means the termination date specified in the Schedule or any other date

1.2 Construction

In the construction of this Hire Agreement, unless the context requires otherwise:

Business Days: anything required by this Hire Agreement to be done on a day which is not a Business Day may be done on the next Business Day. Saturdays, Sundays, and public holidays are not Business Days;

Documents: a reference to any document (including this Hire Agreement) and any statute includes a reference to that document or statute as amended or replaced from time to time;

Fees: all fees described in or calculated under this Hire Agreement include goods and services tax;

Parties: a reference to a party to this Hire Agreement or any other document includes that party's successors and permitted assigns. Where the context allows, a reference to the NZTA includes the NZTA's authorised agents agreed by the parties.

2 Hire

The NZTA agrees to hire and the Hirer agrees to take on hire from the NZTA the Bridge during the Term upon and subject to the terms contained in this Hire Agreement.

3 Term of Hire

This Hire Agreement becomes effective upon its execution and the Term is for the period commencing on the date the NZTA notifies the Hirer that the Bridge is on site and available for use by the Hirer and ending on the Termination Date, or such other period as the parties agree.

4 Payments

4.1 Construction Fee

Subject to clause 5.7, the Hirer must pay the Construction Fee no later than the 20th of the month following the date of the NZTA's invoice for the Construction Fee.

4.2 Hire Fee

The Hire Fee is payable as follows:

4.2.1 The Hire Fee is payable for each day of the Term excluding the Termination Date and any day when the Bridge is unavailable for use by reason of any defect in or unavailability of the Bridge for which the NZTA is responsible;

4.2.2 The NZTA may invoice the Hirer for the payment of up to three months' Hire Fee in advance; and

4.2.3 The Hirer must pay to the NZTA the Hire Fee invoiced by the NZTA no later than the 20th of the month following the date of the NZTA's invoice.

4.3 Dismantling Fee

The Hirer must pay the Dismantling Fee by the 20th of the month following the date of the NZTA's invoice for the Dismantling Fee.

5 Construction of the Bridge

5.1 Obligations of Hirer

The Hirer must, to the satisfaction of the NZTA in the NZTA's discretion:

- 5.1.1 Determine the alignment, level and span arrangements for the Bridge;
- 5.1.2 Design and construct the sub-structure support system for the Bridge;
- 5.1.3 Obtain and comply with all required Resource Consents for the Bridge;
- 5.1.4 Obtain and comply with all required Building Consents for construction of the Bridge;
- 5.1.5 Provide bridge end protection and delineation for the Bridge;
- 5.1.6 Provide such signs on the bridge or on the approaches to the Bridge, including speed and maximum load signs, as the NZTA, in its discretion requires; and
- 5.1.7 Comply with its obligations under clause 5.7 (if applicable).

5.2 Services of the NZTA

The NZTA will provide the following services for construction of the Bridge;

- 5.2.1 Design of the superstructure and bearings for the Bridge;
- 5.2.2 Transport each component of the Bridge to the site where the Bridge is to be constructed;
- 5.2.3 Construct the Bridge superstructure and bearings and, if agreed by the NZTA in writing, a pedestrian footway and/or running planks for the Bridge in accordance with the NZTA's design for the Bridge and the NZTA's Bailey Bridge Manual; and
- 5.2.4 Provision to the Hirer of a Producer Statement - Design, a Producer Statement - Construction and a Producer Statement - Construction Review for the Bridge superstructure and bearings.

5.3 Deck Surface Treatment

The Hirer may add running planks or lay chipseal on the deck of the Bridge to the NZTA's specifications (if any).

5.4 Cost of Construction

The Hirer is liable for the cost of the NZTA providing the services set out in clause 5.2 and any materials used by the NZTA in providing those services (the Construction Fee). The NZTA will render an invoice to the Hirer for the Construction Fee following completion of the Bridge. In the absence of manifest error, such invoice is conclusive evidence of the Construction Fee and the other matters contained in the invoice. The Hirer may request a written estimate of the Construction Fee before the NZTA provides any of its services under clause 5.2.

5.5 Timing of Delivery and Construction

The NZTA and the Hirer will use reasonable endeavours to agree on a timetable for construction of the Bridge and related matters. The NZTA will use reasonable endeavours to ensure that the components of the Bridge are delivered to the site where the Bridge is to be constructed at the agreed time and date and that the Bridge is constructed within the agreed time frame.

5.6 Delay in Construction

The NZTA may delay or stop providing its services under clause 5.2 until it is satisfied, in its discretion, that the Hirer has complied with its obligations under clause 5.1. The Hirer must pay any costs incurred by the NZTA arising from the delay or stop in construction. The NZTA may include those costs in its invoice for the Construction Fee or render a separate invoice.

5.7 Additional Requirements where Hirer is not a Government Entity

If the Hirer is not a Government Entity:

5.7.1 The NZTA will provide a written estimate of the Construction Fee and the Dismantling Fee to the Hirer before the NZTA provides any of its services under clause 5.2;

5.7.2 The Hirer must pay to the NZTA the estimated Construction Fee in advance;

5.7.3 The Hirer must deliver to the NZTA a bond acceptable to the NZTA for an amount equal to the estimated Dismantling Fee;

5.7.4 If the Construction Fee is less than the Hirer paid to the NZTA for the estimated Construction Fee, the NZTA must either refund the balance to the Hirer or credit the balance as payment of the Hire Fee in advance, at the NZTA's option. If the Construction Fee is more than the estimated Construction Fee, the Hirer must pay the balance of the Construction Fee no later than the 20th of the month following the date of the NZTA's invoice for the Construction Fee.

6 Title

Title to the Bridge and ownership of all its component parts remain with the NZTA at all times.

7 Indemnity

The Hirer indemnifies the NZTA against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by the NZTA as a direct or indirect result of any breach of any of the Hirer's obligations, undertakings or warranties contained or implied in this Hire Agreement or the conduct of the Hirer or the Hirer's Contractor.

8 Maintenance

The NZTA must maintain the Bridge in accordance with the NZTA's Bailey Bridge Manual. The NZTA will consult with the Hirer before carrying out any non-urgent maintenance or repairs and will carry out non-urgent maintenance and repairs as agreed with the Hirer or otherwise at reasonable times. The NZTA may stop vehicle and/or foot use to the Bridge while it is carrying out maintenance on the Bridge. No Hire Fee is payable for any day during which the NZTA has stopped vehicle use of the Bridge for more than 4 hours in total.

9 Access by the NZTA

9.1 The Hirer must, both during and after the Term, allow the NZTA reasonable access to any property or premises upon which the Bridge is situated and to any documents relating to the Bridge, its use, and any activities of the Hirer or the Hirer's Contractor on or in the vicinity of the Bridge.

9.2 The Hirer will reasonably co-operate with the NZTA in connection with such activities and provide the NZTA with the opportunity to meet with relevant personnel from the Hirer or the Hirer's Contractors to discuss the Bridge and any related documents.

10 Damage or Destruction to Bridge

- 10.1 If the Bridge or any part of the Bridge is lost, stolen, destroyed, damaged, or has deteriorated in any way, or is otherwise rendered unsafe or potentially unsafe, the NZTA will at its discretion, and within a reasonable time of it becoming aware of the matter, repair and/or replace the Bridge or any part of the Bridge to the extent the NZTA considers this necessary to ensure that the Bridge conforms to the requirements of the NZTA's Bailey Bridge Manual. Where appropriate, the NZTA may defer any action under this clause 10.1 until the Hirer has complied with clause 5.1.
- 10.2 If the Bridge or any part of the Bridge is lost, stolen, destroyed, damaged or is otherwise rendered unsafe or potentially unsafe (including, without limitation, as a result of an act of god) and the matter was not caused solely by the NZTA's act or omission, the Hirer is liable for, and must pay no later than the 20th of the month following the date of the NZTA's invoice for:
- 10.2.1 costs incurred by the NZTA in complying with its obligations under clause 10.1;
 - 10.2.2 the amount the NZTA certifies as being the cost of replacing the lost or stolen parts of the Bridge or the destroyed or damaged parts of the Bridge where the NZTA determines the repair of the destroyed or damaged parts is impractical or uneconomic; and
 - 10.2.3 the costs of the removal, retrieval or dismantling of the Bridge or any part of the Bridge.
- 10.3 If the Bridge causes damage to any property of, or otherwise causes loss to, the NZTA or a third party, the Hirer will be liable to pay such damage or loss.

