

# PROVISION OF WATER AND WASTEWATER SERVICES TO THE SPRING HILL CORRECTIONS FACILITY

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between

THE DEPARTMENT OF CORRECTIONS

and

WAIKATO DISTRICT COUNCIL



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Grierson

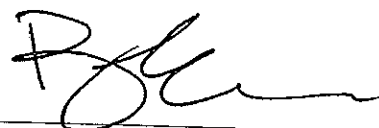
THIS AGREEMENT is dated this 7<sup>th</sup> day of December 2005

BETWEEN HER MAJESTY THE QUEEN acting by and through the Chief Executive of the Department of Corrections (the "Department")

AND WAIKATO DISTRICT COUNCIL, a territorial authority under the Local Government Act 2002 (the "Council")

### Background

- A. The Department is currently constructing the Corrections Facility. In 2002 the Department approached the Council with regard to the supply of water and wastewater services in respect of the Corrections Facility.
- B. On 25 June 2002 the Council passed resolution WDC 02/56/2/2:  
*"That without prejudice, and subject to the Department of Corrections obtaining a designation pursuant to Section 168 of the Resource Management Act 1991 for a corrections facility at Hampton Downs Road, the Waikato District Council agrees in principle that the Council will, subject to a satisfactory contract approved by Council, supply water and wastewater services to the correction facility."*
- C. The Department and the Council entered a Heads of Agreement on 16 December 2003 that set the principles of the agreement referred to in clause B above.
- D. On 30 June 2004 the Environment Court confirmed the designation for the Corrections Facility.
- E. In order to supply the water and wastewater services required by the Department for the Corrections Facility, Council is required to upgrade the Whangamarino Water Treatment Plant and the Te Kauwhata Wastewater Treatment Facility.
- F. This Agreement sets out the agreement between the parties as to the supply by Council of water and wastewater services in respect of the Corrections Facility.
- G. This Agreement supersedes the Heads of Agreement dated 16 December 2003.
- H. The Agreement has been negotiated on the basis that its implementation will not result in an increase of costs to current ratepayers and users of the water and wastewater systems as a result of the water and wastewater services required by the Department. Both parties acknowledge that the Council may elect to upgrade other parts of the water and wastewater systems, or treat water and wastewater to a higher standard than required by the Corrections Facility Designation Conditions and this Agreement. In the event that the Council elects to do so, then costs associated with this upgrade shall be borne by current ratepayers and users of the water and wastewater systems, rather than the Department.



- l. The Agreement provides a fair and equitable outcome that does not disadvantage either party.

## THE PARTIES AGREE:

1. **Interpretation:** In this Agreement unless the context otherwise requires:

- 1.1 Definitions

"Agreement" means this Agreement including all schedules and documents referred to therein;

"Capital Cost" means all costs and expenses associated with the Works and includes the cost of planning, project management, obtaining consents and permits, consultancy services, for considering options and managing completion of the Works, physical works, equipment and commissioning and reasonable Council internal staff costs and administration costs associated with the upgrade of the treatment plants and pumping and reticulation systems;

"Chairperson" means the nominated representative appointed by the Project Control Group to be the Chair;

"Corrections Facility" means the proposed Spring Hill Corrections Facility, which is under construction off Hampton Downs Road, Te Kauwhata;

"Council" means Waikato District Council;

"Department" means Her Majesty the Queen acting by and through the Chief Executive of the Department of Corrections;

"Corrections Facility Designation Conditions" means the conditions set out in Schedule 2;

"Council's Fees and Charges Schedule" means the Council's fees and charges schedule for water and wastewater services issued annually by the Council for all users;

"Drinking Water Standards for New Zealand" means the current drinking water standards published by the Ministry of Health;

"Drinking Water Standards for New Zealand 2005" means the 2005 drinking water standards published by the Ministry of Health;

"Further Water Quantity" means the further volume of treated water to be delivered to the Corrections Facility by Council in accordance with clause 2.1.5.

"Initial Water Quantity" means 350m<sup>3</sup> per day of treated water contracted by the Department to be delivered to the Corrections Facility by Council in accordance with clause 2.1.4;

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"New Consents" means the new consent(s) or variation(s) to the existing consents or any variation or alteration to existing designation or any new designation (as applicable) referred to in clause 2.1.1 and clause 3.1.1;

"Operational Cost" means the cost of operating and maintaining treatment plants and pumping and reticulation systems, including the cost of regular inspections, maintenance, repairs, depreciation, electricity, chemicals, and Council overheads based on the Council financial policies current at the time;

"PPI" means the Producer Price Index Construction Index produced by the Department of Statistics;

"Significant New Customer" means, for the purpose of clause 3.1.9, new customers who discharge more than 10 cubic metres/day average of sewage after the upgrade referred to in clause 3.1.3. For the purposes of this definition a Significant New Customer shall include any development or subdivision that in total is allocated the rates specified in this definition;

"Summary of Costs and Allocation of Responsibility Schedule" means the Summary of Costs and Allocation of Responsibility Schedule to be agreed and updated by the Project Control Group under clause 6.4 and to be attached to this Agreement at Schedule 4;

"Te Kauwhata Wastewater Treatment Facility" means the wastewater treatment plant situated at Rata Street, Te Kauwhata;

"Trade Waste Bylaw" means the Trade Waste Bylaw 2000 adopted by the Council on 26 April 2000 and which came into effect on 8 May 2000 and includes all amendments to that bylaw or a bylaw adopted in substitution for that bylaw;

"Whangamarino Water Treatment Plant" means the water treatment plant situated at Hall Road, Te Kauwhata;

"Works" means all design (including consideration of options), engineering and procurement and construction work to be undertaken for the upgraded Whangamarino Water Treatment Plant referred to in clause 2.1.2 and the upgraded Te Kauwhata Wastewater Treatment Facility referred to in clause 3.1.3, including (without limitation):

- (a) Work associated with decisions on the options to be implemented for the upgraded Whangamarino Water Treatment Plant and upgraded Te Kauwhata Wastewater Treatment Facility and associated pipelines and pumping stations;
- (b) Work carried out to obtain and give effect to the resource consents to carry out the Works.

