

**Cash Flow and FAR Application Agreement
(2011-2015)**

Between

AUCKLAND TRANSPORT

And

NEW ZEALAND TRANSPORT AGENCY

December 2011

Date:

PARTIES

Auckland transport (AT);

The NZ Transport Agency (NZTA)

INTRODUCTION AND BACKGROUND:

- A. The parties have a legislative mandate and certain responsibilities in respect of the provision and maintenance of the roading network, including responsibilities under the Land Transport Management Act 2003 and the Local Government Act 2002.
- B. AT is a Council Controlled Organisation (CCO) controlled by Auckland Council pursuant to section 6 of the Local Government Act 2002. Pursuant to Part 8 of the Resource Management Act 1991 AT is the Requiring Authority for local roads and roading infrastructure through out the Auckland Region and is responsible for the construction, operation and maintenance of local roading infrastructure in the Auckland region.
- C. The NZTA is the roading authority with responsibility for the State Highway network.
- D. The Parties have entered into a Partnership Charter for Transport Operations (the One Network Approach) and this Agreement is consistent with the purpose and objectives of that Charter.
- E. AT receives funding assistance through the National Land Transport Programme for among other things, local roading projects, public transport, and the operation, maintenance and renewal of local roads in the Auckland Region.
- F. The NZTA sets the level of funding assistance to be received by AT for activities or combinations of activities (the Funding Assistance Rate).
- G. AT has agreed to accept a lower Funding Assistance Rate (FAR) from NZTA for delivery of AT's local road routine maintenance, operations and renewals programme in the 2011/12 Financial Year and NZTA has agreed to pay a higher FAR to AT for delivery of its local roads routine maintenance, operations and renewals programmes in the 2012/13, 2013/14 and 2014/15 Financial Years.

- H. To ensure the continued delivery of high priority improvements to the Auckland Transport System, AT has agreed to receive no funding assistance from NZTA for certain local roading and public transport improvement projects (the Approved Projects) in the 2011/12 and 2012/13 Financial Years.
- I. NZTA has agreed that, in the 2013/14 and 2014/15 Financial Years, it will provide greater funding assistance to AT for the Approved Projects.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND CONSTRUCTION

In this agreement, unless the context otherwise requires, the following terms will have the following meanings:

“Additional AT Funding” means the share of the cost of AT’s Maintenance and Renewals Programme to be funded by NZTA in each of the 2012/13, 2013/14 and 2014/15 Financial Years that is additional to the level of funding NZTA would have contributed in each of the 2012/13, 2013/14 and 2014/15 Financial Years to AT’s Maintenance and Renewals Programme if this agreement had not been entered into: Those sums are expected by both parties to be as follows:

- a. 2012/13 \$nil
- b. 2013/14 \$27million
- c. 2014/15 \$27million

These sums may be adjusted prorata to the ratio of Required Funds to the actual subsidy reduction in AT’s Maintenance and Renewals Programme;

“Agreement” means this Agreement as amended from time to time in writing and signed by both parties, including any schedules which may be attached from time to time;

“Approved Local Roading Projects” means Specified Projects approved for funding by NZTA in the 2011/12 or 2012/13 Financial Year;

“Approved Public Transport Projects” means Specified Projects approved for funding by the NZTA in the 2011/12 or 2012/13 Financial Year;

“AT’s Maintenance and Renewals Programme” means the amount AT spends in each financial year on the maintenance operation and renewal of local roads, excluding the cost of emergency and preventative works . (In the 2011/12 Financial Year AT’s Maintenance and Renewals Programme is expected to be \$185m).

“Commencement Date” means the date of this Agreement;

“Funding Assistance Rate” or **“FAR”** means the rate of approved funding assistance set by NZTA under section 20(c) of the Land Transport Management Act 2003;

“Financial Year” means a 12 month period starting on 1 July and ending on 30 June;

“Force Majeure Event” means any unforeseen event beyond the reasonable control of the Party affected by the event,. The term includes earthquakes, storms, landslides, fire, outbreaks of war, acts of hostility and acts of God. For the avoidance of doubt, in the context of a Force Majeure Event, the term “storm” refers only to a storm of severe magnitude which causes significant damage, and does not cover foul, windy or rainy weather that is typical of the season;

“Specified Projects” means the local roading improvements and public transport improvements achieving a prioritisation weighting of 4 or better under NZTAs 2012-15 Investment and Revenue Strategy;

“State Highway” has the meaning given in section 5 of the Land Transport management Act 2003;

Required Funds: means the sum of \$50 million.