11 Early Termination of Hire in Emergency**11.1 Election of Early Termination Hire Fee**

If the Hirer is not a Government Entity, the Hirer may elect the Early Termination Hire Fee is to apply to the Bridge Hire.

11.2 Early Termination in an Emergency

If the Hirer has elected the Early Termination Hire Fee, the NZTA may terminate the Bridge Hire by giving one week's prior written notice to the Hirer if the NZTA determines that the Bridge is required for emergency use or as back-up stock where the NZTA's Bailey bridge stocks are low as a result of an emergency or emergencies. Following termination of the Bridge Hire, the NZTA will refund any excess Hire Fee paid by the Hirer. The Hirer must pay the Dismantling Fee for the NZTA dismantling and removing the Bridge.

11.3 Reinstatement of Bridge

If the NZTA has terminated the Bridge Hire under clause 11.2 and the Hirer requires reinstatement of the Bridge when practicable then no Construction Fee or Dismantling Fee is payable by the Hirer in respect of the subsequent supply of the Bridge.

12 Hirer's Obligations

The Hirer must:

- 12.1 Not, except as permitted or required by this Hire Agreement, in any way add to, interfere with or modify the Bridge or any sign affixed to the Bridge by or at the discretion of the NZTA or do anything which would interfere with the proper and safe working of the Bridge without the prior written consent of the NZTA;
- 12.2 Notify the NZTA immediately if the Bridge or any part of the Bridge is lost, stolen, destroyed, damaged, or has deteriorated in any way, or is otherwise rendered unsafe or potentially unsafe;
- 12.3 Restrict or close access to the Bridge immediately it becomes aware that the Bridge has become unsafe;
- 12.4 Not sell, sublet, hire, encumber, charge or part with possession of or otherwise deal with the Bridge without the NZTA's prior written consent;
- 12.5 Comply with all relevant statutes, regulations, bylaws, resource and building consents and local authority requirements;
- 12.6 Maintain signage on the Bridge or on the approaches to the Bridge as required by the NZTA and any relevant statute, regulation, or bylaw;
- 12.7 Notify the NZTA as soon as it becomes aware that the Hirer will lose the ability to exercise control over any land on which the Bridge is located;
- 12.8 Not by signage or conduct, represent that it has any interest in the Bridge;
- 12.9 Ensure it has in place public liability insurance of at least \$2,000,000 for any one claim or series of claims arising out of the same occurrence in respect of the Hirer's use and operation of the Bridge including its use and operation by any of the Hirer's Contractors; and
- 12.10 If it is not a Government Entity, at all times during the period commencing on the first day of the Term and ending on the day the NZTA notifies the Hirer that it has dismantled and removed the Bridge:
 - 12.10.1 Insure and keep insured, for the full replacement value, the Bridge on terms, and with an insurer, acceptable to the NZTA;
 - 12.10.2 Insure and keep insured, the Hirer against all its potential liabilities under clause 10 on terms, and with an insurer, acceptable to the NZTA;
 - 12.10.3 Pay all insurance premiums when due, and if required by the NZTA, deliver to the NZTA receipts for the premiums;
 - 12.10.4 Ensure that the interest of the NZTA as co-insured and as owner of the Bridge is noted on each insurance policy; and
 - 12.10.5 Ensure that no termination of, cancellation of, change to or reduction in any insurance cover occurs or is effected without the prior written consent of the NZTA.

13 Hirer's Additional Obligations

The Hirer warrants and undertakes that:

- 13.1 It will ensure that each Hirer's Contractor complies with each obligation on the Hirer under this Hire Agreement (except for payment obligations and any other obligation the NZTA agrees is, or will be, the sole responsibility of the Hirer); and
- 13.2 If the Hirer has notified the NZTA that the NZTA may correspond directly with the Hirer's Contractor, any notice or other communication under this Hire Agreement may be validly made to either the Hirer's Contractor or the Hirer, at the NZTA's discretion.

14 Extension of Term Hire

- 14.1 The Hirer may, in writing and at least 6 months before the end of the Term, request that the NZTA extend the Term by a further period of not more than 2 years. The NZTA may extend the term, but is not obliged to do so. The NZTA must notify the Hirer within 1 month of the Hirer's request:
 - 14.1.1 Whether the NZTA agrees to extend the Term;
 - 14.1.2 The period for which the NZTA agrees to extend the Term; and
 - 14.1.3 The Hire Fee for the extended Term. Any increase in the Hire Fee must not exceed the increase in the Construction Price Index since the date of this Hire Agreement.
- 14.2 If the Hirer agrees to the extended Term and the Hire Fee notified by the NZTA, it must notify the NZTA of its agreement within 1 month of the NZTA's notice under clause 14.1. The Term and Hire Fee will be adjusted accordingly, with effect from the date upon which the Term would have expired but for the extension under this *clause 14*.

15 Termination of Hire

- 15.1 The Hirer must, not less than 2 weeks before the Termination Date, give written notice to the NZTA requesting the NZTA to dismantle and remove the Bridge.
- 15.2 If the Hirer wishes to terminate the Bridge Hire before the Termination Date, it must give the NZTA at least 2 weeks written notice. No such notice may be given within 3 months of the commencement of the Term or less than 3 weeks before the end of the Term.

16 Dismantling and Removal

16.1 Dismantling and removal

If requested by the Hirer, the NZTA and the Hirer will use reasonable endeavours to agree on a timetable for dismantling and removal of the Bridge by the NZTA. Until the NZTA has notified the Hirer that it has dismantled and removed the Bridge, the Hirer will leave the approaches to the Bridge in place, and will allow the NZTA reasonable access to the site on which the Bridge is constructed. The NZTA will dismantle and remove the Bridge in accordance with the Bailey Bridge Manual and all applicable laws and regulations. The NZTA will use reasonable endeavours to ensure that the components of the Bridge are removed to the agreed timeframe (if there is one).

16.2 Cost of dismantling and removal

The Hirer will be liable for the cost of the NZTA dismantling and removing the Bridge in accordance with this Hire Agreement (the Dismantling Fee). The NZTA will render an invoice to the Hirer for the Dismantling Fee following dismantling and removal of the Bridge. In the absence of manifest error, such invoice will be conclusive evidence of the Dismantling Fee and the other matters contained in the invoice. The Hirer may request a written estimate of the Dismantling Fee before the NZTA commences dismantling the Bridge.

16.3 Delay in Removal

The NZTA may delay the start of dismantling or stop the dismantling and removal of the Bridge if the NZTA determines, in its discretion, that this is necessary or desirable as a result of any act or omission of the Hirer or the Hirer's Contractor. The Hirer will pay the costs incurred by the NZTA from the delay or stop in the dismantling and removal of the Bridge. The NZTA may include those costs in its invoice for the Dismantling Fee or render a separate invoice.

17 Interest on Overdue Monies

If the Hirer fails to make any payments due under this Hire Agreement on the due date for payment, the Hirer is, upon demand by the NZTA, to pay to the NZTA interest on the due amount from the due date until the date of payment of that amount to the NZTA at the Default Rate.

18 Default by Hirer**18.1 Default by Hirer**

Without limiting any other rights of the NZTA, if Hirer is in breach of any of its obligations under this Hire Agreement then the NZTA will be entitled to take all steps it considers necessary to remedy the breach and to protect its interest in the Bridge. All costs, expenses or other moneys incurred by the NZTA or which the NZTA is liable to pay (including the NZTA's internal time costs) in remedying any breach must be paid by the Hirer to the NZTA on demand. If the Hirer does not pay on demand then interest at the Default Rate is payable by the Hirer on the outstanding amount until the date of full repayment by the Hirer.