"Working Day" shall mean any day, other than Saturday or Sunday or public holiday;



**Defined Expressions:** expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the background;

**Headings:** section, clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;

**Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

**Parties:** references to parties are references to parties to this Agreement;

**Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;

**Plural and Singular:** words importing the singular number include the plural and vice versa;

**Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this Agreement's sections, clauses and schedules; and

**"Including":** the terms "including" and "in particular" shall be read to mean "including, but not limited to" and "in particular but not limited to".

- 1.2 From the date of this Agreement, the Heads of Agreement dated 16 December 2003 shall be deemed to be of no effect and shall be superseded and replaced in all respects by this Agreement.

## 2. Water Supply

- 2.1 The Council agrees that it will:

2.1.1 Apply for New Consents (if required), to enable the Council to provide treated water from the upgraded Whangamarino Water Treatment Plant to the Corrections Facility and exhaust all rights of appeal in relation to obtaining the New Consents, unless the Department requests that no appeals are lodged. In the event that appeals are lodged, the Council will consult with the Department concerning any appeal process and will, where practicable, take into consideration any comments by the Department as to the appeal.

2.1.2 Design and construct an upgrade of the Whangamarino Water Treatment Plant that:


- (a) Meets the Drinking Water Standards for New Zealand 2005;
- (b) Has capacity to provide:
  - (i) 140m<sup>3</sup>/hour of potable water; and



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- (ii) 2800m<sup>3</sup>/day potable water design capacity.
  - (c) Is generally in accordance with the CH2M Beca report *Whangamarino WTP Upgrade* (January 2005) referred to in Schedule 3;
  - (d) Shall be designed to provide the most cost effective solution for water abstraction, treatment and delivery for the expected life of the plant.
- 2.1.3 Supply treated water that meets the Drinking Water Standards for New Zealand from the upgraded Whangamarino Water Treatment Plant via a new pumping and reticulation system necessary for the delivery of the Initial Water Quantity and the Further Water Quantity to be designed and constructed by Council to the boundary of the Corrections Facility site.
- 2.1.4 Allocate and supply as from 1 July 2006 the Initial Water Quantity to the Department for the Corrections Facility.
- 2.1.5 Set aside, and allocate to the Corrections Facility (if requested by the Department to do so) the Further Water Quantity, which shall be 150m<sup>3</sup>/day over and above the Initial Water Quantity on the following terms and conditions:
- (a) The Department may elect to take up the Further Water Quantity at no further Capital Cost or other connection fee.
  - (b) The Department may, by giving one months notice where practicable, elect to make one or more requests of the Council to be allocated the Further Water Quantity or part thereof until that quantity is fully allocated to the Department.
  - (c) In the event that the Council wishes to allocate either the whole or part of the Further Water Quantity to another customer, the Department will have a right of first refusal to be allocated the Further Water Quantity in whole or part, before the Council allocates any part of the Further Water Quantity to the other customer. The Department shall have 20 Working Days to accept the Further Water Quantity, in whole or part at no further Capital Cost or connection fee. The Council agrees to provide the amended allocation at the rate requested by the Department, up to the Further Water Quantity.
  - (d) If the Department does not exercise its right of first refusal under sub-clause 2.1.5(c) above, the Council shall have the right to allocate that quantity to the other customer and the amount available for allocation to the Department under clause 2.1.5 shall be reduced accordingly.
- 2.1.6 Council's obligation in clause 2.1.5(c) shall only apply when the allocated capacity at the upgraded Whangamarino Water Treatment Plant reaches a level of 2650m<sup>3</sup>/day.

- 2.1.7 Maintain and operate the upgraded Whangamarino Water Treatment Plant to deliver the Initial Water Quantity referred to in clause 2.1.4 and Further Water Quantity referred to in clause 2.1.5.
- 2.1.8 Maintain separate financial accounts to which the Operational Cost for the upgraded Whangamarino Water Treatment Plant and pumping and reticulation system shall be debited. The Department and its advisors shall be entitled to review, audit and copy the accounts.
- 2.1.9 Pay the costs associated with upgrading parts of the water supply network which do not relate or are additional to what is required by this Agreement, or upgrading the Whangamarino Water Treatment Plant beyond the standard required by clause 2.1.2, or providing further connections to the Whangamarino Water Treatment Plant beyond that referred to in clause 2.1.3 or which are allocated as being at the Council's sole cost in the Summary of Costs and Allocation of Responsibility Schedule.
- 2.2 The Department agrees that in consideration of the Council entering into this Agreement and incurring the obligations in clause 2.1 above, it will
- 2.2.1 Pay:
- (a) Capital Costs associated with the upgrading of the Whangamarino Water Treatment Plant to the standard required by clause 2.1.2 including any associated land purchases; and
  - (b) Capital Costs associated with the reticulation system required by clause 2.1.3,
- provided that such costs are indicated the responsibility of the Department in the Summary of Costs and Allocation of Responsibility Schedule.
- 2.2.2 Pay to the Council a connection fee of \$423,266 + GST adjusted in accordance with clause 4.
- 2.2.3 Pay annual water consumption costs for the Corrections Facility at the following rates:
- (a) A minimum charge to cover the fixed costs associated with the upgrade of the Whangamarino Water Treatment Plant and pumping and reticulation to the Corrections Facility (eg depreciation of assets) equivalent to the annual charge for consumption of 100m<sup>3</sup>/day at the per cubic metered water supply rate determined in accordance with Council's Fees and Charges Schedule for the North Waikato Rural Water Supply.
  - (b) For water consumption above 100 m<sup>3</sup>/day at the per cubic metered water supply rate as set annually in the Council's Fees



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and Charges Schedule for rural water users in the North Waikato Rural Water Supply.

- 2.2.4 Ensure that minimum on-site storage facilities are available at the Corrections Facility site, equivalent to one and a half days allocation (ie 525m<sup>3</sup> storage). If the Department takes up the Further Water Quantity then the Department shall ensure that sufficient additional onsite storage is available.

