PLANT HIRE AGREEMENT

THE PLANT HIRE	AGREEMENT made this / / /
<u>BETWEEN</u>	<u>WATER AUTHORITY OF FIJI</u> a statutory body established under the Water Authority of Fiji Promulgation 2007 having its registered office at Lot 1 Wainivula Road, Centre point, Nasinu together with its successors and assigns (hereinafter called the "Principal") of the other part.
<u>AND</u>	
<u>WHEREAS</u>	both the parties mutually agree to hire the Plant listed in the Schedule 2 (" Schedule of Plant "), on the terms and conditions of this Agreement, from the date of this Agreement until the completion of this Agreement or until this Agreement is terminated, whichever is the earliest.

GENERAL CONDITIONS OF CONTRACT – PLANT HIRE

1.0 DEFINITIONS

In these conditions, unless the context otherwise requires:

Additional Designated Site means the other sites apart from the designated sites which is approved by the [Team Leader Fleet].

Claim means in relation to any claim against the Principal, any claim, cause of action, suit, proceeding, demand or loss in contract, tort, under any legislation, or otherwise:

Conditions mean the general conditions of this Agreement;

Contract means the Legal Agreement between the Principal and the Contractor for the hire and operation of the plant and includes the Letter of Acceptance, these conditions and all schedules or other documents annexed to or referred to in the Letter of Acceptance or these conditions.

Contract Period means the number of **working day**s or calendar days, from the commencement date to the completion date, as provided for in this Agreement.

Contractor means the party whose tender submission or quotation is accepted by the Principal and includes that party's successors and permitted assigns.

Contractor's liability amount means the amount specified in the Purchase Order.

Commencement Date refers to the date in which both parties duly execute this Agreement by affixing their respective signatures and common seal therein.

Designated Site means the site or area of work specified in the Purchase Order.

Dispute Representative means a person nominated by a party with express authority to settle the dispute;

Duration of Hire means the engagement time specified in the Purchase Order whether it is Long term hire or Short term hire basis.

Extension of Hiring Hours means the extra hours that the Plant is hired as an addition to the initial engagement time. some sort of approval to be granted.

Extension of Hiring Hour Rate - is the same as the normal rate

Idle time means waiting time while other work such as pipe laying and etc is being carried out when the vehicle is stationery without the principals materials or principal's representative inside.

Idle Time Rate means the hire rate for the Plant, which is payable when the plant is laying idle for an hour as specified in clause 13.7.

Insolvency Events means following the inception of this Agreement the Contractor, being a corporation, resolves to be wound up voluntarily or has any winding up petition presented against it or is placed under official management, administration or provisional liquidation or a receiver, receiver and manager or controller is appointed over part or all of its undertaking or property or if the Contractor, being a natural person, becomes insolvent or bankrupt or commits any act of bankruptcy or enters into any arrangement or assignment for the benefit of its creditors.

Instruction means the written instruction provided by the Principal to the Contractor;

Letter of Acceptance means the letter from the Contractor to the Principal accepting this Agreement (with or without amendment) and awarding this Agreement;

Long Term hire is a period of hire that is more than one day.

Manual Purchase Order means the non-system generated Purchase Order used after hours or during an emergency.

Meal Breaks means a 1 hour unpaid lunch break and any other break specified by the principals representative.

Mobilization and Demobilization Charge - means 40% of the normal rate is added together with the normal rate when a plant is engaged outside the designated areas and travels in excess of 20km and more for each movement from point A to B.

Normal Rate means the rate for the Plant and Operator when the plant is operated during Working Hours and After Hours, as specified in the Annexure 1 (as applicable);

Notice of Dispute means a written notice which adequately identifies and provides details of the dispute between the parties;

Operator means the person provided and remunerated by the Contractor to operate the plant.

Plant means equipment, vehicles and machines as specified in Annexure 1

Principal means the Water Authority of Fiji, commercial Statutory Authority (CSA) under the ambit of the Public Enterprise Act;

Principal's Representative means the person nominated in writing to represent the Principal.

Quotation means the statement given by the Contractor to the Principal stating the cost of the work requested by the Principal. .

Schedule means a schedule annexed to and referred to in this Agreement which shall form an integral part of this agreement;

Sea Freight Charges means the cost of carting a plant across the sea or river.