18.2 Other Defaults and Consequences

If the Hirer:

- 18.2.1 Fails to pay any amount due under this Hire Agreement within 14 days of it being due;
- 18.2.2 Becomes insolvent, or a liquidator is appointed in respect of the Hirer or any receiver, manager, receiver and manager, trustee or administrator is appointed in respect of any of the Hirer's assets, and such person fails, within 10 Business Day's to make arrangements satisfactory to the NZTA in respect of the Hirer's obligations under this Hire Agreement;
- 18.2.3 Ceases to carry on all or substantially all of its business or operations;
- 18.2.4 Fails to strictly observe or perform any term of this Hire Agreement which it is required to perform or observe whether or not the relevant failure is capable of remedy;

- 18.2.5 Abandons or is otherwise no longer able to exercise control over any land on which the Bridge is located or is in breach or in default under any lease or licence relating to any land on which the Bridge is located;
- 18.2.6 Does or causes or permits to be done any other act or thing which may prejudice the NZTA's rights and title to the Bridge; or
- 18.2.7 Is not a Government Entity and there is any change in the effective control of the Hirer without the prior written consent of the NZTA; then the NZTA may by written notice to the Hirer terminate all of the Hirer's rights under this Hire Agreement and:
- 18.2.8 All amounts payable by Hirer under this Hire Agreement will immediately become due and payable (whether or not at that time due for payment) together with either:
 - (i) all costs and expenses reasonably required to restore the Bridge to a state of good and proper working order and condition; or
 - (ii) the Dismantling Fee and all costs and expenses incurred in repossessing or attempting to repossess the Bridge; and
- 18.2.9 The NZTA may immediately take possession of the Bridge and any documents related to the Bridge.

19 Exclusion of Warranties and Liabilities

- 19.1 Except as set out in clause 19.2, the NZTA is under no liability to the Hirer for:
 - 19.1.1 Any interruption or loss of service or use of the Bridge caused by any reason other than negligence of the NZTA.
 - 19.1.2 The Bridge being inadequate for any purpose not notified in writing to the NZTA before this Hire Agreement is executed.
 - 19.1.3 Any liability, claim, loss, damage or expense of any kind caused directly or indirectly by the Bridge or any part of it.
- 19.2 The NZTA is liable to the Hirer for direct physical damage caused by the NZTA, the Bridge or any part of the Bridge to property of the Hirer to the extent that the NZTA's negligence caused the damage but is not liable to the Hirer for any consequential loss; nor is the NZTA liable under this Hire Agreement to any other person.

20 Dispute Resolution

If any dispute arises between the parties in connection with this Hire Agreement, either party may by written notice to the other party require that an attempt be made to resolve the dispute by agreement between the parties using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other such alternative dispute resolution technique. If the parties do not resolve the dispute by agreement within 14 days of the written notice (or any further period as the parties may agree in writing) then either party may by written notice to the other party require that the dispute be referred to arbitration under the Arbitration Act 1996.

21 Force Majeure

- 21.1 Non-performance by either of the parties of any of its obligations (other than to pay money) under this Hire Agreement is excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure.
- 21.2 The party claiming the benefit of this clause must promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under this Hire Agreement and the likely duration of such non-performance. In the meantime such party must take all reasonable steps to remedy or abate the Force Majeure.
- 21.3 No party is by virtue of this clause, required against its will to settle any strike, lockout or other industrial disturbances.
- 21.4 Performance of any obligation affected by Force Majeure must be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure.
- 21.5 An obligation arising during any period of suspension of rights and obligations under this clause must be performed as soon as practicable after the suspension ends.
- 21.6 “Force Majeure” means any:
- 21.6.1 act of God, fire, earthquake, volcanic eruption, storm, flood, or landslide;
 - 21.6.2 strike, lockout, work stoppage or other labour hindrance;
 - 21.6.3 explosion, spillage or public mains electrical supply failure;
 - 21.6.4 sabotage, riot, civil disturbance, insurrection, national emergency (whether in fact or law) or act of war (whether declared or not);
 - 21.6.5 other similar cause beyond the reasonable control of the party claiming the benefit of the Force Majeure clause in this Agreement and which that party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost;
- but does not include:
- 21.6.6 any event which the party affected could have prevented or overcome by exercising a standard of reasonable care; or
 - 21.6.7 a lack of funds for any reason.

22 Hirer Acknowledgements

The Hirer acknowledges that:

- 22.1 It has entered into this Hire Agreement on the basis of its own judgment and evaluation and not on the basis of any representation or warranty by or on behalf of the NZTA unless that representation or warranty is stated in this Hire Agreement;
- 22.2 it may not bring any claim or action alleging misrepresentation or breach of warranty unless the representation or warranty on which the claim or action is based is stated in this Hire Agreement;
- 22.3 it has taken such advice as it considers relevant from advisors independent of the NZTA and is not relying on any statement outside this Agreement from or on behalf of the NZTA (whether written or otherwise) in entering into this Hire Agreement.

23 Performance by the NZTA

The NZTA is to perform its obligations and exercise its rights under this Agreement either personally or through the service contractor named in Background B or any other contractor or agent, but without affecting the liability of the NZTA to the Hirer under this Hire Agreement.

24 Miscellaneous

24.1 Survival

The obligations and liabilities of the Hirer under this Hire Agreement in respect of any matter arising during the term of this Hire Agreement, (and the dismantling and removal of the Bridge on the termination or expiry of this Hire Agreement) survive the termination or expiry of this Hire Agreement

24.2 Notices

Any notice required pursuant to this Hire Agreement must be in writing and is regarded as having been given and received if:

- 24.2.1 personally delivered to the party for whom it is intended or to that party's address described in item 4 of the Schedule or otherwise notified to the other party for the purpose of notices under this Hire Agreement;
- 24.2.2 mailed by prepaid registered mail, to the last known business address in New Zealand of the party for whom it is intended. In this case receipt is to be regarded as occurring on the second business day after the day of posting; or
- 24.2.3 sent by facsimile, to the facsimile number of the party for whom it is intended, and a confirmation of proper receipt is held by the sending party. In this case receipt is to be regarded as occurring at the date and time of receipt, or if that is after 4.30pm or on a day other than a Business day, then receipt is to be regarded as occurring on the next Business day.

24.3 Amendments

No amendment to this Hire Agreement will be effective unless it is in writing signed by all the parties.

24.4 Counterparts

This Hire Agreement may be executed by the parties in separate counterparts, including by way of facsimile. Each counterpart when so executed and delivered will be an original for all purposes. All such counterparts will together constitute one and the same instrument.

24.5 Severability

Where:

- 24.5.1 any provision of this Hire Agreement is held to be invalid; or
- 24.5.2 either party is unable to perform any of its obligations by reason of a change in the law;
- 24.5.3 the parties will negotiate in good faith to achieve a similar economic and practical effect for both parties;
- 24.5.4 any provision of this Hire Agreement is held to be invalid the other provisions are not affected but may be subject to negotiation under *clause 24.5.2*.

24.6 Waivers

A waiver by either party of any of its rights or any obligation of the other party is effective only if in writing and expressly stated to be a waiver for the purposes of this Hire Agreement.

24.7 Complete Agreement

This Hire Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Hire Agreement. This Hire Agreement supersedes any prior agreements with respect to its subject matter.

24.8 Further Assurances

Each party agrees that, from time to time, it will do and perform in a timely manner any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the other party for the purpose of carrying out the intention of this Hire Agreement.

Signed by **NEW ZEALAND TRANSPORT AGENCY** by:

Name

Position

Signed by [**Insert full legal name of Hirer in bold capitals*] by:

Name

Position

SCHEDULE

1 Specifications of Bailey Bridge superstructure and bearings:

[insert specifications required by Hirer]*

2 Monthly Hire Fee: \$[insert agreed monthly hire fee]

3 Early Termination Hire Fee (clause 11.1): [state either “elected to apply” or “not applicable”]

Initial addresses of the parties: **NZTA:**

Address: 5th Floor, Majestic Centre, 100 Willis Street, Wellington

Private Bag: 6995, Wellington 6141

Facsimile Number: 894 6146

Contact Person: Neil Beckett

Address:

PO Box:

Facsimile Number:

Contact Person:

Cost Sharing Contract

DRAFT

1 December 2008

Parties

NEW ZEALAND TRANSPORT AGENCY

("NZTA")

and

[LOCAL AUTHORITY]

(the Principal)

COST SHARING CONTRACT



COST SHARING CONTRACT

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PARTIES

- (1) NEW ZEALAND TRANSPORT AGENCY (NZTA)
- (2) [LOCAL AUTHORITY] (*the Principal*)

1 INTERPRETATION**1.1 Application**

This Section shall apply to the Contract Documents unless inconsistent with the context.

1.2 Definitions

Contract Agreement means the written agreement for the fulfilment of the contract signed by the Principal and NZTA.