### 3. Wastewater Disposal

#### 3.1 The Council agrees that it will:

- 3.1.1 Apply for New Consents (if required) to enable the Corrections Facility to dispose of wastewater through the upgraded Te Kauwhata Wastewater Treatment Facility referred to in clause 3.1.3.

- 3.1.2 Exhaust all rights of appeal in relation to the New Consents, unless the Department requests, in writing, that no appeal, or further appeals are lodged. In the event that appeals are lodged, the Council will consult with the Department concerning any appeal process and will, where practicable, take into consideration any comments by the Department as to the appeal.

- 3.1.3 Design and construct any upgrades to the existing Te Kauwhata Wastewater Treatment Facility necessary to meet the standards required by the Corrections Facility Designation Conditions or any New Consents, such upgrades being referred to in the Harrison Grierson report *Waikato District Council Te Kauwhata WWTP Feasibility Studies: Te Kauwhata Wastewater Treatment Facility Upgrade Options Study* (May 2005) and others detailed in Schedule 5. The faecal coliform bacteria level shall not exceed:

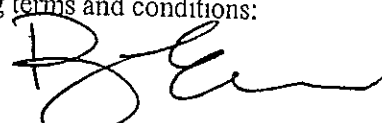
- (a) A median value of 200 MPN per 100ml; and
- (b) A 90 percentile limit of 800 MPN per 100ml

over a 12 month period measured at the outlet of the treatment ponds and before it is discharged into any wetlands.

- 3.1.4 Design and construct a pipeline and pumping system from the Corrections Facility to the Te Kauwhata Wastewater Treatment Facility, such pipe to be laid predominantly in accordance with the plan approved by the Project Control Group.

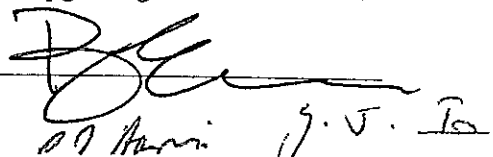
- 3.1.5 As from 1 January 2007 and subject to obtaining the New Consents and giving effect to those New Consents, accept 300m<sup>3</sup>/day of wastewater from the Corrections Facility.

- 3.1.6 Accept a further 100m<sup>3</sup>/day of wastewater, over and above the 300m<sup>3</sup>/day referred to in clause 3.1.5, on the following terms and conditions:





- (a) The Department shall be entitled to require the additional wastewater to be accepted at no further capital cost or connection fee.
  - (b) Subject to any new or amended Corrections Facility designation conditions, the Department may request the Council to accept the additional 100m<sup>3</sup>/day of wastewater.
  - (c) The obligation in this clause 3.1.6 is subject to the Te Kauwhata Wastewater Treatment Facility having the ability to treat the additional volume at the plant whilst remaining within resource consent limits. If capital expenditure is required to take the additional volume then the Department shall fund that expenditure.
- 3.1.7 Maintain and operate the upgraded Te Kauwhata Wastewater Treatment Facility to receive and treat the wastewater referred to in clauses 3.1.5 and 3.1.6.
- 3.1.8 Maintain separate financial accounts to which the Operational Costs for the upgraded Te Kauwhata Wastewater Treatment Facility and pumping/reticulation system are to be debited. The Department and its advisors shall be entitled to review, audit and copy these accounts and the accounts showing the actual costs for wastewater discharge as referred to in clauses 3.4.1 and 3.4.2.
- 3.1.9 Notify and promptly pay the Department 50% of any capital contribution (which shall include any connection fee exclusive of any sums paid for the physical cost of the connection) received from any Significant New Customer who connects to the pipeline and pumping system from the Corrections Facility to the upgraded Te Kauwhata Wastewater Treatment Facility in the first ten years of operation following practical completion. Upon request the Council will permit the Department and its advisors to review, audit and copy any information concerning the contribution made by any Significant New Customer.
- 3.1.10 If the Council decides to add additional capacity to the pipeline or pumping system at its own cost, the Department will not be eligible for a financial repayment provided for in clause 3.1.9 for this increase in capacity in the reticulation system. All such increases in capacity will be identified in the Summary of Costs and Allocation of Responsibility Schedule.
- 3.1.11 It will accept wastewater from the Corrections Facility at the Corrections Facility site boundary, pipe it to the Te Kauwhata Wastewater Treatment Facility, treat it and dispose of the treated product in accordance with its resource consents, or any New Consents obtained for the Te Kauwhata Wastewater Treatment Facility.
- 3.1.12 Pay all costs associated with upgrading parts of the Te Kauwhata Wastewater Treatment Facility which do not relate or are additional to what is required by this Agreement, or upgrading the Te Kauwhata



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Wastewater Treatment Facility beyond the standard required by clause 3.1.3, or providing a pipeline beyond that referred to in clause 3.1.4, or which are allocated as being at the Council's sole cost in the Summary of Costs and Allocation of Responsibility Schedule.

- 3.1.13 Confirm that its existing resource consent allows for sufficient capacity to dispose of an additional 300m<sup>3</sup>/day.
- 3.2 The Department agrees that it shall construct on-site storage, equivalent to one and a half days discharge (ie 450 m<sup>3</sup>), at the Corrections Facility sufficient to hold wastewater on site in the event of failures to the pipeline and pump stations.
- 3.3 The Department agrees that it shall pay:
  - 3.3.1 All reasonable Capital Costs associated with upgrading the Te Kauwhata Wastewater Treatment Facility to meet the standards set out in the Corrections Facility Designation Conditions provided that such costs are indicated the responsibility of the Department in the Summary of Costs and Allocation of Responsibility Schedule.
  - 3.3.2 All reasonable costs associated with the total cost of the new rising main and associated pump stations on the Corrections Facility site and between Corrections Facility boundary and the upgraded Te Kauwhata Wastewater Treatment Facility, provided that such costs are indicated the responsibility of the Department in the Summary of Costs and Allocation of Responsibility Schedule.
  - 3.3.3 A connection fee of \$504,533 + GST adjusted in accordance with clause 4.
  - 3.3.4 Commencing from the month that the upgraded Te Kauwhata Wastewater Treatment Facility is commissioned, and is operating to standards required to accept wastewater from the Corrections Facility, until 31 July 2008 pay the Council a sum of \$2,640 + GST per month being the Te Kauwhata community share of additional depreciation cost of the Te Kauwhata Wastewater Treatment Facility.
  - 3.3.5 Annual wastewater costs for the Corrections Facility based on:
    - (a) A base charge per annum, which shall cover the fixed costs associated with the upgrade of the Te Kauwhata Wastewater Treatment Facility (eg depreciation of assets). The base charge per annum shall be equivalent to the annual charge for the discharge of 100m<sup>3</sup>/day at the per cubic metre rate determined for the Te Kauwhata Wastewater Treatment Facility in accordance with the Council's Fees and Charges Schedule and clause 3.4.
    - (b) For wastewater discharge over and above 100m<sup>3</sup>/day at the per cubic metre rate set annually in the Council's Fees and Charges Schedule and in accordance with clause 3.4.