“Term” has the meaning given to that term in clause 3;

“Working Day” means any day other than a Saturday, Sunday, or a statutory public holiday in New Zealand.

2. INTERPRETATION

In the interpretation of this Agreement, unless the context requires otherwise:

Documents: a reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time;

Financial Year: a reference to a financial year means that period starting on 1 July and ending on 30 June of the following year;

Joint and Several Liability: any provision of this Agreement to be performed or observed by two or more persons binds those persons jointly and severally;

Parties: a reference to a party to this Agreement or any other document includes that party's personal representatives/successors and permitted assigns;

Schedules: the schedules form part of this Agreement;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.

3. TERM

Subject to Clause 8, this Agreement shall commence on the Commencement Date and shall continue in force until 30 June 2015.

4. GOOD FAITH ARRANGEMENTS

- a. The parties agree to work constructively and collaboratively in relation to the implementation of this Agreement, including by adopting the following practices in their ongoing relationship:
- b. Sharing all available information relevant to the implementation of this Agreement.
- c. Promptly responding to reasonable requests for information or advice from other parties to this Agreement;
- d. A commitment to resolution of conflict promptly and transparently;
- e. Acting in good faith at all times in meeting their responsibilities under this Agreement.
- f. Where any approval is required under this Agreement by any party, that party will not unreasonably withhold or delay its approval.
- g. The parties will identify and empower key staff to give effect to this Agreement.

5. AGREEMENT NOT TO FETTER STATUTORY RESPONSIBILITIES

- a. The parties acknowledge that they each have statutory responsibilities, powers and duties, including under the Government Roadway Powers Act 1989, the Resource Management Act 1991, the Land Transport Management Act 2003 and the Local Government Act 2002. While the parties have committed to work together constructively in relation to the matters addressed by this Agreement, it is recognised and agreed that this Agreement in no way fetters the parties in relation to those statutory responsibilities, powers and duties.
- b. When any approvals or consents are required under this Agreement a party will not be acting unreasonably or arbitrarily if it declines its consent or approval, or imposes conditions on any such consent or approval, on the grounds of its statutory responsibilities, powers and duties, provided such grounds are specified in writing at the time.
- c. Subject to the provisions of clause 6, the parties shall not be entitled to claim from each other any compensation, loss or damage under this agreement if, as a result of the other party having exercised in good faith, its statutory duties, a party is affected in anyway whatsoever.

6. THE CASH FLOW AND FAR APPLICATION (LOCAL ROAD MAINTENANCE)

- a. In the 2011/12 Financial Year NZTA will apply a FAR that is lower than the then current FAR to AT's Maintenance and Renewals Programme to enable the release of the Required Funds.
- b. The FAR to be applied to AT's Maintenance and Renewals Programme in the 2011/12 Financial Year will be calculated as follows:

$$\frac{a - b}{c} \times 100 = d$$

Where:

- a = Current FAR x AT's Maintenance and Renewals Programme (\$,millions)
- b = Required Funds (\$, millions)
- c = AT's Maintenance and Renewals Programme
- d = reduced FAR

- c. In the each of the 2012/13, 2013/14 and 2014/15 Financial Years NZTA will apply a higher FAR than the then current FAR to AT's Maintenance and Renewals programme.
- d. The FAR to be applied to AT's Maintenance and Renewals Programme will be calculated separately in each of the 2012/13, 2013/14 and 2014/15 Financial Years as follows:

$$\frac{a + e}{c} \times 100 = f$$

Where:

- a = Current FAR x Maintenance and Renewals Programme (\$, Millions)
- c = AT's Maintenance and Renewals Programme
- e = Additional AT Funding for applicable Financial Year
- f = Increased FAR for the applicable Financial Year

- e. At the end of the 2014/15 Financial Year AT will have received no less funding assistance across the four Financial Years from NZTA for AT's Maintenance and Renewals Programme than it would otherwise have received if this Agreement had not been entered into. To ensure this, NZTA will review and adjust the FAR up or down before the end of each Financial Year.

7. THE CASH FLOW AND FAR APPLICATION (LOCAL ROAD AND PUBLIC TRANSPORT IMPROVEMENTS)

- a. In the 2011/12 and 2012/13 Financial Years AT will submit local roading and public transport projects that are Specified Projects and are ready for construction or implementation during the 2011/12 and 2012/13 Financial Years for NZTA funding through the usual process and NZTA will approve those projects for funding in the usual way.