Contract Documents means the Contract Agreement in the First Schedule and the documents referred to in and forming part of the Contract Agreement.

Contract Price means the sum named in the Contract Documents for the completion of the Contract Works subject to such adjustments as are provided for in the Contract Documents.

Contract Works means the works including Temporary Works to be executed in accordance with the contract.

Cost includes expense or loss and overhead cost whether on or off the Site.

Daywork means work to which 8.4 applies.

Days when used to express a period of time means Working Days.

Drawings means the drawings included in the Contract Documents together with any modification of such drawings.

Due Date for Completion has the meaning assigned to it in the First Schedule.

Materials means any raw or manufactured material, goods or things (other than Plant) required for use in the Contract Works.

Month means a calendar month.

Plant means all appliances, temporary buildings and equipment of whatsoever nature required for the construction, completion or maintenance of the Contract Works but not intended to be incorporated in the Contract Works.

Prime Cost Sum has the meaning assigned to it in 5.6.

Principal means [] and includes its successors.

Schedule means the third schedule included in the Contract Documents which shows the prices payable for sections or items of the Contract Works and the proportion of such prices payable by the Principal and may also include quantities, rates, Prime Cost Sums and contingency sums.

Site means the land and other places on or over or under which the Contract Works are to be carried out together with any other places made available to NZTA by the Principal conditionally or unconditionally for the purposes of the Contract.

Special Conditions means the First Schedule and such other documents as are included in the Contract Documents which add to or delete from or modify these General Conditions.

Specifications means documents included in the Contract Documents containing descriptions of Materials and workmanship and other details of the Contract Works together with any additions to or modifications of such documents approved in writing by NZTA and the Principal for the purpose of the Contract.

Subcontractor means any person who contracts with NZTA to carry out or supply part of the Contract Works on behalf of NZTA and includes a nominated subcontractor under 3.4.

Temporary Works means works of any kind, not being part of the Contract Works to be taken over by the Principal, but which are required for the execution of the Contract Works.

Variation means a variation to the Contract Works pursuant to clause 4 and any other matter which is stated to be a Variation by the General Conditions or by the Special Conditions.

Week means a period of seven consecutive calendar days.

Working Day means a calendar day other than any Saturday, Sunday, public holiday or any day falling within the period from 24 December to 5 January both inclusive.

1.3 General

- 1.3.1 Where the context so requires, words importing the singular shall include the plural and *vice versa*, and words importing the masculine shall include the feminine and the neuter.
- 1.3.2 Cross-references to other clauses or clause sub-divisions within these General Conditions quote the number only.
- 1.3.3 The headings to clauses are for convenience only and shall not affect their interpretation.

1.4 Law, currency and language

- 1.4.1 The contract shall be governed by and construed with reference to the law for the time being in force in New Zealand.
- 1.4.2 All prices and payments made under the contract shall be in New Zealand currency and payable in New Zealand.
- 1.4.3 All communications between the Principal and NZTA shall be in the English language.

1.5 Computation of time

- 1.5.1 Where any period of time from a given day, act or event is prescribed or allowed for any purpose, the time shall, unless a contrary intention appears, be reckoned as exclusive of that day or the day of that act or event.

2 THE CONTRACT**2.1 Type of contract**

- 2.1.1 The contract shall be a cost share contract in the proportions set out in the Schedule of Prices.

2.2 Evidence of contract

- 2.2.1 Unless and until the Contract Agreement is executed by the parties, the offer and its acceptance between NZTA and the Principal shall, together with the other documents intended to form part of the contract, constitute the contract between them.

2.3 Use of documents

- 2.3.1 NZTA shall maintain on Site at least one copy of the Drawings and Specifications marked to show where superseded or modified together with at least one copy of all amended Drawings, supplementary Drawings, information or directions as may be issued by the Engineer from time to time during the Contract.
- 2.3.2 The Contract Documents shall be taken as mutually explanatory and if there are ambiguities or omissions these shall not invalidate the contract.

3 CONTRACTOR'S OBLIGATIONS

3.1 General responsibilities

- 3.1.1 NZTA shall complete, hand over to the Principal and maintain the Contract Works and arrange to provide all services, labour, Materials, Plant, Temporary works, transport and everything whether of a temporary or permanent nature required so far as the necessity for the same is specified in or to be inferred from the Contract Documents.

3.2 Contractor's representative

- 3.2.1 NZTA shall arrange to provide all necessary supervision during the contract. It shall have on the Site at all working times a competent representative. All work shall be carried out under the supervision of NZTA's representative.

3.3 Possession of the Site

- 3.3.1 Where necessary, the Principal shall give NZTA possession of the Site on the date as is provided in the First Schedule.
- 3.3.2 Should the Principal not give possession of the Site or any portion of the Site, in accordance with the First Schedule, for any reason other than default of NZTA in carrying out his obligations under the contract, NZTA may suspend the commencement of work on the Site or on that portion of the Site by notice in writing.
- 3.3.3 The Principal shall obtain authority for NZTA to have the reasonable right of entry upon and do any act upon any adjoining property as may be necessary for the commencement or prosecution of the Contract Works. Such access may be limited by the Special Conditions. Any Costs involved in obtaining such right shall be borne by the Principal. NZTA shall respect the rights of the adjoining property owners and shall make good at its own expense with the least possible delay any damage arising out of its operations. NZTA shall procure for itself at its own Cost the use of or inappropriate rights in respect of any other property which it may choose to use for carrying out the Contract Works.

3.4 Separate contractors

- 3.4.1 NZTA may arrange for work on the Site to be carried out under separate contract by parties other than NZTA and concurrently with the carrying out of the Contract Works. Such parties shall be engaged directly by NZTA and are referred to as "subcontractors".

3.5 Care of the works

- 3.5.1 NZTA shall be responsible for the care of the Contract Works and all Plant from the time it obtains possession of the Site until the time of completion.
- 3.5.2 NZTA shall be responsible for the care of all Materials which are in its care or possession awaiting incorporation in the Contract Works.
- 3.5.3 NZTA shall be responsible for and shall indemnify the Principal against loss or damage to the Contract Works occurring after completion arising out of the execution of NZTA's outstanding obligations under the contract.
- 3.5.4 Except where loss or damage has the effect of terminating the contract by frustration, should any loss or damage occur to the Contract Works or Materials while NZTA is responsible for their care, NZTA shall repair the loss or damage to the extent needed for completion, handing over and maintenance of the Contract Works. Such repair of damage shall be carried out without additional payment by the Principal unless caused by an excepted risk defined in 3.5.5, in which event the repair (to the extent its necessity arises from an excepted risk) shall be a Variation.
- 3.5.5 The excepted risks are:
- (a) riot (insofar as it is uninsurable), civil commotion or disorder (unless solely restricted to employees of NZTA or his/her Subcontractors and arising from NZTA's conduct of the Contract Works), war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection of military or usurped power;
 - (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any nuclear explosive, nuclear assembly or nuclear component thereof;
 - (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

- (d) the use, occupation or taking over of any portion of the Contract Works including but not limited to any portion in respect of which a certificate of Practical Completion has been issued;
- (e) the design of the Contract Works other than by NZTA or by a person acting on his behalf;
- (f) any such operation of the forces of nature as an experienced contractor could not foresee or reasonably make provision for or insure against;
- (g) any risks specifically excepted in the Special Conditions;
- (h) any act or omission of the Principal or of any other person for whose acts or omissions the Principal is as between himself and NZTA responsible.

3.6 Protection of persons and property

- 3.6.1 So far as the Site and the Contract Works are under NZTA's control, NZTA shall take all reasonable steps to keep them in an orderly state and in such a condition as to avoid danger to persons and property.
- 3.6.2 NZTA shall 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 others.
- 3.6.3 NZTA shall indemnify the Principal against any liability or Cost resulting from extraordinary or excessive traffic on any highway, road or bridge arising from the execution of the Contract Works.
- 3.6.4 NZTA shall take all reasonable steps to avoid nuisance and prevent damage to property.

3.7 Setting out

- 3.7.1 NZTA shall be responsible for the setting out of the Contract Works in accordance with the Contract Documents.
- 3.7.2 NZTA shall preserve and maintain in their true position all survey marks other than marks which are required to be covered or removed by the Contract Works. Should any survey mark be disturbed or obliterated, NZTA shall arrange its replacement at its own Cost.