- (c) All Operational Costs associated with the rising main pipeline between the Corrections Facility and the upgraded Te Kauwhata Wastewater Treatment Facility. Except, that if Council is accepting wastewater from another customer into this system, the sum to be paid shall be prorated between the customers in accordance with volumes of wastewater reticulated and their use of the system.

3.4 The per cubic metre rates referred to in clauses 3.3.5(a) and (b) will be calculated as follows:

3.4.1 For Council's first financial year or part thereof in which the payments referred to in 3.3.5 are required:

- (a) the per cubic metre rate for wastewater discharge of 100m<sup>3</sup>/day will be \$2.61 per m<sup>3</sup>;
- (b) the per cubic metre rate for wastewater discharge over 100m<sup>3</sup>/day will be \$1.08 per m<sup>3</sup>.

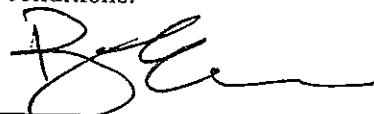
At the end of the financial year or part thereof referred to above in this clause 3.4.1, an adjustment will be determined by the Council following consultation and agreement with the Department so that the payments made by the Department under clause 3.4.1 equate to the actual operating costs incurred by the Council in relation to the wastewater discharge leaving the Corrections Facility. For the avoidance of doubt, the adjustment may require the Department to make a further payment, or receive a credit, due immediately from the Council to the Department.

3.4.2 For at least five years following the period described in clause 3.4.1, the charges referred to in 3.4.1(a) and (b) will be:

- (a) \$2.61 per m<sup>3</sup> or \$1.08 per m<sup>3</sup> (as applicable); or
- (b) as otherwise adjusted by the Council on an annual basis following consultation and agreement with the Department, so as to reflect the actual operating cost of the Council in relation to the wastewater discharge leaving the Corrections Facility.

3.4.3 Before the beginning of Council's financial year which immediately follows the fifth year under clause 3.4.2, the Council and the Department will review this arrangement and may agree on an alternative methodology for setting the per cubic metre rates in a way that recovers the actual operating costs attributable to the wastewater discharge from the Corrections Facility.

3.5 The Department shall not discharge from the Corrections Facility in to the wastewater system any trade waste (as defined by the Council's Trade Waste Bylaw) that may adversely affect the wastewater reticulation and treatment system or that will result in a breach of resource consent conditions.



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- 3.6 The Department acknowledges that the Council may develop an alternative wastewater treatment plant and alternative disposal site or methodology in order to satisfy any future requirements of the Council's resource consent. The Council shall prior to implementing such a proposal discuss it with the Department and obtain the Department's agreement as to the allocation of costs in relation to such proposal.
4. **Connection fees**
- 4.1 The connection fees specified in clauses 2.2.2 and 3.3.3 above shall increase from 1 December 2003 in accordance with the PPI (Construction) until they are paid to the Council.
- 4.2 The Council acknowledges that the connection fees for connecting to existing infrastructure required by this Agreement shall be expended on infrastructure in the Te Kauwhata, Rangiriri, Meremere and Whangamarino areas, including but not limited to water supply, wastewater treatment and disposal, stormwater, buildings and structures.
5. **Payment on invoice, proof of expenditure & total liability**
- 5.1 The Department agrees to pay the Council all amounts due and payable by the Department under this Agreement within 20 Working Days of receipt of both an invoice from the Council and proper proof of expenditure under this Agreement by the Council, or as otherwise agreed by the parties from time to time.
- 5.2 The Council agrees that the Department will not be liable for any capital or operational cost, or any other fee, charge or rate set annually by the Council, in relation to the provision of water and wastewater services to the Corrections Facility, unless such a cost, fee, charge or rate is expressly provided for in this Agreement.
- 5.3 The Council must in each year before 31 March, provide the Department with a schedule which shows the proposed amount of any fee, charge or rate set annually by the Council, in relation to the provision of water and wastewater services to the Corrections Facility, for the forthcoming year.
6. **Project management**
- 6.1 The Council and the Department, by written notice:
- 6.1.1 Shall each nominate two representatives ("Nominated Representatives") through which all communications for the purpose of this Agreement in relation to the Works will be made;
- 6.1.2 May from time to time replace that party's Nominated Representative/s with the consent of the other party (such consent not to be unreasonably withheld).
- 6.2 The Nominated Representatives will form a project control group ("Project Control Group") to facilitate a co-operative working relationship and allow an



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efficient implementation of the design, construction of the Works and approval of variations.

