

1882.

NEW ZEALAND.

TAURANGA, EAST COAST, AND HOT LAKES DISTRICT RAILWAY.

CONTRACT ENTERED INTO BETWEEN HER MAJESTY THE QUEEN AND THE TAURANGA, EAST COAST, AND HOT LAKES DISTRICT RAILWAY COMPANY (LIMITED).

Laid before Parliament in compliance with the 13th Section of "The Railways Construction and Land Act, 1881."

CONTRACT.

This Deed made the twenty-first day of August, one thousand eight hundred and eighty-two, between Her Majesty the Queen (who, with her heirs and successors, is and are hereinafter included in the expression "the Queen"), of the one part, and the Tauranga East Coast and Hot Lakes District Railway Company, Limited (which, with its successors and assigns, except where the context otherwise requires, is and are hereinafter included in the expression "the Company"), of the other part. **Whereas** the Company has been established for the purposes (amongst other things) of constructing and maintaining a line of railway from the Town of Tauranga to such point or points, place or places, on the southern side of Rotorua Lake as the Directors shall determine, with all necessary buildings, railway works, and other appliances requisite for the same, and of working the said Railway, and especially of carrying thereon passengers, animals, and goods for hire, and generally in other respects of carrying on the business of a railway company in all its branches: **And Whereas** the said railway is intended to be constructed as nearly as may be along the line shewn in red upon the map marked A hereunto annexed, and is estimated to be of the length of forty-seven miles or thereabouts, and is intended to connect near the Town of Rotorua with the Thames Valley and Rotorua Railway **And Whereas** it is expedient that power should be given to the Company to reclaim from the sea the land now covered with water within the Harbor of Tauranga, the limits of which are approximately shewn on the map marked B hereunto annexed. **And Whereas** the Governor of New Zealand acting therein with the advice of the Executive Council of the Colony, and in pursuance of the provisions of "The Railways Construction and Land Act, 1881," (hereinafter in these presents termed "the said Act") has agreed with the Company for the construction and working of the said proposed line of railway: **Now this Deed witnesseth** that in consideration of the covenants hereinafter contained on the part of the Queen, **The Company** doth hereby covenant with the Queen in manner following, that is to say:—

1. **The Company** shall and will with all convenient speed and within the term of five years computed from the date of these presents, at its own expense, in all things, construct and thereafter maintain and work a line of railway between the Town of Tauranga aforesaid and some point on the Southern side of the Rotorua Lake to be approved of by an Engineer appointed for the purpose by the Governor (hereinafter throughout these presents referred to as "the Engineer") where the said line of Railway will connect with the Thames Valley and Rotorua Railway, and will construct such line of railway along the line shewn in red upon the map marked A hereunto annexed, or as near thereto as may be found to be practicable after survey; such railway to be constructed, and when completed to be worked in all respects under and subject to the provisions of the said Act.

2. **The** railway to be constructed, maintained, and worked, under the provisions of this Contract and all other works in connection with the said railway which are provided for in this Contract shall be well and faithfully constructed of sound materials and of sufficient strength and durability, having regard to the nature of such works upon plans both general and detail, to be from time to time approved of by the Engineer, and so that the details shall as nearly as may be conform to the approved standard drawings in use on the New Zealand Government Railways and that the specifications for the said railway, and

other works shall accord as nearly as may be to the standard specifications of the Government of New Zealand for the time being used in respect of the construction of railways having single lines of permanent way, or as may be necessary for any particular work included in this Contract and such construction shall in all things be to the satisfaction of the Engineer, it being the intent and meaning of this provision that all such plans and specifications when approved by the Engineer, or as the same may be altered or modified subject to his approval, shall form part of this Contract as effectually as if the same had respectively been attached hereto at the date of the execution hereof.

3. All rolling stock and plant to be from time to time used or employed upon the said railway, or in connection therewith shall be of the like character and strength in all respects to the rolling-stock and plant in use upon railways constructed by the Government of New Zealand.

4. The Company will within twenty four months from the date of this Contract expend a sum of not less than £25,000 in the construction and execution of permanent works under its provisions upon and in connection with the line of railway, such works to be of a character, in the opinion of the as Engineer, that will enable some complete section or sections of the said railway to be fit for traffic as early as possible.

