



2 February 2023

§ 7(2)(f)(ii)

## Slip Inspections for Council Reserves

Dear § 7(2)(f)(ii)

Thank you for the opportunity to present our proposal which is detailed below. As discussed, we understand you require geotechnical inspections of slips that have occurred on various Council reserve sites in Tauranga City. The geotechnical inspections will inform TCC of any immediate risk to property or people and if any emergency works are required. This would be provided by email correspondence soon after inspection work has been undertaken. We understand you require inspections at the following sites:

- Mauao Campground (Inspection Completed)
- McLaren Falls – Road slump and Hamilton Point
- Te Auhi Pa – slips above properties at No. 33 & 37 Bateleur Cl
- Wharepai Domain – slip down onto the Waikareao walkway

### 1.1 Geotechnical Assessments

Based on our recent discussions we understand you require the following:

- Walkover and visual appraisal of slope instability issues
- Determination of risk and if any immediate actions are required
- Email updates following inspections
- Preparation of an inspection memo with findings, risk assessment and recommendations for further work.

### 1.2 Fee Estimate

Table 1: Fee estimate for slip inspections

Item	Fee Estimate (excl. GST)
Site inspections, email correspondence and preparation of letter detailing the findings	§ 7(2)(b)(i) – Commercial position



Note: we anticipate inspections can be undertaken over a 3 day period, in the event additional time is required then it will be communicated to TCC in advance and agreed prior to any additional work being completed charged on a time and expense basis at the following rates:

Senior Engineer/ Geologist § 7(2)(b)(i) – Commercial position [Redacted]

Mileage § 7(2)(b)(i) – Commercial position [Redacted]

We anticipate that we can undertake inspections towards the end of this week and early next week. A memo detailing the findings will be provided in a further 2 -3 working weeks.

### 1.3 Exclusions to Scope

We have assumed the following:

- Any additional work outside the scope of services detailed above
- Attendance at meetings
- TCC will arrange access to the site

We have specifically excluded the following:

- Engagement with mana whenua
- Archaeology assessments
- Planning or detailed design of slip remediation

### 1.4 Conditions of Engagement

We have assumed that the scope of work will be performed in accordance with the terms and conditions set out in accordance with the attached ACENZ Short Form Agreement for Professional Services Engagement.

The offer set out in this letter is valid for 60 days from the date of its issue. Any changes to the assumptions and qualifications above or any other matter set out in this Offer of Service, including any amendments to the terms and conditions of contract proposed, may result in an adjustment to the Fees and/or Programme.

This offer is based on our current understanding of your requirements. We would be pleased to discuss changes to the scope to better meet your needs, should you require. Please call me should you have any questions.

§ 7(2)(a) – Privacy [Redacted]

# Short Form Agreement for Consultant Engagement

**Between:** Tauranga City Council

(Client)

**and:** WSP NZ Limited

(Consultant)

Collectively referred to herein as the "Parties" and individually as a "Party"

**Project:** TCC Geotech Support

**Location:** Multiple Locations

**Scope & nature of the Services:** As per OOS

**Programme for the Services:** As per OOS

**Fees & timing of payments:** s 7(2)(b)(i) – Commercial position

**Information or services to be provided by the Client:** Procure and provide rope access contractor

The Client engages the Consultant to provide the Services described above and the Consultant agrees to perform the Services for the remuneration provided above. Both Parties agree to be bound by the provision of the Short Form Model Conditions of Engagement (overleaf), including clauses 2, 11 and 12 and any variations noted below. Once signed, this agreement, together with the conditions overleaf and any attachments, will replace all or any oral agreement previously reached between the Parties.