- 6.3 The Project Control Group will meet on a regular basis (as outlined in the Partnering Charter attached at Schedule 1) and on an "as required" basis. The Nominated Representatives shall attend each meeting.
- 6.4 The Project Control Group shall be required to give its approval or consent to all decisions in relation to:
  - 6.4.1 The tender documentation to be sent by Council to tenderers for the Works;
  - 6.4.2 The engagement of consultants chosen to recommend options;
  - 6.4.3 The engagement of contractors to carry out the Works and the terms of contract relating to the Works;
  - 6.4.4 The terms of contract between the contractor/consultants and the Council;
  - 6.4.5 Final approval of resource consent applications and accompanying assessment of environmental effects for the chosen option for the upgrade of the Whangamarino Water Treatment Plant and the Te Kauwhata Wastewater Treatment Facility;
  - 6.4.6 Decisions on the option to be implemented for the upgrade of the Whangamarino Water Treatment Plant and the Te Kauwhata Wastewater Treatment Facility;
  - 6.4.7 Timeframes for giving effect to the resource consents to carry out the Works;
  - 6.4.8 Any significant variation to the Works;
  - 6.4.9 The Summary of Costs and Allocation of Responsibility Schedule;
  - 6.4.10 The plan referred to in clause 3.1.4; and
  - 6.4.11 Any other matter contemplated by this Agreement.
- 6.5 Where the approval or consent of the Project Control Group is required to be given under this Agreement, then such approval or consent shall only have effect if it is the unanimous approval or consent of all Nominated Representatives at the relevant meeting.
- 6.6 The Parties shall negotiate in good faith with a view to agreeing terms of reference appropriate for the purpose of the Project Control Group as referred to in clause 6.2. The Parties intend to operate under the Partnering Charter set out in Schedule 1 to this Agreement, subject to clause 9.1 of that Charter.



- 6.7 If a dispute arises between any of the Nominated Representatives relating solely to a technical construction or design matter in relation to the project then any such Nominated Representative may by written notice to the other Nominated Representatives ("Technical Expert Reference Notice") require such a dispute to be referred to the technical expert.
- 6.8 The Project Control Group shall nominate a technical expert where required for the purposes of resolving a dispute under clause 6.7. If the Project Control Group fails (including being unable to agree) within 10 Working Days of receipt of a Technical Expert Reference Notice to nominate a technical expert then any Nominated Representative may apply to the President of the Institute of Professional Engineers New Zealand (IPENZ) to nominate the person to be appointed in relation to such disputes.
- 6.9 Each party's Nominated Representatives may submit a concise statement to the technical expert together with necessary supporting documentation within 3 Working Days ("Submission Period") of the Technical Expert Reference Notice. The technical expert shall, within 5 Working Days of the expiry of the Submission Period, or such longer period as the Project Control Group may agree, review the statements and provide an independent opinion which is fair and reasonable taking into account the relevant facts and good engineering practice. Any such opinion shall not be binding on the Project Control Group or the parties to the Agreement, but shall be considered by them in good faith.
- 6.10 In giving his or her opinion, the technical expert:
- 6.10.1 Shall be acting as an expert and not an arbitrator;
  - 6.10.2 Shall have the power to request the Department or the Council to provide him with oral or written statements, documents or information;
  - 6.10.3 Shall have the power to consult with any party, consultants or persons engaged in, or associated with, the Works;
  - 6.10.4 Shall have power to consult with persons who, in his or her opinion, are expert in their field;
  - 6.10.5 Shall be entitled to rely in good faith upon the opinions of any persons or experts so consulted;
  - 6.10.6 Shall be entitled to rely on his or her own knowledge or expertise.
- 6.11 The costs of the engagement of the technical expert shall be shared equally between the parties.
- 6.12 Each of the parties shall bear their own costs in relation to the preparation of any presentations, submissions and the collation of any documentation which is requested by the technical expert.

7. Limitation of liability



- 7.1 Neither party shall be liable to the other party for any loss of profits or savings or for any indirect or consequential loss or damage, however caused, arising out of or in connection with the performance or non-performance of this Agreement.
8. **Confidentiality/media releases**
- 8.1 All matters relating to this Agreement and all information acquired or received by either party in the course of or under this Agreement shall be held confidential and shall not be divulged in any way to any other persons without the prior written approval of the party which provided the information.
- 8.2 Disclosure of information in the following circumstances shall not be a breach of clause 8.1:
- 8.2.1 To any outside professional consultants upon obtaining a similar undertaking of confidentiality from such consultants;
- 8.2.2 To the extent that the information has become generally available to the public other than as a result of unauthorised disclosure by a party;
- 8.2.3 To the extent that a party is required to disclose the same pursuant to the Official Information Act 1982, the Local Government Official Information and Meetings Act 1987 or any other law;
- 8.2.4 To the extent reasonably necessary to inform the local community of the Works, provided that both parties agree that this is necessary.
- 8.3 The parties shall co-operate to formulate joint statements to be made to the media in relation to the Works.
9. **Statutory compliance**
- 9.1 In performing their obligations under this Agreement the parties will at all times comply with all relevant statutory obligations, including their obligations under the Health and Safety in Employment Act 1992.
- 9.2 During the term of this Agreement the Council will not intentionally or wilfully do anything, or omit to do anything which could result in enforcement action being taken against the Council in relation to its resource consents for the Whangamarino Water Treatment Plant and the Te Kauwhata Wastewater Treatment Facility.
10. **Force majeure**
- 10.1 Neither party will be liable for any act, omission, or failure to fulfil its obligations under this Agreement to the extent that such act, omission or failure arises from any cause reasonably beyond its control including without limitation Acts of God, strikes, lockouts, riots, acts of war, epidemics, government action, fire, earthquakes or other disasters ("Force Majeure").
- 10.2 The party unable to fulfil its obligations due to Force Majeure will immediately:



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10.2.1 Notify the other in writing of the reasons for its failure to fulfil its obligations and the effect of such failure;

10.2.2 Use all responsible means to avoid or remove the cause and perform its obligations.

## 11. Period of Supply

11.1 Subject to this clause 11, the Council acknowledges and agrees that it will provide the services referred to and on the terms set out in this Agreement relating to the supply of water and disposal of wastewater for the life time of the Corrections Facility.

11.2 In the event that the Department no longer requires the services of the Council in relation to supply of water and disposal of wastewater within the period 20 years from the date of execution of this Agreement, the parties will negotiate in good faith the termination of this Agreement.