3.7.3 If at any time prior to completion of the contract works any error shall appear in the position, levels or dimensions of any part of the Contract Works set out by NZTA, NZTA shall rectify the error. The Cost of rectification shall be borne by NZTA except and to the extent that any error arises out of incorrect information supplied by the Principal, and which was not known by NZTA to be incorrect at the time of tender.

3.8 Materials, Labour and Plant

3.8.1 NZTA shall, except where otherwise specified in the Contract Documents, supply at its own Cost everything necessary for the completion of the Contract Works and the performance of its obligations under the contract including minor items not expressly mentioned in the Contract Documents and of a type not normally detailed but necessary for completion and performance of the Contract Works.

3.8.2 All materials and workmanship shall conform to the provisions of the Contract Documents, with work being carried out in a tradesperson-like manner. Unless otherwise specified, all Materials used other than in Temporary Works shall be new.

3.9 Programme

3.9.1 NZTA shall prepare a construction programme and submit it to the Principal within the nominated time. The programme shall show the proposed order of work and the dates for commencement and completion of the various stages of the Contract Works.

3.9.2 The supply of Materials, services and work to be supplied by the Principal shall be phased to comply with NZTA's programme or as otherwise reasonably requested by NZTA.

3.9.3 If it becomes evident to NZTA that completion of the Contract Works is likely to be delayed, it shall notify the Principal as soon as practicable.

3.9.4 From time to time, the Principal may require NZTA to amend its programme to take account of the actual progress of the Contract Works.

3.9.5 Work requiring inspection by the Principal other than emergency work shall be carried out on Working Days and within normal working hours unless NZTA has given reasonable prior notice to the Principal.

3.10 Compliance with laws

3.10.1 In carrying out the contract the Principal and NZTA shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Contract Works.

- 3.10.2 Unless the Contract Documents require otherwise, the Principal shall obtain all licences and approvals of public authorities which may be required for the use of the Contract Works when constructed. NZTA shall give all notices and obtain all other necessary permits and approvals as may be required for the construction of the Contract Works and shall pay all proper charges for such permits and approvals. The Principal shall arrange for NZTA to be supplied with copies of any necessary documents and other information in order to comply with this clause.
- 3.10.3 If the issue of any permit or approval is delayed without fault of NZTA and NZTA thereby suffers delay in the completion of the Contract Works or incurs additional Cost, the effect of the delay in the issue of the permit or approval shall be a Variation.
- 3.10.4 From time to time at the request of the Principal and in any case before the completion of the Contract Works NZTA shall deliver to the Principal all documents necessary to prove the issue of notices, permits and approvals for which NZTA is responsible under this clause.

4 VARIATIONS

4.1 Variations permitted

- 4.1.1 The Principal and NZTA may agree to any Variations to the Contract Works.
- 4.1.2 The Principal and the Contract may agree to direct or change the order in which the work is to be carried out. Any such agreement shall be a Variation.
- 4.1.3 NZTA shall carry out and comply with any Variation agreed to under this clause.
- 4.1.4 The value of Variations shall be added to or deducted from the Contract Price.

5 PAYMENTS

5.1 Contractor's claims

- 5.1.1 NZTA shall submit to the Principal invoices for payment under the contract. Unless otherwise provided in the Contract Documents such invoices shall be submitted in respect of work carried out during periods of not less than one Month.
- 5.1.2 NZTA's invoices shall show:
- (a) the estimated extent and value of the Contract Works, excluding Variations, which have been carried out

- (b) the estimated extent and value of all work done or other Cost which is claimed in respect of Variations
- (c) the estimated extent and value of Materials delivered to the Site which are intended to be incorporated in the Contract Works but have not yet been so incorporated
- (d) any advances for Temporary Works or Plant or for Materials not yet on Site for which payment is provided in the Contract Documents
- (e) the estimated value of Cost fluctuations
- (f) the proportion of each of the above items to be met by the Principal in accordance with the Schedule of Prices.

5.1.3 Within 8 Working Days after the receipt of NZTA's invoice the Principal shall pay to NZTA the sum invoiced less any deductions which are required by the terms of the contract or by law.

5.2 Final invoice

5.2.1 Not later than two Months after the completion of the Contract Works NZTA shall submit to the Principal a final invoice of all NZTA's claims in relation to the contract. The final invoice shall state the amount or amounts claimed by NZTA in respect of all outstanding invoices and shall show next to each amount what proportion of the amount is due from the Principal. This account shall be endorsed "final invoice" and signed by NZTA.

5.2.2 Submission of the final invoice by NZTA shall be conclusive evidence that NZTA has no outstanding claim against the Principal except as contained therein, and except for any item which has been referred to arbitration under clause 6. The Principal shall not be liable to NZTA for any matter in connection with the contract unless contained within the final invoice but this shall not preclude the later correction of any clerical or accounting error.

5.3 Interest

5.3.1 The Principal shall pay NZTA interest on all monies certified as payable and remaining unpaid after the expiry of the time provided for payment in the invoice or if no time is provided for payment then after 8 working days.

5.3.2 The rate of interest shall be equal to one and a quarter times the average interest rate as certified by a chartered accountant or trading bank manager, which is currently payable or which would be payable by NZTA for overdraft facilities [or 11% per annum accruing daily].

5.3.3 The right to interest shall be additional to any other remedy to which NZTA may be entitled at law.

5.4 Cost fluctuations

5.4.1 If after the date of this Agreement the making of any statute, regulation or bylaw, or the imposition by Government or by a local authority of any royalty, fee or toll increases or decreases the Cost to NZTA of performing the contract, such increase or decrease not being otherwise provided for in the contract, the effect shall be treated as a Variation.

5.4.2 A cost fluctuation adjustment shall be paid in accordance with the provisions of Appendix A unless otherwise provided in the Special Conditions.

5.4.3 Claims for Cost fluctuation adjustments in accordance with this clause may be submitted by NZTA to the Principal each month in writing and a detailed summary of all such claims shall be submitted with the final invoice.

5.5 Prime Cost Sums

5.5.1 Prime Cost Sums may be provided for Materials to be supplied by NZTA or by a Nominated Subcontractor for incorporation into the Contract Works. Such sums shall be expended only on agreement between the Principal and NZTA.

5.5.2 NZTA shall obtain quotations and samples for the Materials covered by the Prime Cost Sums and submit them to the Principal for its approval.

5.5.3 The amount payable to NZTA in respect of a Prime Cost Sum shall be varied by the substitution for the Prime Cost Sum of the following:

- (a) the net purchase price payable by NZTA (without deduction of any cash discount for early payment), together with
- (b) a reasonable allowance for NZTA's expense and profit on the Materials to which the Prime Cost Sum relates.

5.5.4 The proportion of the Prime Cost Sum payable by the Principal to NZTA shall be that proportion provided in the Schedule of Prices or if no proportion is provided then such proportion shall be agreed between the Principal and NZTA in writing.

5.6 Contingency sums

- 5.6.1 Contingency sums may be provided for any work which may be executed by NZTA, but the expenditure on which is unknown at the time of entering into this Agreement. Such sums shall be expended only after written agreement between the Principal and NZTA. The proportion of the Contingency sum payable to NZTA by the Principal shall be that proportion provided in the Schedule of Prices or if no proportion is provided then such proportion shall be agreed between the Principal and NZTA in writing.
- 5.6.2 All work carried out under a contingency sum shall be a Variation.

6 DISPUTES

6.1 General

- 6.1.1 No decision, valuation or invoice of NZTA shall be questioned or challenged more than three Months after it has been given to the Principal unless notice has been given to NZTA within that time.
- 6.1.2 Every dispute or difference concerning the contract shall be dealt with under the following provisions of this Section.

6.2 Conciliation and arbitration

- 6.2.1 If the Principal and NZTA cannot reach agreement on any matter, then either the Principal or NZTA may by notice require that the matter in dispute be referred to arbitration.
- 6.2.2 A notice requiring arbitration shall be in writing and shall be given by the Principal or NZTA to the other of them within one Month after negotiations between the parties have broken down.
- 6.2.3 The notice requiring arbitration may include a request for conciliation. If such a request is made and is acceded to by the other party then the Principal and NZTA shall endeavour to agree on a conciliator and shall submit the matter in dispute to him to her. The conciliator shall discuss the matter with the parties and endeavour to resolve it by their agreement. All discussions in conciliation shall be without prejudice, and shall not be referred to in any later proceedings. Failing agreement the conciliator may by written decision himself or herself determine the matter. The conciliator's determination shall be binding on both parties unless within ten Working Days either party notifies the other in writing that it rejects the conciliator's determination. The Principal and NZTA shall bear their own costs in the conciliation, and shall each pay half the costs of the conciliator.