**Variations to the Short Form Model Conditions of Engagement (overleaf):** N/A

**Client authorised signatory (ies):**

s 7(2)(a) – Privacy

**Consultant authorised signatory (ies):**

s 7(2)(a) – Privacy

## SHORT FORM MODEL CONDITIONS OF ENGAGEMENT

1. The Consultant shall perform the Services as described in the attached documents.
2. The Client and the Consultant agree that where all or any of, the Services are acquired for the purposes of a business the provisions of the Consumer Guarantees Act 1993 are excluded in relation to those Services. However, nothing in this Agreement shall restrict, negate, modify or limit any of the Client's rights under the Consumer Guarantees Act 1993 where the Services acquired are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Client is not acquiring the Services for the purpose of a business.
3. In providing the Services, the Consultant must use the degree of skill, care and diligence reasonably expected of a professional consultant providing services similar to the Services.
4. The Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in the Client's power to obtain which may relate to the Services. The Consultant shall not, without the Client's prior consent, use information provided by the Client for purposes unrelated to the Services. In providing the information to the Consultant, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.
5. As soon as either Party becomes aware of anything that will materially affect the scope or timing of the Services, the Party must notify the other Party in writing and where the Consultant considers a direction from the Client or any other circumstance is a variation the Consultant shall notify the Client accordingly.
6. The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variations to the Services.
7. The Client shall pay the Consultant for the Services the fees and expenses at the times and in the manner set out in the attached documents. Where this Agreement has been entered by an agent (or a person purporting to act as agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for payment of all fees and expenses due to the Consultant under this Agreement.
8. All amounts payable by the Client shall be due on the 20th of the month following the month of issue of each GST Invoice or at such other timing as stated elsewhere in this Agreement. If the Client fails to make the payment that is due and payable and that default continues for 14 days, the Consultant may provide written notice to the Client specifying the default and requiring payment within 7 days from the date of the notice. Unless payment has been made by the Client in full, the Consultant may suspend performance of the Services any time after expiration of the notice period. The Consultant must promptly lift the suspension after the Client has made the payment. Regardless of whether or not the Consultant suspends the performance of the Services in accordance with this clause, the Consultant may charge interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2% and in addition the costs of any actions taken by the Consultant to recover the debt.
9. Where the nature of the Services is such that it is covered by the Construction Contracts Act 2002 (CCA) and the Consultant has issued a payment claim in accordance with the CCA, the provisions of the CCA shall apply. In all other cases, if the Client, acting reasonably, disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount in accordance with clause 8.
10. Where Services are carried out on a time charge basis, the Consultant may purchase such incidental goods and/or Services as are reasonably required for the Consultant to perform the Services. The cost of obtaining such incidental goods and/or Services shall be payable by the Client. The Consultant shall maintain records which clearly identify time and expenses incurred.
11. Where the Consultant breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Consultant shall not be liable to the Client under this Agreement for the Client's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.
12. The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the fee (exclusive of GST and disbursements) with a minimum of \$100,000 and a maximum limit of \$NZ500,000.
13. Without limiting any defences a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
14. The Consultant shall take out and maintain for the duration of the Services a policy of Professional Indemnity insurance for the amount of liability under clause 12. The Consultant undertakes to use all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the Services.
15. If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
16. Intellectual property prepared or created by the Consultant in carrying out the Services, and provided to the Client as a deliverable, ("New Intellectual Property") shall be jointly owned by the Client and the Consultant. The Client and Consultant hereby grant to the other an unrestricted royalty-free license in perpetuity to copy or use New Intellectual Property. The Clients' rights in relation to this New Intellectual Property are conditional upon the Client having paid all amounts due and owing to the Consultant in accordance with clauses 7 and 8. Intellectual property owned by a Party prior to the commencement of this Agreement (Pre-existing Intellectual Property) and intellectual property created by a Party independently of this Agreement remains the property of that Party. The Consultant accepts no liability for the use of New Intellectual Property or Pre-existing Intellectual Property other than to the extent reasonably required for the intended purposes.
17. The Consultant has not and will not assume any duty imposed on the Client pursuant to the Health and Safety at Work Act 2015 ("the Act") in connection with the Agreement.
18. The Client may suspend all or part of the Services by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default that has not been remedied within 14 days of receiving the other Party's notice of breach) either suspend or terminate the Agreement by notice to the other Party. If the suspension has not been lifted after 2 months the Consultant has the right to terminate the Agreement and claim reasonable costs as a result of the suspension. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
19. The Parties shall attempt in good faith to settle any dispute themselves but failing that by mediation.
20. This Agreement is governed by the New Zealand law, the New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.