11.3 After the period 20 years from the date of execution of this Agreement, where the Department no longer requires the services of the Council in relation to supply of water and disposal of wastewater the Department shall be entitled to terminate this Agreement by giving 120 Working Days prior notice to the Council.

11.4 The Council may develop an alternative proposal to build a new water or wastewater treatment plant on an alternative site that meets the requirements of the Department as set out in this Agreement, provided that the Council seeks the Departments prior written approval to the proposal and any necessary amendments to this Agreement as a result.

## 12. Waiver

12.1 No delay, neglect or forbearance by either party, in enforcing against the other any provision of this Agreement, will be a waiver or in any way prejudice any right, of that party.

## 13. Severability

13.1 If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision will be severed and the remainder of the Agreement will remain in full force and effect.

## 14. Notices

Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered, or sent by prepaid post, facsimile or email to the other party at the address as shown below (or such other address as may be notified by the relevant party in accordance with this clause):





*The Department:*

The Department of Corrections  
Private Box 1206  
Wellington

Attention: The National Property Manager  
Phone : 04 499 5620  
Fax : 04 460 3200

*The Council:*

Waikato District Council  
Private Bag 544  
Ngaruawahia

Attention: The Chief Executive  
Phone: 07 824 8633  
Fax: 07 824 8081

A notice is treated as given or made:

- If it is delivered, when it is left at the relevant address;
- If it is sent by post, two (2) Working Days after it is posted;
- If it is sent by facsimile, as soon as the sender receives from the sender's facsimile machine a report of an error free transmission to the correct facsimile number,

provided that if a notice is delivered, or an error free transmission report in relation to it is received, after the normal business hours of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

**15. Costs**

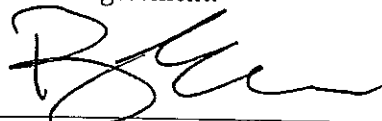
**15.1** Each party will pay its own legal and other costs and expenses of and incidental to this Agreement and to any document, act, matter or thing required pursuant to this Agreement to be prepared, executed, done or completed.

**16. Assignment**

**16.1** Neither party may assign, transfer or subcontract its rights or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld where:

**16.1.1** The assignee or third party is solvent and of good standing and capable of performing the obligations of that party under this Agreement;

**16.1.2** The assignee or third party agrees to enter a covenant agreeing to be bound by and perform all of the terms of this Agreement.

  
P. J. Harris J. V. S.

## 17. Survival

- 17.1 The provisions of this Agreement which are capable of having effect after termination of this Agreement shall remain in full force and effect following the termination of the Agreement.

## 18. Dispute resolution

- 18.1 If there is a difference or dispute (other than a technical dispute in accordance with clause 6.7) between the parties in relation to this Agreement, or any matter arising from it, the parties will in good faith, in the first instance use their best endeavours to resolve the dispute themselves.
- 18.2 If the dispute cannot be resolved by the Parties under clause 18.1 within 10 Working Days then either party may give written notice ("Dispute Notice") to the other party, stating the subject matter and details of the dispute and requiring the dispute to be referred to a mediator to be appointed by the parties.
- 18.3 The mediator shall be agreed between the parties or, if the parties cannot agree within 15 Working Days of service of the dispute notice, appointed at the request of a party by the chairperson for the time being of LEADR (New Zealand). The guidelines which shall govern the mediation proceedings shall be set by the mediator. Each party shall bear its own costs in relation to the mediation.
- 18.4 If the dispute is not resolved within 10 Working Days of the appointment of the mediator, or such other time as the parties agree either party may by written notice to the other party refer the dispute to arbitration by a sole arbitrator under the Arbitration Act 1996, and the substantive law of New Zealand. The arbitrator will be agreed between the parties within ten Working Days of written notice of referral by the referring party to the other or, failing agreement, by the President of the New Zealand Law Society or its successor body, or any nominee of the President. In either case, the arbitrator must not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.
- 18.5 Except as provided in clause 18.6, no dispute arising gives either party the right to suspend their obligations under the terms of this Agreement.
- 18.6 Where any party disputes that it is required to pay any amount due under this Agreement, it shall only be required to pay the undisputed amount to the other party.
- ## 19. Entire agreement
- 19.1 The parties acknowledge that this Agreement contains the whole of the contract and understanding between them. There are no conditions, warranties, representations or other understandings affecting the arrangements between the parties other than those set out herein, and this Agreement supersedes all prior agreements, correspondence and understandings with respect to the subject matter of this Agreement.

## 20. Amendments

20.1 Any modification to or variation of this Agreement must be in writing and signed by authorised representatives of the parties.

## 21. Governing law

21.1 This Agreement shall be governed by, and construed in accordance with, the laws of New Zealand.

## 22. Execution in counterparts

22.1 This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which will constitute a single contract. A party may enter into this Agreement by signing any counterpart, but no party will be bound until the counterpart has been signed by each party and communicated to the other. Facsimile copies of the execution page of executed counterparts will be sufficient evidence that an original of the Agreement has been executed.

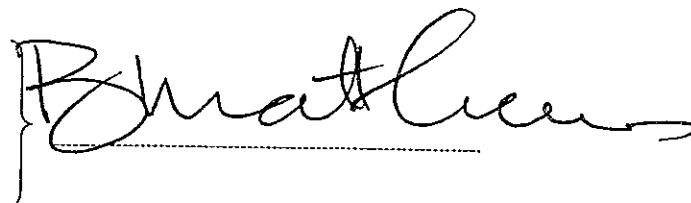
## 23. No Partnership, Joint Venture or Agency

23.1 This Agreement shall not create a partnership, joint venture or fiduciary relationship between the Council and the Department.