Short Term Hire is a period of hire that is not more than a day (24 hours).

Stand Down means that the Principal's representative may during the Period of Hire, instructs that the hired plant must cease work based on circumstances that demands the work to stop.

Tax - means tax, levy, impost, deduction, charge, withholding and duty imposed under law on any matter relating to this Agreement;

VAT means goods and services tax or similar value added tax imposed in Fiji;

Working Hours means the hours of work specified in the Purchase Order.

INTERPRETATIONS

In this Agreement:

- a) a reference to a party means a party to this Agreement;
- b) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- c) the singular includes the plural and vice versa;
- d) headings appear for convenience only and do not affect the interpretation of this Agreement;
- e) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
- f) if a period of time is specified and commences from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- g) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later; and
- h) the Schedules form part of this Agreement.

1.0 Term

This agreement shall be effective from the date of execution by both parties and shall continue for a period of one (1) year unless earlier terminated by other parties through the provision of this agreement. This Agreement may be renewed for a further term by mutual consent of both the parties however, further subject to the prior approval of the Principal's Board of Directors.

2.0 HIRE.

- 2.1 The Principal shall request and confirm the availability of Plant at a designated site for a specified duration. The contractor shall be engaged with a Purchase Order and the period of hire shall be specified therein.
- 2.2 The Principal shall call for quotation for hired plants that are not included in the Principal's main plant category list and the Principal has the sole prerogative to select the favored contractor.
- 2.3 The contractor shall not mobilize their plant if there is no Purchase Order issued. The Contractor however can do so based on the nominated Principal's representative's that is the CEO or CFO approval through an instruction or the issuing of a Manual Purchase Order.
- **2.4** The Manual Purchase Order shall be used only after hours or during an emergency.
- 2.5 The Principal shall use the appropriate rate for each plant type required as stipulated in Annexure 1.
- **2.6** The Contractor shall mobilize good working condition Plants to the designated sites within an hour from receiving the Purchase Order.
- 2.7 The Principal should use the appropriate mobilization rate for each plant type required as stipulated in Annexure 1.

3.0 RATES

The plant hire rate used by each individual contractor is recorded in Annexure 1.

4.0 REVIEW OF RATE

The rates in this Agreement shall be reviewed should circumstances justify the demand to do so and the review shall be based on mutual agreement between both parties.

5.0 TRANSPORT CHARGES

5.1 The Principal shall separately pay sea freight charges for the cartage of plant where sea freight transportation is required to the designated site at the Principal's determine charges.

The Principal shall pay the mobilization or demobilization rate at the Principal's determine charges for any plant that is engaged outside the designated metered areas as per annexure 1.

6.0 PLANT

6.1 It is the responsibility of the Contractor to ensure that the Plant and all parts of the Plant are kept and maintained in good working condition. It is the responsibility of the Contractor to ensure that all Plant hired meets all the standard conditions and requirements of the Land Transport Authority Act of Fiji together with any addendum to it by way of decrees or regulations before the commencement and for the duration of the Contract Period. Refer Annexure 4 (Standard Checklist)

The contractor must ensure that all plants documents such as the Third Party and etc must be available on demand.

The Principal will not be liable if any of Land Transport Authority of Fiji laws is breached during the Period of Contract as it will be the Contractor's responsibility.

7.0 OPERATOR

- 7.1 The Contractor must provide an Operator.
- 7.2 The Operator must be qualified, skilled and competent to operate the plant and must ensure to use all required personal protective equipment (PPE) of approved standard. The Operator must ensure that their valid driving license is available at all times when operating the plant. The operator must meet requirements of the Health and Safety and Work Act 1996 and its regulations.

8.0 EXTENSION OF HIRING HOURS

8.1 In urgent circumstances, the Principal's representative and the Contractor may by mutual agreement extend the working hours subject to the approval from the Regional Managers or General Manager responsible. If

the additional working hours are undertaken, the contractor shall be paid the normal hiring rate.