5. The power conferred by the 48th section of the said Act shall be deemed to extend to and include all works of every kind executed by or on behalf of the Company under this Contract, and all plant, rolling-stock, materials and things which are or may be used, or are intended to be used in or upon the said works. And if at any time the Governor shall be advised that some addition, alteration, or repair is necessary or requisite to or upon the said railway, or all or any of the works aforesaid, or to the rolling stock, plant, and materials used or intended to be used thereon, then for the purpose of more effectually carrying out this contract, he may on behalf of the Queen direct the Engineer to take such steps as may be necessary to have such addition or alteration made or repair effected, and upon delivery to the Company at its registered office in Tauranga of a notice in writing from the Engineer specifying the nature and extent of the addition, alteration, or repair required, or the class and character of the rolling stock, plant or material to be supplied, the Company shall cause the same to be made, executed or supplied within the period specified in such notice as the case may require.

6. The Company shall not assign charge or dispose of this Contract or any benefit or advantage thereof or thereunder either at law or in equity without the written consent of the Governor on behalf of the Queen, but this clause shall not be deemed to interfere with, or in anywise abridge the power or borrowing given by the said Act, but no moneys shall be raised by way of mortgage without the prior approval of the Minister for Public Works for the time being.

And this deed further witnesseth that, subject to the provisions of the said Act, and in consideration of the premises, the Queen doth hereby covenant with the Company in manner following, that is to say,—

7. The Queen will with all convenient speed after the date of these presents, and free of all expense to the Company, put the Company in possession of all Crown Lands then in the possession and at the disposal for the purposes of the said railway of the Governor of the Colony, of the width and extent necessary for the construction of the said railway, and of any Crown land adjacent thereto which may be available, and required for side cuttings, ballasting, spoil banks, road approaches and road diversions.

8. The Queen will grant to the Company the sections numbered respectively 234 and 235 on the plan of the Town of Tauranga, Section I., subject, nevertheless, to any right now possessed by the occupier of any part or parts of the same, and in exchange therefor shall be entitled to select as a site for a Custom House an equal quantity of land as soon as the same is reclaimed by the Company as hereinafter mentioned.

9. The Queen will grant unto the Company the right to use a portion of the Railway Reserve at Ohinemutu for the purposes of a station and station accommodation in connection with the said Railway, but the right so to be granted as aforesaid shall be deemed to be revocable at the will of Her Majesty, and shall be subject to the right of the Government without such revocation to use any part of the said Reserve for the purposes for which the same has been made, when and as the occasion for the same shall arise, and in case such last-mentioned user shall necessarily interfere with the right granted to the Company, then the right of the Government shall be paramount, and the Company shall not be entitled to any compensation for any loss which the Company may sustain thereby.

10. The Queen will grant unto the Company so far as she can lawfully do so, the right to reclaim from the sea the land now covered with water within the Harbour of Tauranga; the outer lines of which are approximately shown in the map marked B, hereunto annexed, so as to reclaim and raise the level of the said land to a level to be fixed by the Engineer, and the Company is to take all such steps as are by law required in that behalf, in order to obtain legislative and other authority to reclaim and raise the level of the said land accordingly, and after obtaining such authority the Company is to carry out the said reclamation within the period of five years computed from the date of these presents; and in carrying out the said reclamation the Company is to erect and maintain a sufficient retaining-wall or breast-work to the satisfaction in all respects of the Engineer.

11. The Queen will, upon the completion of the said line of railway and of the works connected therewith, at the request of the Company grant to the Company that part of the land shown upon the

said map marked B, hereunto annexed, which is approximately shown within a red border on the said map.

12. **Pending** such grant as last aforesaid, and so long as the Company shall in all respects perform the conditions and stipulations on their part contained in these presents, the Company shall be entitled to use and occupy for the purposes of the Company any part of the land comprised within the red border on the said map marked B, hereunto annexed, which shall for the time being have been reclaimed.

13. **Provide** always that the powers of reclaiming the said land shall only be exercised after the Company shall have obtained legislative sanction for the same from the General Assembly of New Zealand, and that nothing herein contained shall give the Company any claim for compensation, or impose any liability whatsoever upon the Queen or the Government of the Colony in the event of such Legislative sanction being refused.

And whereas there not being sufficient land adjoining the proposed line of railway available for allocation under the provisions of the said Act, it is intended that the land set apart for selection as hereinafter mentioned shall be deemed to be so set apart under the provisions of Section 101 of the said Act.

Now it is hereby further agreed between the Queen and the Company.