23.2 The Department is not authorised to act as the agent of the Council and vice versa.

## EXECUTION

EXECUTED for and on behalf of HER  
MAJESTY THE QUEEN acting by and  
thorough the MINISTER OF  
CORRECTIONS by:  
in the presence of



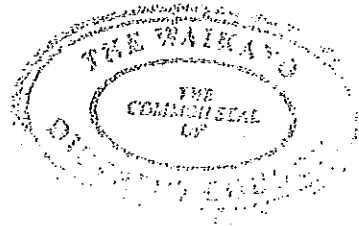
Witness Full Name Son Billich

Witness Signature [Signature]

Witness Address Wakapu

Witness Occupation Personal assistant

EXECUTED for and on behalf  
WAIKATO DISTRICT COUNCIL  
THE COMMON SEAL of WAIKATO  
DISTRICT COUNCIL was hereto affixed  
in the presence of:



P. J. Harris Mayor

S. J. Lee Chief Executive Officer

Witness Full Name Jacelyn Pope  
Witness Signature [Signature]  
Witness Address 40 WDC  
Witness Occupation Executive Secretary

**SCHEDULE 1****Partnering Charter****INTRODUCTION**

This schedule sets out the terms of the partnering charter ("Charter") that the Project Control Group shall operate under.

**1. PROJECT OBJECTIVES**

- 1.1 The Department and Council/Nominated Representatives shall co-operate and work closely together with the intention that the Project will be of a high quality, and will be carried out and completed:

1.1.1 safely;

1.1.2 efficiently;

1.1.3 on time;

1.1.4 within budget;

1.1.5 without the referral of any dispute to a third party;

1.1.6 in a manner which is of benefit to both of the Department and Council.

**2. PROJECT CONTROL GROUP**

- 2.1 The following clauses are in addition to the clauses in section 6 of the Agreement.

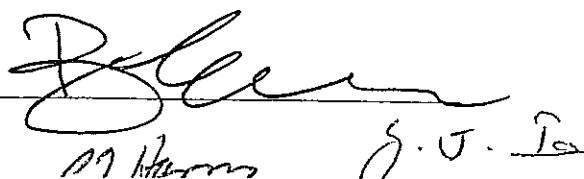
- 2.2 A Nominated Representative may nominate a replacement representative to attend a meeting or meetings of the Project Control Group in the event that such a Nominated Representative is unable to attend.

- 2.3 A Nominated Representative may invite other members of its organisation or professional advisors to any meeting of the Project Control Group, on prior notice to the Chairperson, to assist that Nominated Representative ("the Guests"). Any Guests who attend a Project Control Group meeting shall not be entitled to vote on any matters decided by the Project Control Group.

- 2.4 All Nominated Representatives will provide written confirmation that they agree to the terms and conditions of this Charter. In the event that a Nominated Representative does not confirm this in writing, then it shall not alter their obligations under the Agreement and this Charter.

**3. MEETING SCHEDULE FOR PROJECT CONTROL GROUP**

- 3.1 During the period of construction related to the Project, the Project Control Group shall meet monthly, at the office of the appointed project management consultant



(or some other agreed location) on the dates and at the times determined by the Project Control Group.

3.2 The Project Control Group shall be available for special meetings, to be called by the Department or Council at such time as the Project Control Group nominates. Such meetings shall take place at the Waikato office of the appointed project management consultant, unless otherwise agreed.

3.3 After the period of construction related to the Project, the Project Control Group shall meet on an "as required" basis.

#### 4. PROCEDURE AT MEETINGS

4.1 The Chairperson shall notify the consultant or contractor if a representative of the consultant or contractor is required to attend any given meeting.

4.2 The Chairperson shall chair all meetings of the Project Control Group, and the Chairperson's declaration that a resolution is carried by the requisite unanimous approval of the Project Control Group members shall be conclusive evidence of that fact.

4.3 A representative of the project management consultant shall be responsible for recording the minutes of the meetings.

#### 5. MEETING AGENDA ITEMS

5.1 A standard agenda for meetings of the Project Control Group shall be agreed, and shall include:

5.1.1 Project Management;

5.1.2 Design contracts;

5.1.3 Programme;

5.1.4 Budget;

5.1.5 Health & Safety;

5.1.6 Construction contracts;

5.1.7 Resource consent issues;

5.1.8 Technical Variations and significant Variations;

5.1.9 Communications/Media .

5.2 The standard agenda shall be reviewed every three months

*[Handwritten signature: P. J. Harris]*

## 6. VOTING OF MEMBERS

- 6.1 Where the approval or consent of the Project Control Group is required to be given, such approval or consent shall only have effect if it is the unanimous approval or consent of all Nominated Representatives of the Council and the Department at the relevant meeting.

## 7. TECHNICAL EXPERT


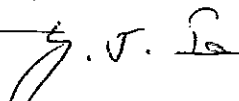
- 7.1 Refer to clause 6.7 to 6.12 of the Agreement in relation to the appointment of a technical expert.

## 8. CONFLICT RESOLUTION OBJECTIVES

- 8.1 The Department and Council shall work together in a non-adversarial manner to anticipate potential conflicts and to prevent them arising.
- 8.2 Should any conflicts arise, the Department and Council shall discuss them and make every effort to resolve them as soon as possible at the level at which they originate.
- 8.3 Where conflicts cannot be resolved in the manner referred to in clause 8.1 and 8.2 above, the Department and Council will promptly refer such conflicts to the appropriate level of management.
- 8.4 Where conflicts cannot be resolved at the appropriate management level, the Department and Council shall resolve them under the appropriate contractual mechanism as quickly, cheaply and efficiently as possible, without unnecessary confrontation.

## 9. INTERPRETATION

- 9.1 The purpose of this Charter is to record the Department and Council's intention in relation to the Project. It is not intended to, and does not create any obligations or liability enforceable in law, whether contractual or otherwise. In particular, no clause of the Charter implies that the Department and Council have entered into a relationship of partnership, as that relationship is understood at law. All obligations or liability enforceable at law are set out in the main body of the Agreement.