8.2 The contractor must not vary the Working hours without the prior written instruction from the Principal's Representative as mentioned in clause 8.1

9.0 STAND DOWN OF PLANT

9.1 Stand Down

The Principal's representative may during the Period of Hire, as he/she thinks fit, stand down the Plant or any part of the Plant by notice to the Contractor or the Operator, if circumstances arise such as Mechanical failures or Unavailability of Operator due to sickness or any other situation that affects the ability of the plant to continue operating as required when hired. The Principal shall not pay for any Stand Down period.

The representative of the Principal or the Contractor may stand down the Plant or any part of the Plant by notice to the other party when OHS requirements are not met or satisfied.

7.2 The plant shall be used on an "AS and When Required" basis. The Contractor can use the plant for other contracts when it is not required by the Principal as per the hired duration stipulated in the Purchase Order.

10.0 REPLACEMENT PLANT

- 10.1 In the event of emergency, whereby a plant provided by the contractor during the period and time of hire cease to operate or breakdown due to engine failure; the contractor is required to immediately provide a replacement plant within an hour from the actual failure time. The replacement shall be an approved plant that is already part of Annexure 1. The Contractor must advice the Principal within one (1) hour if the plant cannot be replaced from their approved list in Annexure 1.
- 10.2 The contractor must ensure that the replacement plant provided must meet the standard requirements specified in annexure 5 of this agreement.
- 10.3 The Principal shall not pay for any hiring of the replacement plant that does not meet the standard requirement as required under this agreement.
- 10.4 In normal circumstances for replacement plant the contractor must submit in writing to the Principal the reason for the replacement.

11.0 PARKING

The Principal will not provide parking facilities for the Contractor or the Operator at the Principal's premises.

12.0 DAILY RUNNING SHEET SUBMISSION

- 12.1 Contractors must ensure that the Purchase Order is stamped and signed by the Principals representative (security) before and after work commences. Contractors must ensure that the timing of the plant's movement in and out of the depot is clearly stated in the stamped space of the Purchase Order. Exception is for machineries where there is no punching machine, the Principal's representative (Supervisor) has to log the time in and out.
- 12.2 The Contractor must ensure that the running sheet is signed by the tally man daily and the Principal's representative (supervisor) must verify and sign within the next two to five working days.

For machines, all Running sheet /Tally sheet must be clearly filled and must state the major work undertaken in every 1 hour interval.

For vehicles, all running sheet/Tally sheet must be clearly filled and must state the time and reason of every movement from point A to point B. The running sheet shall note all instances of idle and running time in all mileage at the start and the end of the run. Failure to properly fill the running sheet as stipulated in Clause 12.1 and 12.2 shall result in the deduction of the total hire cost by 20%.

Within 10 working days from signing of this, all contractors should start must use the standard daily running sheet format as specified by the Principal on Annexure 2 failure may shall result in the deduction of the total invoice cost by 20%.

The Contractor must submit the verified and signed running sheet and invoices to the Principal's representative (Supervisor) for payment arrangement.

13.0 PAYMENTS

- 13.1 The contractor must invoice the Principal in a form approved by the Principal's Representative (including the Principals Purchase Order and the daily running sheet), for all payments under this Agreement. It is the duty of the Contractor to bring all the invoices to the Principal on time. For Plant hired on a Long Term basis, the invoice shall be submitted to the Principal weekly and shall be submitted within two working days.
- Payments shall be made by the Principal within 30 days of receipt of the Contractors invoice provided that the content of the invoice has been certified as correct by the Principal's Representative and nothing in the invoice is in dispute.

- 13.3 If the invoice is disputed by the Principal's Representative and cannot be resolved prior to 7 days before the invoice is due for payments, the Principal may hold the payments till the dispute is resolved.
- 13.4 Failure by the Principal to pay any amount payable at the due time will not entitle the contractor to any interest or charge for extending credit or allowing time for payment.
- 13.5 The Principal will pay VIP rate if the contractor is registered for VAT with Fiji Islands Revenue and Customs Authority.
- 13.6 5% Provisional Tax will be deduxted from the ontractors VEP payable amount and remitted to the Fiji Islands Revenue and Customs Authority.
- 13.7 The Principal shall pay the Contractor 50 percent of the normal rate (idle time rate) for idle time.
- 13.8 The Contractor shall pay for the drawing, drafting, engrossing and stamping of this agreement at the Office of Stamp Duties.