14. **That** so soon as conveniently may be after the execution of the Contract, all the lands of the Crown within the area shewn by a red border and color on the map, hereunto annexed, and marked A, including those parts of the land comprised within the village of Atuaroa, which have not been sold or set apart by way of Public Reserve, shall be withdrawn from sale and set apart, to be dealt with in manner provided by Parts I. and V. of the said Act, and otherwise as hereinafter mentioned, and that the selection of such land, for the purposes of the said Act, and of this Contract shall after the construction of the said Railway, or of any completed section or sections of the same, be conducted and carried out as follows, that is to say—

- (a.) For the purposes of such selection, the estimated cost of constructing the said line of Railway shall be the sum of £5,000 per mile, throughout its whole length, estimated at 47 miles.
- (b.) For the purposes of such selection the several parts of the land set apart as aforesaid, shall respectively be deemed to be of a value per acre, to be ascertained as soon as conveniently may be after the execution of this Contract, in the manner prescribed in section 102 of the said Act, such total value to be thirty pounds per centum of the total estimated cost of the said line of railway, and a schedule of such values certified by the Surveyor General of New Zealand, shall be conclusive evidence of such values
- (c.) For the purposes of such selection as aforesaid, the said line of railway shall be deemed to be divided into the several sections numbered 1 to 5 shewn in figures colored red, and in circles upon the map marked A, hereunto annexed, and when and so soon as the Minister for Public Works, for the time being shall be satisfied that the said line of railway or any section thereof which can be usefully worked for public traffic has been completed, and is fit for such traffic in accordance with the said Act, the Company shall be at liberty to select and shall receive a grant for so much of the said land as looking to the valuation thereof to be made as aforesaid they may be entitled to in respect of the number of miles of the said railway comprised in such completed section, and if there shall be any difference or dispute as to the area the Company shall be entitled to select, the decision of the Governor shall be binding and conclusive on the Company, and every such selection shall be subject to the approval of the Governor.

15. **Every grant** made to the Company of land selected under the provisions of this contract shall be subject to the provisions of "The Railway Construction and Land Act, 1881," respecting the terms and conditions upon which grants of Crown lands may be made to a Company thereunder.

16. **In** dealing by way of sale or otherwise with any land which shall become vested in the Company pursuant to any such selection as aforesaid, the Company shall conform to the rules and regulations set forth in the First Schedule hereto, and any such dealing not in conformity therewith, shall be null and void.

And whereas, the Crown lands within the red border on the map hereunto annexed, and marked A, may be insufficient in value to provide the amount of endowment in land to be granted to the Company under the powers contained in Part V. of the said Act.

Now it is hereby further agreed between the Queen and the Company.

17. **That** if within the period of five years, computed from the date of these presents, Her Majesty the Queen shall acquire lands within the area shewn by a red border upon the map hereunto annexed, and marked A, and such lands, or a proportionate part of the same, shall, in the opinion of the Governor, be available for the purpose, the same or a proportionate part of the same, as the case may be, shall forthwith after such acquisition, be withdrawn from sale, and set apart to be granted to the Company under the powers and to be dealt with in manner respectively provided by Parts I. and V. of the said Act, and shall be, and be deemed to be subject to selection, and dealing by the Company, in like manner as hereinbefore pro-

vided in respect of the aforesaid Crown lands, but so nevertheless that the total area of land so to be set apart and selected, shall not when valued and assessed, as by the said Act provided, exceed in value the amount necessary to make up any such insufficiency of value as aforesaid.

18. **That**, when and so soon as any lands shall have been acquired as aforesaid, the same shall be assessed and valued with all convenient speed in manner provided by the said Act, in order to render the same available for selection and dealing by the Company, and the Company may accordingly select and deal with the same in like manner, and for the like purposes, and subject to the like provisions and conditions as are hereinbefore contained, in respect of the aforesaid Crown lands.

And it is hereby further agreed between the Queen and the Company.

19. **That** the maximum tolls, fares, and rents to be charged by the Company for the carriage upon the said Railway of passengers, produce, animals, goods, merchandize, articles, matters, and things, and for the storage of goods in the Company's sheds or warehouses, shall not exceed the scale set forth in the Second Schedule hereto.

20. **Provided** that the Company shall be at liberty at any time in the manner prescribed by the said Act to reduce the said tolls, fares, rates and rents or any of them.

21. **Provided** further that if at any time the Minister for Public Works for the time being shall be satisfied that the said tolls, fares, rates and rents or any of them are excessive or ought to be increased, he may by giving one calendar month's notice in writing to the Company, require the tolls, fares, rates and rents to be reduced or increased as stated in such notice, and at the expiration of such month's notice the Company shall make the reduction or increase accordingly.