 P. J. Harris  
 J. V. La

## SCHEDULE 2

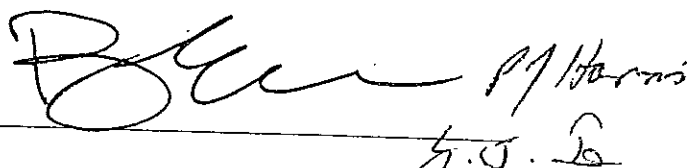
### Corrections Facility Designation Conditions

#### 11A Wastewater

##### Introductory statement

The Minister has entered into an agreement with the Council to share the costs of upgrading the wastewater treatment plant at Te Kauwhata (TKWTP) with a view to ensuring that the mass loadings Total Phosphorous (TP) and Total Kjeldahl Nitrogen (TKN) discharged to Lake Waikare do not increase as a direct result of the TKWTP being used to treat sewage from the Corrections facility. This proposed upgrade may take any form, including pre treatment and/or the installation of a parallel treatment plant. The purpose of the conditions in this section are to set out the processes by which the Minister is to demonstrate that an appropriately designed upgrade has been completed and is functional, prior to discharges from the Corrections facility commencing.

- 11A.1 Wastewater flows from the Corrections Facility shall not exceed a maximum of 300m<sup>3</sup>/day. The Minister shall install appropriate flow meters at the Corrections Facility prior to opening and shall provide to the Council and community liaison group in spreadsheet form, the relevant data from this flow meter at 6 monthly intervals. The raw data upon which the spreadsheet is based shall also be provided upon request of either the Council or the community liaison group.
- 11A.2 The Minister and the North Waikato Action Group Incorporated shall appoint an independent waste water engineer ("the independent engineer") acceptable to both parties at least 10 working days prior to any monitoring under 11.A.3 commencing. All costs associated with the waste water engineers tasks pursuant to the conditions below, will be borne by the Minister.
- 11A.3 The Minister shall fund the Council to monitor the influent to the TKWTP and the discharge prior to the wetlands, for a period of at least 2 months prior to any upgrade commencing, for the following:
- Daily Flow
  - Total Kjeldahl Nitrogen (TKN)
  - Total Phosphorus (TP)
- Monitoring shall be undertaken daily and shall be based upon 24 hour time proportional composite samples. Analysis shall be under taken in accordance with the "Standard Methods For the Examination of Water and Wastewater, 1998" 20th edition by A.P.H.A and A.W.W.A and W.E.F or other approved method.
- 11A.4 Following completion of the upgrade (in whatever form that takes), but prior to any wastewater being received from the Corrections facility, the Minister shall fund the Council to undertake a further 2 months of daily monitoring in accordance with the methodologies specified in Condition 11A.3.

  
P. J. Harris



11A.5 The independent engineer is to be provided with all monitoring data, together with:

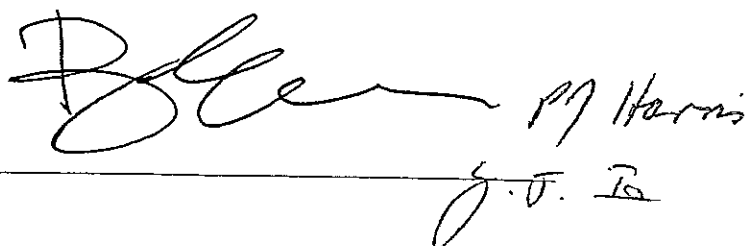
- (a) information regarding the assessed daily flow and load (of TKN and Total Phosphorus) expected to be generated by the Corrections facility after any pre treatment at the Corrections site. This information is to be supported by monitoring records taken from existing Corrections facilities after making any allowances for pre treatment and/or flow balancing and storage on site.
- (b) all relevant design information, and manufacturers specifications, relating to the proposed upgrade of the TKWTP and any pre treatment on the Corrections site, including performance histories (from other similar plants) and including any information generated by the upgrade designers regarding the modelled performance of the upgraded plant both before the Corrections facility is occupied and once the Corrections facility has reached capacity.

11A.6 No waste water will be discharged from the facility until the independent engineer has certified that he or she is satisfied that the plant upgrade has been designed and constructed so as to ensure that the addition of the expected maximum daily flows and mean monthly flows of sewage from the Corrections facility to the TKWTP, will not of itself result in an increase in the mass loadings of TP and TKN as established by the monitoring undertaken pursuant to Condition 11A.3 above. Such certification shall be based upon the information provided under Condition 11A.5 above and upon a comparison of actual monitoring results with those calculated using wastewater process simulation models such as GPSX, BioWin or STOAT.

Provided however, that nothing in this condition shall be taken as requiring the upgrade to be sufficient to treat the mass loading deriving from any waste streams not in existence on 1 June 2004, (other than the new loadings deriving from the Corrections facility). Nor to treat any increases in mass loading(s) from the existing trade waste discharges) beyond the loadings estimated to have occurred from those sources during 2003.

11A.7 The Minister shall (in conjunction with the Council) use his or her best endeavours to ensure that the objectives set out in the introductory statement above and in 11A.6 are achieved, once the condition precedent has been satisfied and the corrections facility is occupied, provided however, that this obligation shall only apply so long as the discharge is to Lake Waikare or another water body, or until such time as more stringent standards are included in any discharge permit for discharge of effluent from the Treatment Plant

11A.8 The Minister will pay for the independent engineer to undertake any oversight of the monitoring required under Condition 11A.3 and 11A.4 above, which is reasonably necessary to ensure that the monitoring results are reliable.



### SCHEDULE 3

CH2M Beca report *Whangamarino WTP Upgrade* (January 2005)

CH2M Beca *Whangamarino WTP Upgrade Contract Documents* (No 46-05-05)  
(September 2005)


CH2M Beca *Whangamarino Sludge Dam Documents* (No 46-05-06) (September 2005)

The above documents are deemed to be incorporated into this Agreement.

 P. J. Harris  
J. V. L.

## SCHEDULE 4

### Summary of Costs and Allocation of Responsibility Schedule


 PJ Harris  
g.s. l.

## SCHEDULE 5

Harrison Grierson report *Waikato District Council Te Kauwhata WWTP Feasibility Studies: Te Kauwhata Wastewater Treatment Facility Upgrade Options Study* (May 2005)

Harrison Grierson report *Waikato District Council Te Kauwhata WWTP Upgrade and Rising Main Wastewater Monitoring Report No 1* (September 2005)

The above documents are deemed to be incorporated into this Agreement.

 PJ Harris  
J. U. B.