14.0 REPORTING OF ISSUES

14.1 The Principal or Contractor shall inform the other party in writing of any issues encountered for proper monitoring and recording for decision making purposes and also for future reference.

15.0 TERMINATION

- 15.1 Despite anything in this Agreement to the Contrary, the Principal may, by providing a written notice to the contractor, terminate this Agreement immediately if the Contractor:
 - a) Is Involved in Fraudulent activities
 - b) Suffers an insolvency Event;
 - c) Refused to comply with any reasonable instruction or direction of the Principal's Representative; or
 - d) Is in breach of this Contract and failed to rectify the breach within 7 days following written request to do so by the Principal.
- 15.2 In the event where either Party have examined its financial positions and following its analysis have rendered itself unable to continue to fulfill its obligation under the Agreement, then the party must provide the other party written notice within 14 days of its intention to terminate the Agreement.

15.3 Effect of Termination

Termination of this Agreement shall not release either party from liability for any prior breach of the Agreement by that Party.

15.4 Temporary Suspension of Services and/or Default

In the event that one Party is in default of performance of its obligations under this Agreement, the defaulting Party may immediately give written notice to the other Party advising of the default (which may include the temporary suspension of Services); and undertakes to rectify and remedy the default within seven (7) days of having provided immediate notice to the aggrieved Party.

The aggrieved Party shall not be responsible for any loss, cost or damage sustained by the defaulting Party during the period of any such default.

15.5 Limitations of Liability

Any condition, warranty or other implied term not expressly contained in this Agreement is excluded.

Any liability of the parties in relation to this Agreement and its subject matter, whether such liability arises in contract, tort (including negligence), or equity, for breach of statutory duty or otherwise, shall not extend to indirect or consequential loss of damage or loss of profits. This clause shall survive the expiry, termination or cancellation of this Agreement.

16.0 INDEMNITY

- 16.1 Subject to clause 16, the Contractor indemnifies the Principal against any loss or Claim, whether arising at common law, in equity or under any statute, which the Principal suffers or incurs arising out of or in connection with:
 - a) Any defect or want of repair of the plant;
 - b) Any act, default or omission by the Contractor or the Operator;
 - c) Any use or misuse of the Plant by any person;
 - d) Any failure by the Contractor or the Operator to comply with the Contractor's obligations under this Agreement; or
 - e) The presence of the Contractor or the Operator on or about the designated Site(s).

Except that the Contractor's liability is reduced proportionately to the extent that the Principal or an employee, consultant, agent or other Contractor of the Principal contributed to that Loss or Claim.

17.0 CLAIMS AND LIENS

Without limiting clause 17, the Contractor indemnifies the Principal against all claims and liens arising out of or in connection with wages due and payable to the Operator (where the Operator is not the Contractor) and all Claims and liens of any sub-contractors.

18.0 COMPLIANCE

- The Contractor must comply and ensure that the Operator complies with all legislation (including the Occupational Safety and Health Act, Road Traffic Act, Motor Vehicle (third Party Insurance) Act, Transport Act), the requirements of any governmental authority (including any government Minister), the requirements of all industrial Awards, Industrial Agreements, registered Workplace Agreements or Employer-Employee Agreements and the orders of competent courts or industrial tribunals, the requirements of the Principal's Occupational Safety and Health Policy from time to time in force and all lawful directions of the Principal's Representative applicable to the hire of the Plant or this Agreement.
- 18.2 The Contractor and the Operator must Comply with any "Clearance to work" safety requirements advised to the Contractor and the Operator by the Principal's Representative, where the Plant will be working on or adjacent to the Principal's existing asset(s) or will substantially restrict or prevent access or require the relocation of the asset(s).
- 18.3 The Contractor must obtain all necessary permits, licenses and approvals, give all notices required to be given and pay all fees, deposits and taxes in connection with the Plant and provide evidence of compliance to the Principal or the Principal's Representative on request.'
- 19.0 The Contractor indemnifies the Principal against any Loss suffered or incurred by the Principal and any Claims by any person against the Principal, arising out of or in connection with any breach of clauses 18.1 to 18.3.

20.0 RELATIONSHIP

The relationship between the parties is that of principal and the contractor and neither the Contractor nor the Operator will be deemed to be an employee or representative of the Principal.