- 6.2.4 If:
- (a) conciliation has not been requested, or if requested has not been agreed upon within ten Working Days of the request; or
 - (b) the parties have agreed upon conciliation but have been unable within ten Working Days of such agreement to agree upon a conciliator; or
 - (c) no agreement has been reached in conciliation and no determination has been issued by the conciliator within two Months of the request for conciliation, or within such further time as the parties may agree; or
 - (d) either party has within the prescribed time rejected the conciliator's determination
- then the matter in dispute shall be referred to arbitration.
- 6.2.5 The dispute shall be referred to a sole arbitrator if the Principal and NZTA agree upon one, and if not then to two arbitrators, one appointed by each party, and their umpire. References in this Section to "the arbitrator" shall include two arbitrators and their umpire.
- 6.2.6 The arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, direction, or valuation.
- 6.2.7 Where the matter has been referred to conciliation the conciliator shall not be called by either party as a witness, and no reference shall be made to the determination, if any, issued by the conciliator in respect of the matter in dispute.
- 6.2.8 The award in the arbitration shall be final and binding on the parties.
- 6.3 Suspension during dispute**
- 6.3.1 No dispute proceeding shall entitle NZTA to suspend the execution of the Contract Works, except with the agreement the Principal in writing.
- 6.3.2 No payment due or payable shall be withheld on account of disputes proceedings other than payment of so much of the item as is in dispute.
- 6.4 Award of interest**
- 6.4.1 The arbitrator may award interest upon any amount due and payable under his or her award from the Principal to NZTA or vice versa at such rate and for such period as he or she considers just, down to the date of the award.

7 FRUSTRATION AND DEFAULT

7.1 Frustration

7.1.1 In the event that either the Principal or NZTA considers that the contract has become impossible of performance or has been otherwise frustrated, it may notify the other that it considers the contract to be terminated. If the other party agrees, or in the event of disagreement if it is so determined under clause 6 by conciliation or arbitration, then 7.1.2 shall apply.

7.1.2 The Principal shall pay NZTA:

- (a) the agreed proportion of the value of the work carried out at the date of termination less the amounts previously paid;
- (b) the agreed proportion of the Cost of Materials ordered for the Contract Works which have been delivered to NZTA or of which NZTA is legally obliged to accept delivery, and which NZTA delivers to the Principal. These Materials shall become the property of the Principal upon delivery to it;
- (c) the agreed proportion of cost fluctuation adjustments due and payable up to the date of termination;
- (d) fair compensation to NZTA for any Cost which is included in the First Schedule to the extent that the termination of the contract causes an under-recovery of that Cost;
- (e) the agreed proportion of any Cost reasonably incurred by NZTA in the expectation of completing the Contract Works in so far as such Cost is not covered by other payments under this clause;
- (f) the Cost of any works necessitated by the removal of Contractor's plant and the carrying out of the Engineer's instructions for the making safe of the Contract Works;
- (g) any other Costs resulting from the termination as are reasonable to compensate NZTA for disruption and are not otherwise provided in the Contract Documents.

8 SERVICE OF NOTICES**8.1 General**

- 8.1.1 The Principal or Contractor may require that any notice, instruction or other communication under the contract be given in writing.
- 8.1.2 Any document which is to be served upon the Principal or NZTA under the contract shall be sufficiently served if it is handed to an employee or to its appointed representative, or delivered to its address as stated in the Contract Documents or as subsequently advised in writing.
- 8.1.3 Proof that a document has been sent by prepaid post in a correctly addressed envelope shall be *prima facie* evidence of delivery in the ordinary course of post.

FIRST SCHEDULE
SPECIAL CONDITIONS OF CONTRACT

Contract for: _____

1. The Principal is: _____
of (street address: _____)
2. NZTA shall be given possession of the Site on:

3. NZTA shall complete the Contract Works by _____.
4. The amount of the insurance to be effected in respect of the Contract Works shall be not less than the total of the Contract Price and the following:
 - (a) for the Cost of demolition, disposal and preparation for replacement work, the sum of \$_____ (or _____% of the Contract Price)
 - (b) for professional fees including the cost of clerks of works and inspectors, the sum of \$_____ (or _____% of the Contract Price)
 - (c) for the value of items incorporated, or to be incorporated, in the Contract works, the cost of which is not included in the Contract Price, the sum of \$_____
 - (d) for increased construction Costs during the construction period _____% of the Contract Price
 - (e) for increased construction Costs due to delay during the reinstatement period _____% of the Contract Price.
5. (a) NZTA shall insure as provided in _____
6. Cost fluctuation adjustments
 - (a) shall be paid in accordance with Appendix A
 - (b) shall be paid in accordance with _____
 - (c) shall not be paid

(delete as appropriate)

7. Prime Cost Sums included in the contract are:

(a) _____ \$ _____

(b) _____ \$ _____

(c) _____ \$ _____

(d) _____ \$ _____

8. The contingency sum to be included in the contract is: _____

\$ _____

9. For the purpose of service of notices, the postal address of

(a) the Principal is _____

**SECOND SCHEDULE
CONTRACT AGREEMENT**

FOR _____

THIS AGREEMENT is made on _____ 19_____

BETWEEN NEW ZEALAND TRANSPORT AGENCY (NZTA)

AND _____

of _____ (*the Principal*)

IT IS AGREED as follows:

1. NZTA shall construct, complete, deliver and maintain the works and things described in the Contract Documents.
2. THE Principal shall pay NZTA the proportion of each cost as set out in the attached Schedule of Prices.
3. EACH party shall carry out and fulfil all other obligations imposed on that party by the Contract Documents.
4. THE Contract Documents are this Contract Agreement and the following which form part of this agreement:
 - (a) the General Conditions of Contract, NZS 3910:1987
 - (b) the Special Conditions of Contract
 - (c) the Specification
 - (d) the Drawings
 - (e) the Third Schedule "Schedule of Prices" (*delete if applicable*)
 - (f) *identify any additional documents to be included (for example agreed correspondence)*

THIRD SCHEDULE — SCHEDULE OF PRICES

Item	Value	Principals Proportion
1.		
2.		
3.		
4.		

WITNESS to the signature
of NZTA:

NZTA

WITNESS to the signature:
of the Principal:

Principal

APPENDIX A

COST FLUCTUATION ADJUSTMENT BY INDEXATION

A1

The provisions of this Appendix shall apply unless otherwise specifically provided in the Special Conditions.

A2

The amounts payable by the principal to the Contractor under the contract shall be adjusted up or down by amounts calculated in accordance with the following formula:

$$C = V \left[\frac{0.4(L - L')}{L'} + \frac{0.6(M - M')}{M'} \right]$$

Where C = Cost fluctuation adjustment for the quarter under consideration,

V = Valuation of work certified for payment as having been completed during the quarter under consideration subject to A3, but without deduction of retentions and excluding the Cost fluctuation adjustment,

L = Prevailing Weekly Wage Rates Index; — "part 1 Analysis: Private Sector: Industry 15 — Construction" published by the Department of Statistics applying for the quarter under consideration,

L' = Index as defined under L but applying for the quarter during which tenders close,

M = "Producers Price Index — Construction Inputs" published by the Department of Statistics applying for the quarter under consideration,

M' = Index as defined under M but applying for the quarter during which tenders close.

A3

For the purpose of calculating the Cost fluctuation adjustment, any Daywork, Prime Cost Sums, Variations and other payment items which are based on actual Cost or current prices and any advances shall be excluded from the Engineer's valuation.

A4

No other Cost fluctuation adjustment will be made by reason of any inaccuracy in the proportions of labour and Material Costs assumed in the above formula.

A5

The Contractor shall not be entitled to claim or have deducted any Cost fluctuation adjustment for any further changes in indices which occur after the Due Date for Completion of the contract.