22. **And it is hereby further agreed** that the power of purchase conferred upon the Governor by the said Act may be exercised at any time after the expiration of three years from the completion of the said line of railway.

23. **And it is hereby lastly agreed** that in case this Contract or any provision thereof shall be avoided or modified either wholly or in part by a resolution or resolutions to be passed by the General Assembly of New Zealand in the manner prescribed by the said Act, the Company shall not have any claim or demand upon or against the Queen or the Governor of New Zealand for any loss or damage by reason of such avoidance or modification or in consequence of the operation of any such resolution, and any property, estate, right or interest acquired by the Company from the Queen or the said Governor under or by virtue of the said Contract or provision shall to the extent and in the like manner specified in any such resolution be and be deemed to have again become the property or estate of the Queen or the Governor or to revest in the Queen as the nature of the case may require.

24. **And further** that nothing contained in this Contract shall be deemed in any way to abridge, control, modify, or supersede any power remedy or authority, which under the said Act is vested in or may be exercised by the Governor in Council or the Governor or the Minister for Public Works.

25. **The** word Governor in this Contract has the like meaning as is attached thereto by "The Interpretation Act, 1878."

In witness whereof these presents have been executed by the parties hereto on the day and year first above written.

The seal of the Company was hereunto affixed this twenty-first day of August, one thousand eight hundred and eighty-two, by order of the Directors.

ALEXANDER MACKENZIE,
Secretary, (*pro tem*) of the Company.

GEO. VESSEY STEWART,
JOHN DUNCAN,
Directors.

(*L.S.*) Seal of the Tauranga, East Coast, and Hot Lakes District Railway Company (Limited).

Signed by His Excellency Sir James Prendergast, Knight, Chief Justice, the Administrator of the Government of Her Majesty's Colony of New Zealand, with the advice of the Executive Council thereof, on behalf of Her Majesty the Queen, and sealed with the public seal of the said colony, in the presence of—

JAMES PRENDERGAST.

(*L.S.*) Seal of the Colony.

FORSTER GORING,
Clerk of the Executive Council,
21st August, 1882.

FIRST SCHEDULE.

THE following regulations shall apply to sales of land.

1. All agricultural and pastoral lands, and not less than one-fourth of the area set apart for town, village and suburban lands to be offered for sale not later than twelve months after the railway line has been opened for traffic to the locality of such lands.

2. The price of the agricultural and pastoral lands shall not be less per acre than the valuation already made in terms of Section 102 of "The Railways Construction and Land Act, 1881." The price of town and village lands shall not be less than £20 per acre, and of suburban lands, not less than £3 per acre.

3. Sales of land may either be by auction or by application in writing.

4. Agricultural land to be surveyed in sections not exceeding 1,000 acres each, with a practicable line of road marked off on the ground to each section.

Bush to be felled on road lines one chain wide, and cleared 16 feet in the centre before the land is offered for sale.

5. Pastoral land—that is, the higher slopes on the hills—to be surveyed generally so far as the natural features will permit, in sections at least twice the depth to the breadth, the depth running back with the slope of the hills.

Sand hills to be deemed pastoral land, and may be surveyed in such areas as the Company may deem best.

6. Sites for towns and villages to be selected by the Company along the railway line at intervals not exceeding 10 miles, water and other circumstances being favorable.

7. Governor to have the right of selecting free of cost in each town and village, whether on land acquired by the Company as public grant, or by purchase from the Natives, an area not exceeding 3 acres for post and telegraph offices, courthouse, police station and other public buildings.

Also an area not exceeding 5 acres for a school site.

At cross roads or other suitable places in rural districts, Governor to have the right of selecting free of cost, five acres for a school site at distances 4 or 5 miles apart.

8. The survey of lands to be conducted on the New Zealand system of surveys, so that the plans traverse reductions, and field books may be conformable with the public survey records of the Colony, from which the descriptions of title are taken.

9. All record surveys and classification of agricultural and pastoral land to be subject to the approval of the Surveyor General or other officer nominated by him.

JAMES PRENDERGAST.

FORSTER GORING,
Clerk of the Executive Council,
21st August, 1882.

SECOND SCHEDULE.

SCALE OF FARES AND CHARGES.—Vide *New Zealand Gazette* No. 87, October 24, 1881, pp. 1339–1374.

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