21.0 LIMITATION OF LIABILITY

- 21.1 Neither party is liable to the other party for any indirect, consequential, special, contingent or penal damages, whether arising out of loss of use, loss of revenue, loss of reputation or loss of opportunities or otherwise, suffered by that party arising out of or in connection with this Agreement, due to negligence or otherwise.
- The Principal's total liability to the Contractor for all claims made by the Contractor against the Principal arising out of or in connection with this Agreement including Claims due to any negligence (of the Principal its servants, agents and contractors) or otherwise is limited to the greater of:

- a) Any amounts that the Principal has affected and maintains that apply to those Claims.
- 21.3 The Contractor's total liability to the Principal for all losses the Principal suffers or incurs arising out of or in connection with this Agreement is limited to the greater of:
 - a) The Contractor's Liability amount as specified at annexure 3.
 - b) Any amounts that the Contractor is able to recover under a policy or policies of insurance that the Contractor effects and maintains, or should have effected and maintained, under this Agreement, or would have been able to recover but for any act, failure or omission by the Contractor.
- 21.4 The Contractor and the Operator must commence legal proceedings or make any set-off or deduction in respect of any Claim against the Principal within 1 year from the date on which the Claims first arises, after which the Principal's liability for that Claim will be extinguished.
- 21.5 Every exemption from and limitation of, liability, defense and immunity that applies to the Principal (including those set out in this Agreement) will also be available and extend to protect every servant or agent of the Principal acting under or connected with this Agreement or giving representations, information, or advice relating to this Agreement. For the purpose of this clause the Principal is deemed to be acting as agent or trustee on behalf of or the benefits and to that extent all those persons are deemed to be parties to this Agreement.

22. ASSIGNMENT AND SUBCONTRACTIING

The Contractor must not assign, transfer or sub-contract any of its rights or obligations under this Agreement without the Principal's prior written consent, which the Principal may, in its absolute discretion, either refuse to give or grant subject to any condition as the Principal thinks fit. The Principal's approval to sub-contract will not be unreasonably withheld but where given, this approval will not relieve the Contractor from its obligations under this Agreement and the sub-contract must be subject to the terms and conditions of this Agreement to the extent they apply.

23. DISPUTE RESOLUTION

23.1. General-Operating License

The Contractor waives all of its rights (if any) under the dispute resolution procedure contained in the Operating License and acknowledges that its rights as a customer will not apply to the resolution of any dispute under this Agreement.

23.2 Notice of Dispute

A party claiming that a dispute has arisen must give a Notice of Dispute to the other party.

23.3 Nominated representatives

Within 10 days of the Contractor receiving the Notice of Dispute, the parties must each nominate a Dispute Representative. The Dispute Representatives must, acting in good faith, and on a without prejudice basis, attempt to resolve the dispute within 30 days after the Notice of Dispute is received.

24.0 GOVERNING LAW

This Agreement is governed by and will be interpreted in accordance with the laws of Fiji. The parties agree to submit to the exclusive jurisdiction of the courts of Fiji.

25.0 CONTRACT INTERPRETATION AND CONSTRUCTION

This Agreement constitutes the entire agreement between the parties for the hire of the Plant by the Contractor and supersedes any prior written or oral negotiations, discussions, arrangements, agreements, representations or undertakings between the parties.

The Clause headings and sub-clause headings in this Contract will not form part of this Contract and shall not be used in the interpretation of this Agreement.

- 25.1 If there is any inconsistency or ambiguity between the documents comprising this Agreement, the Principal's Representative will determine the interpretation to be followed by the Contractor.
- The waiver of a breach of any provision of this Agreement does not operate as a waiver of another provision or of a continuing breach of that provision. Failure to exercise or any delay in exercising any right, power or privilege by any party does not operate as a waiver of that right, power or privilege.
- 25.3 The terms of this Agreement may be waived, discharged or released only by agreement in writing signed by the parties.
- If any part of this Agreement is or becomes void or unenforceable, that part is or will be severed from this Agreement without affecting the remainder of this Agreement.

 Specifying anything in this Agreement after the words "include" or "for example" or a similar expression does not limit what else is included.
- 25.5 If the whole or any part of a provision of this Agreement is void or unenforceable, it may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.
- 25.6 This Agreement may be varied or amended or modified in writing mutually agreeable to both parties.