A6

The indices to be used in the calculation of fluctuation shall be those first published by the Department of Statistics for the appropriate quarter.

A7

Where indices for the quarter have not yet been published, interim payments will be made on the basis of the indices for the most recent quarter for which indices are available.

A8

If at any time either of the indices referred to in A2 are no longer published by the Department of Statistics, or if the basis of either index is materially changed, the adjustment shall thereafter be calculated by using such other index, or in such other manner, as will fairly reflect the changes as previously measured by that index.

Delegation Agreement between the New Zealand Transport Agency and a Territorial Authority

In this Section

This section gives the wording for a formal agreement between NZTA and a territorial authority, where NZTA has resolved to delegate administration activities to the territorial authority.

DELEGATION AGREEMENT

THIS AGREEMENT is made the _____ day of _____

BETWEEN NEW ZEALAND TRANSPORT AGENCY a body corporate pursuant to the Land Transport Management Amendment Act 2008 ("NZTA")

AND [_____] a territorial authority within the meaning of the Local Government Act 2002 ("the Territorial Authority").

RECITALS

- A. The Territorial Authority wishes to exercise various of the functions, duties and powers of NZTA with respect to State highway.
- B. The Territorial Authority has requested NZTA to delegate those functions, duties and powers pursuant to section 62(1) of the Government Rounding Powers Act.
- C. NZTA has determined that the delegation will not result in an increased cost to the Account.
- D. NZTA considers that the Territorial Authority has the resources and capacity to exercise the delegation.
- E. The functions, duties and powers have not been delegated to any other territorial authority and NZTA is satisfied they ought not to be so delegated.
- F. NZTA has, [either by decision of the System Manager or by resolution of the Board], delegated to the Territorial Authority the functions, duties and powers set out below subject to the terms and conditions set out below.

AGREEMENT

- 1. Extent of Delegation: Conditions are set out hereunder and in the attached Schedule I ("the delegation").
- 2. Acceptance: The Territorial Authority consents to the delegation.
- 3. Exclusive Exercise of Powers: NZTA shall not have the power to exercise any of the powers so delegated during the period of the delegation.
- 4. State Highway Policy: Notwithstanding the delegation, NZTA retains the full power and control over State highway policy and the Territorial Authority shall comply with such policy as is communicated to it by NZTA from time to time.

5. Payment: NZTA shall pay the whole of the cost of the construction and maintenance of the State highway which is the subject of the delegation, being the costs included in the state highway output of NZTA's component of the *National Land Transport Programme*, provided that if the Territorial Authority elects to undertake any work of construction or maintenance that is of a higher standard than the standard prescribed by NZTA or is in addition to the works required to be undertaken in order to comply with that standard, then NZTA shall only contribute such costs as are required to meet the prescribed standard and not for the above standard or extra work, if any, unless NZTA considers this to be value for money.
6. Administration Costs: In addition to the costs payable under clause 5, NZTA shall pay the Territorial Authority an administration fee calculated in accordance with Schedule II, provided that, if the Territorial Authority considers that any alteration in policy or other action of NZTA has resulted in an increase in the costs of the delegation, the Territorial Authority may seek an amendment to Schedule II to compensate it for additional costs. On receipt of a request for amendment, NZTA shall agree to such amendment to Schedule II as it considers reasonable.
7. Liability: The Territorial Authority shall exercise the delegated powers in its own name and shall be liable to third parties accordingly; and neither NZTA nor the Crown shall be answerable to any third party for any act or default of the Territorial Authority in the course of the delegation, provided that where any such act or default occurs in the normal course of the delegation and is not the result of any negligent or wilful act of the Territorial Authority, its employees or agents, then NZTA shall indemnify the Territorial Authority for the reasonable costs incurred as a result of the act or default, provided that the Territorial Authority shall notify NZTA as soon as practicable of any alleged act or default which may give rise to a claim by a third party.
8. Compliance with Legislation: In exercising the delegation the Territorial Authority shall comply with all relevant legislation.
9. Compliance with NZTA Manuals: In exercising the delegation the Territorial Authority shall comply with all relevant NZTA manuals being those manuals set out in Schedule III and any other manuals notified to the Territorial Authority by NZTA during the course of the delegation. Such manuals shall be provided to the Territorial Authority by NZTA on request and NZTA shall notify the Territorial Authority of any amendment it makes to the manuals.
10. Compliance with Procurement Procedures: In letting any contracts required under the delegation, the Territorial Authority shall comply with the relevant Procurement Procedures approved by NZTA in compliance with the Procurement Manual.
11. Reporting: The Territorial Authority shall report to NZTA by the tenth day of each month and at such other times on request from NZTA. The reports shall be in the form set out in the attached Schedule IV or in such other form as is notified to the Territorial Authority from time to time.
12. Guidance from NZTA: In exercising the delegation, the Territorial Authority may seek guidance from NZTA but any guidance provided by NZTA is provided on the basis that the Territorial Authority will not rely on such guidance but will take such professional and other advice as is appropriate in the circumstances and, in reaching any decision required to be made in the course of the delegation, will rely on its own skill and judgement.
13. Capability Assessment: In requesting the delegation, the Territorial Authority has provided NZTA with the capability assessment attached as Schedule V. Should any material factor (noted as such in the schedule) in the capability assessment change, the Territorial Authority shall notify NZTA in writing of the change within 7 days of such change together with any proposed action to alleviate any reduction in the Territorial Authority's capability arising from the change.

14. Review: NZTA shall review the delegation at three-yearly intervals, with the first review being three years from the date of this agreement. All reviews shall include consideration of the Territorial Authority's performance of the delegation, the resources and capacity of the Territorial Authority to continue to exercise the delegation and the costs to the Land Transport Account of the delegation.
15. Surrender by Territorial Authority: Should the Territorial Authority wish to surrender the delegation it shall give notice in writing to that effect not later than six months before the end of financial year of NZTA and such notice shall take effect on the commencement of the following financial year.
16. Revocation by NZTA: If following a review under clause 14, or at any other time NZTA considers that the delegation results in an increase in cost to the Land Transport Account, or that the Territorial Authority no longer has the resources and capacity to exercise the delegation, or that the delegation should be to some other territorial authority, then NZTA shall advise the Territorial Authority of any proposed action and invite comment. Following consideration of the Territorial Authority's comments NZTA may, by resolution of the Board, revoke or vary the delegation and such revocation or variation shall be notified as soon as possible to the Territorial Authority, and take effect, upon receipt of such notification.
17. Property: On the surrender or revocation of the delegation the Territorial Authority shall, as soon as reasonably practical, transfer and, if deliverable, deliver to NZTA all property (including, but not limited to, all real property and all intellectual property) obtained by it as a result of the delegation or created by it, its agents or employees, in the course of the delegation.
18. Notices: Any notice or request to be given under this Agreement shall be in writing addressed to the party to whom it is to be sent at the address or facsimile number from time to time designated by that party in writing to the other. Until a change is so notified the address and facsimile number of each party is as follows:

New Zealand Transport Agency:	Majestic Centre 100 Willis Street (Private Bag 6995) WELLINGTON Facsimile: 04 894 6146 Attention: General Manager, System Design and Delivery
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Territorial Authority:

Attention:

THE COMMON SEAL of the)
NEW ZEALAND)
TRANSPORT AGENCY)
was hereunto affixed in)
the presence of:)

THE COMMON SEAL of)
_____)
was hereunto affixed in)
the presence of:)

Note: The schedule of administration functions as shown in Appendix 1A of this manual is to be attached as part of this Delegation Agreement.

SCHEDULE I

An example of special conditions specific to the agreement.

The following special conditions apply:

- I.1 The extent of delegation is defined as the current _____ District/City as depicted in Appendix .
- I.2 Projects shall be delegated for all phases at the discretion of the System Manager on approval of the National Land Transport Programme. Once a project is delegated it will remain with council until completion.
- I.3 The Delegated territorial authority shall manage overall works and fees programmes to maximise investment effectiveness within policy and budget.
- I.4 Projects that require consents:
 - (a) All planning consents shall be lodged by the Principal Planner. Subsequent hearings shall be directed by the Principal Planner.
 - (b) All resource consents, and statutory applications that do not require design mitigation measures for environmental effects, and will not be notified shall be delegated to council.
 - (c) Land Purchase shall be recommended to the System Manager for approval.
- I.5 Network control functions apply specifically to activities within road reserve except for the special conditions that apply to 50 km/h areas. Activities outside the road reserve shall be administered by the NZTA Regional Office and shall be a charge to Region ___ allocations.
- I.6 Information required by documents specified in Schedule III and reported through Schedule IV shall be supplied to the NZTA Regional Office 2 days in advance of the specified date.