- b. AT and NZTA will agree the project funding cash flow over the 2011 – 2015 Financial Years for each of the Approved Local Roding and Approved Public Transport Projects at the time of funding approval.
- c. Both parties agree that the Approved Local Roding and Approved Public Transport Projects will not increase the total amount of NZTA committed approvals included in the 2009-12 NLTP for the 2011/12 Financial Year.
- d. In the 2012/13 Financial Year AT will fully fund:
 - i. the Approved Local Roding Projects up to a maximum level of funding of \$64.4million; and
 - ii. the Approved Public Transport Projects up to a maximum level of funding of \$25 million.
- e. In each of the 2013/14 and 2014/15 Financial Years, NZTA will fund the Approved Local Roding Projects at the level of funding agreed in the project funding cash flow for each project applying a FAR of 54.33% and will fund the Approved Public Transport Projects at the level of funding agreed in the project funding cash flow for each project applying a FAR of 60% or such other FAR as is applicable to the particular Approved Public Transport Project.
- f. NZTA may adjust the agreed project funding cash flow amounts in any of the 2012/13, 2013/14 or 2014/15 Financial Years in order to provide AT with a greater level of funding assistance in any of those years, provided the overall FAR for each Approved Local Roding Project remains at 54.33% and the overall FAR for each Approved Public Transport Project remains at 60% or such other FAR as is applicable to the particular Approved Public Transport Project.
- g. At the end of the 2014/15 Financial Year AT will have received no less funding assistance from NZTA for the Approved Local Roding Projects and the Approved Public Transport projects than it would have received if this Agreement had not been entered into.

8. DISPUTES

- a. In the event of any dispute or disagreement arising as to any proposed solution, matters shall be referred in the first instance to the Regional Director of NZTA and the Chief Financial Officer of AT to determine a process of resolution.
- b. If a resolution cannot be agreed within twenty (20) Working Days, of referral to the Regional Director of NZTA and the Chief Financial Officer, AT then the matter may be referred to an independent appropriately qualified expert, agreeable to both parties, setting out the details of the matter to be referred for determination and the reasons the parties do not agree.

- c. The independent appropriately qualified expert shall be appointed within 10 Working Days of the NZTA or AT giving notice of their intention to seek expert determination.
- d. The expert shall, as soon as possible, issue his or her decision on the matter. In making the decision, the expert shall be entitled to seek further information and hear from the parties as he or she sees fit. The determination of the independent appropriately qualified expert shall be final.
- e. For the avoidance of doubt, while any Dispute remains unresolved, the Parties will continue to perform their obligations under this Agreement to the extent practicable, but without prejudice to their respective rights and remedies.

9. ASSIGNMENT

No party may assign any of its rights or obligations under this Agreement without the written consent of the other party. Except where either of the parties are dissolved and replaced through legislative amendment, then that party's rights and obligations under this Agreement will be transferred to that party's successor, in accordance with the provisions of any legislative amendment.

10. VARIATIONS TO THIS AGREEMENT

This Agreement may not be modified or amended except in writing signed by both parties.

11. WAIVER

Failure by either party to enforce at any time or for any period one or more of the terms or conditions of this Agreement shall not be a waiver of such terms or conditions nor of a party's right, at any time subsequently, to enforce all of the terms and conditions of this Agreement. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

12. COSTS

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.

13. NOTICES

Addresses: For the purposes of any notices or other correspondence between parties under this Agreement, the addresses and facsimile numbers of the parties are set out below:

NZTA: Regional Director
NZ Transport Agency
Private Bag 106602
Auckland 1143
P: 09 969 9800
F: 09 969 9813

Auckland Transport
Private Bag 92250
Auckland 1142
P: 09 355 3553
F: 09 355 3550

14. SURVIVAL

The Provisions of this Agreement shall continue in full force and effect notwithstanding a Force Majeure event occurring.

15. CONFIDENTIALITY

- a. Subject to any contrary provision in this agreement and to the Local Government Official Information and Meetings Act 1987, and the Official Information Act 1982 each of the parties will treat as strictly confidential and will not disclose to any person without the other party's prior written consent, any confidential information for any use other than that for which it was provided. Such obligation of confidentiality will not apply where the information comes into the public domain otherwise than as the result of a breach of this clause, or where disclosure is required by law.
- b. Each of the parties undertakes to clearly identify to the other party where possible, any Confidential Information that it may wish to withhold under Local Government Official Information and Meetings Act 1987, or the Official Information Act 1982 and will discuss with the other party any request for Confidential Information made under the Local Government Official Information and Meetings Act 1987 or the Official Information Act 1982.

16. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties as to the subject matter contained in the Agreement and supersedes, replaces and excludes all earlier representations, warranties or other obligations.

EXECUTION

New Zealand transport Agency by:

Auckland Transport by:

Chief Executive Officer

Chief Executive Officer

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