26.0 DURATION

26.1	EXECUTION
	In witness thereof the parties have set their hands and seal on theday of2016
SIGNED FO	OR and ON BEHALF of
(INSERT C	OMPANY NAME)
	Please place the company seal here
This	day of2016
By its duly	authorized officers:
Insert nan	ne and position of signatory
SIGNED b	y the said
at this	day of2016
	authorized officers:
	thority of Fiji
TTUICI AU	

ANNEXURE 2 – STANDARD DAILY RUNNING SHEET

,				50 00	CON	IPANY N	AME		50	10	
Plant No.				Driver's Name:					LPO No:		
Plant Type:				Date:							
Time	T	Jour	rney	Milea	ge	Rate/Hour	A	mount	s	ignature	Remarks (Purpose)
Start	Stop	From	То	Start	Stop		\$	¢			
			,	10							
									13		
									-		
					,						
									-		
			2	2 2							
				2 5					a a		
			5	A G							
			-								
Driver's Siganture:				Tallyman's name	•			Supervisor's Name			
Date				Signature				Signature			
				Date:				Date			

ANNEXURE 3 – SAMPLE PURCHASE ORDER

	fiii		Republic of I				
	13.		Phone: 33467	777	Peb 04		Page 1
				[
		Ship To	o:				
m.ovipa.	COMPANY	Rewa	Depot				
	Contact Vinay .P. Sharma	Vendor Number LEC	PO Date 4/02/2015	Terms	Ship Via	Freight A	Agent Code
,	ot I		Rewa Company Contact Vendor Number	Contact Vendor Number PO Date	Rewa Depot Rewa Depot Contact Vendor Number PO Date Terms	Ship To: Rewa Depot Contact Vendor Number PO Date Terms Ship Via	Ship To: Rewa Depot Contact Vendor Number PO Date Terms Ship Via Freight A

ltem	Description	Qty. Ordered	Partial Delivery	Unit Cost	иом	Extended Price
MISC -	hire of 7 ton t/truck_vech # D 06/9 carting of backfilling materials at burst main location GL A/C 66030-01-01-09-04-1781	24.00	Not Permitted	50.00	each	1,200.0
				¥6		
	*					
Comments: hire of 7 ton t/truck			Subtotal Total tax			1,043.4i
LTA Req valid 25/ third party valid 26/ Req by Ponipate .	11/15 3					222222
Entered By: Senerated By:	Penala Rokotuiloma Kishan Prasad	l	Total (FJD)			1,200.00
	Period - 30 Days Seniods and services within this period shall Mana	orAccountant	CEC	·····	A/CFO	Date

ANNEXURE 4 – PLANT HIRE CHECKLIST

No.	Particulars	Fill in details
1	Name of Company	
2	Contact Person & Contact Number	
3	Vehicle & Machine type offered for hiring	
4	Vehicle & Machine Registration no	

No.	Particulars	Yes	No
1	Company Registration Certificate		
2	Business License		
3	Copy of VAT Registration Certificate		
4	Copy of Certificate of Exemption (COE)		
5	Copy of TIN Certificate		
6	Copy of LTA search certificate		
7	Driver's License & copy of defensive driving certificate		
8	Photos of all the vehicle and machines		
9	Directors Names		
10	Passenger access for the rear tray (applicable for 2 tonne and 3 tonne trucks)		

Note:

- Third Party and Wheel Tax should be registered under company name
- All vehicles are to be registered as commercial
- All prices are to be quoted on a VEP amount. VAT will only apply to those that are registered under VAT registration with FIRCA

Contractors are to make sure that the above format is strictly followed. The Format should be on the company Letter Head and Typed. The Directors of the company should sign on the Letter head.

ANNEXURE 5 – COMPANY PARTICULARS

	Name				
	Date of Registration				
	Registered Office				
	Postal Address				
	Telephone			Facsimile	
	Email			Website	
	Principal				
	Activities				
	Directors				
	Share Capital Authorised Issued & Paid Up				
	Accountant				
The un	ndersigned indicate that	the above info	ormation is tru	e and correc	t as of the date hereby giver
	Name:		Name:		
	Signature:	Si	gnature:		
	Designation:	D	esignation:		

Date.....