SCHEDULE II

Method of calculation of administration fee, e.g.

- II.1 The annual administration fee payable shall comprise:
 - 1 \$150 per km, and
 - 2 1% of the actual annual expenditure.

SCHEDULE III

- III.1 NZTA *Standards and Guidelines Manual*.

SCHEDULE IV

Form of reports to the New Zealand Transport Agency, e.g.

- IV All reporting required by NZTA's *Planning, Programme and Funding Manual* shall be assumed by the Delegated Territorial Authority for the delegated area and report to the nominated System Manager's Agent.

Further specific reporting is:

Accrued indebtedness on the SAP output.

SCHEDULE V

Capability assessment of territorial authority. Material factors (required notification of change) are to be noted, e.g.

V.1 The Capability assessment of the _____ District/City Council is included in Appendix B

BETWEEN

NEW ZEALAND TRANSPORT AGENCY
("NZTA")

AND

("the TERRITORIAL AUTHORITY")

DELEGATION AGREEMENT

Dated 20.....

Conditions for Motor Vehicle Crossing Licenses on Highways

In this Section

This section contains the recommended special conditions to be used in a licence to occupy granting limited access permission for vehicles that do not pay road user charges and, also qualify for a full refund of motor spirits duty, to cross State highways.

Licence to Occupy

Agreements should be based on the *Licence to Occupy* long form agreement included in pages 13 to 22 above. The conditions below should be used as a basis for replacing the Special Conditions contained in that agreement.

1. THAT all travelling along the said highway with the said vehicles shall be confined to _____ the road reserve between RP _____ and RP _____.
2. THAT the grantee will meet all reasonable costs necessary in the opinion of the System Manager of NZTA to provide and maintain this access path along the [western] shoulder of the said highway.
3. THAT the grantee shall agree to meet reasonable capital and maintenance costs necessary in the opinion of the System Manager for any works considered necessary to accommodate the movement when the State highway is reconstructed including the construction of properly designed concrete crossing strips to be incorporated in the reconstruction of the pavement as required.
4. THAT the grantee shall be responsible for the costs of providing any traffic control signs and/or any other measures found to be necessary in the opinion of the System Manager to ensure the safety of traffic using the State highway.
5. THAT the grantee shall make good to the satisfaction of the System Manager at the grantee's own cost any damage to the said highway caused by the passage of the said vehicles within the boundaries of the legal road reserve permitted to be used by termination the grantee shall at the grantee's own cost restore the said highway if so required by and to the satisfaction of the System Manager.
6. THAT the grantee shall in exercising the rights hereby granted cause as little obstruction as possible to the use of the said highway by the public, and in particular will ensure, to the satisfaction of the System Manager, that the headlights of the said vehicles do not cause hazard to other users of the said highway.
7. THAT the grantee indemnifies the Board from and against all costs, actions, demands, suits, damages and proceedings of any kind for or in respect of any loss or damage that may directly or indirectly result by reason of the rights hereby granted and for that purpose shall take out policies of insurance fully assuring the Board and the grantee against all claims and liabilities whether under any statute or at common law which may arise from the grantee's exercise of its rights under this agreement.

AND it is hereby agreed and declared by and between the parties hereto:

8. THAT the Board may at any time during the continuance of the right hereby granted by written notice to the grantee require the grantee at its sole expense in all things to comply with any further conditions on the use of the said crossing places or other rights as the Board may consider necessary to ensure the safe and efficient use of the said highway.
9. THAT this grant is at all times subject to the provisions of section 48 of the Public Works Act 1981 as if this grant were a grant of easement within the meaning of that section.
10. THAT the grantee shall not acquire any vested right by virtue of the right hereby granted.

11. THAT the grantee shall not without the prior consent in writing of the Board assign, transfer, underlet, or part with its rights under this agreement and the grantee shall use rights hereunder only in connection with and for the purpose of the present business of the grantee.
12. THAT the grantee shall not have any claim whatsoever against the Board, its agents, representatives and contractors in respect of any alterations or work done on the said highway or road reserve which interferes with the grantee's rights under this agreement, nor shall the grantee be entitled to any compensation at any time should this agreement be terminated by the Board.
13. THAT any power may be exercised, or approval given hereunder on behalf of the Board, by the System Manager or other person acting under his express or implied authority.
14. THAT should the grantee in the exercise of its rights under this agreement be found in the opinion of the System Manager to constitute a danger to other road users, then the Board may terminate this agreement immediately by written notice to the grantee.
15. THAT in the construction of these presents when any notice is to be given by the Board that such notice be signed by some person acting under the Board's express or implied authority and sent by post or telegram addressed to the grantee's duly registered office.

Charges and Financial Cost Sharing

Authorisation for Charges The GRP Act authorises NZTA to make or pay charges either in accordance with the Act or by agreement.

Application for new services By convention, statute or agreement the following charges apply:

Service	Charges
Power, Gas and Telecommunications.	Reasonable processing and supervision costs
Territorial authority, Governmental Agency or Local Authority Trading Enterprise.	Nil for minor. Major installations shall be treated on their merits.
Private.	Processing and supervision costs (\$500 minimum).
Bonds	A bond shall be charged where considered reasonable to demand a bond due to previous non-performance. Bonds shall not be applied vexatiously.

Cost sharing agreements In all cases NZTA's consultants should advise the System Manager of activities which should be subjected to cost sharing and secure the agreement in writing of the other party.

NZTA and its consultants are responsible for advising the other party of the likely costs.

Agreement to payment is to be secured by an exchange of letters.

Cost shares are apportioned as prescribed in the GRP Act (s54) or as prescribed in applicable provisions of the relevant utility act. The share that NZTA agrees to has to be “reasonable”.

Annual lease charges, utility or TLA The GRP, Gas, Electricity and Telecommunications Acts do not permit a lease to be charged.

Annual lease charges, private individuals or bodies The GRP Act does permit a lease to be charged.
By convention a peppercorn is charged.

Service charges on bridges Applicants shall be charged for attaching services to a bridge. In the absence of costing records, the charge shall be assessed using the following formula:

$$\text{Charge} = \text{Bridge Construction Cost} \times \frac{\text{Weight of Services with Content}}{\text{Overall Weight of Bridge Superstructure}}$$

plus, the cost involved in assessing the practicality of and design required for any attachment.

System Managers have discretion in respect of the application of this charge. Should the costs of applying the charge particularly the professional services costs of calculating the charge, in the opinion of the System Manager, be greater than the likely cost recovery, then the charge may be waived.

Charges for relocation of services

The following charges shall apply:

Initiator of Relocation	Type of Service	NZTA Application Charges	NZTA Share of Relocation Cost
Utility Operator	Utility, TLA or private.	As for new services.	Nil.
NZTA	Telecommunications, power or gas.	Nil.	<u>On non-motorway State highways</u> - costs excluding all fittings other than those used only during construction. <u>On motorways</u> – in accordance with conditions previously agreed or in the absence of such agreement, 50% excluding betterment.
NZTA	Other utility or TLA.	Nil.	50 % excluding betterment.
NZTA	Private.	Nil.	Nil.

Reserving of additional ducting in bridges

Additional empty ducts in bridges shall not be placed or reserved for future use by a Utility Operator unless the bridge charge has been paid and the Utility Operator has stated a definite intention to install the service within a reasonable timeframe.

Installation of additional ducting in highways in general

Additional empty ducts in highways shall not be placed or reserved for future use by a Utility Operator unless the Utility Operator has stated a definite intention to install the service within a reasonable timeframe and the ducts are installed to ensure the most efficient use of space.

The national code of practice allows the Corridor Manager to ask for additional ducts to be placed when work is being done by a Utility Operator, provided that the Corridor Manager pays the incremental costs of the additional work. In congested networks (either traffic or other utilities) this may be considered on a discretionary basis by the System Manager where there is a benefit in reducing future disturbance of the highway and a payment mechanism exists. The System Manager is authorised to manage the future use of these assets on a commercial basis.