

**Multi Party Funding Agreement
For Contributions from Road Controlling Authorities and
Approved Organisations**

Between



Transit New Zealand

and



**Waikato Regional Council
(Environment Waikato)**

and



Hamilton City Council

and



Waipa District Council

and



Waikato District Council

and



Taupo District Council

and



Matamata-Piako District Council

and



Thames Coromandel District Council

In respect of the Waikato Regional Transportation Model

1.0 Date of Agreement

- 1.1 This Agreement is made on 12 July 2007

2.0 Funding Partners

- 2.1 Waikato Regional Council (“Environment Waikato”), a regional authority constituted under the Local Government Act 2002 and an approved organisation under the Land Transport Management Act 2003.
- 2.2 Hamilton City Council (“HCC”), a territorial authority constituted under the Local Government Act 2002 and an approved organisation and road controlling authority under the Land Transport Management Act 2003.
- 2.3 Transit New Zealand (“Transit”), a Crown entity continued under section 75 of the Land Transport Management Act 2003 and an approved organisation and road controlling authority under the Land Transport Management Act 2003.
- 2.4 Waipa District Council (“Waipa DC”), a territorial authority constituted under the Local Government Act 2002 and an approved organisation and road controlling authority under the Land Transport Management Act 2003.
- 2.5 Waikato District Council (“Waikato DC”), a territorial authority constituted under the Local Government Act 2002 and an approved organisation and road controlling authority under the Land Transport Management Act 2003.
- 2.6 Taupo District Council (“Taupo DC”), a territorial authority constituted under the Local Government Act 2002 and an approved organisation and road controlling authority under the Land Transport Management Act 2003.
- 2.7 Matamata-Piako District Council (“MPDC”), a territorial authority constituted under the Local Government Act 2002 and an approved organisation and road controlling authority under the Land Transport Management Act 2003.
- 2.8 Thames Coromandel District Council (“TCDC”), a territorial authority constituted under the Local Government Act 2002 and an approved organisation and road controlling authority under the Land Transport Management Act 2003.

3.0 Recitals

- 3.1 Section 3.2.10 of Land Transport New Zealand’s Programme and Funding Manual stipulates that multi-party projects involving more than one road controlling authority or approved organisation receiving financial assistance from Land Transport New Zealand for the activity is conditional on the Funding Partners entering into a formal funding agreement developed in consultation with the appropriate Land Transport New Zealand regional manager.
- 3.2 The Funding Partners intend to jointly fund the development of a Waikato Regional Transportation Model (“the Model Project”).
- 3.3 The Funding Partners are together involved in developing the Model Project and have applied to receive or are receiving Land Transport New Zealand financial assistance to fund the Model Project.
- 3.4 The Funding Partners have agreed to enter into a formal funding agreement in compliance with the requirements of Land Transport New Zealand specified in Recital 3.1 in relation to the Model Project and wish to record the terms of that agreement in writing.

4.0 The Model Project – General Obligations

- 4.1 The full scope and detail of the Model Project and the tasks to be completed as part of it are specified in the supporting documentation submitted to Land Transport New Zealand (the Scope Documents) as part of the funding application made for the Model Project.
- 4.2 The Funding Partners agree to:
- 4.2.1 undertake the Model Project in terms of this Agreement;
 - 4.2.2 use reasonable endeavours to complete the Model Project on or before June 2009;
 - 4.2.3 work together co-operatively and in good faith in respect of all ownership and management decisions required in respect of the Model Project;
 - 4.2.4 keep each other fully informed of all matters relating to the Model Project and to act promptly and reasonably in conducting all matters relating to the Model Project;
 - 4.2.5 identify all Funding Partners as contributing partners in the Model Project, whenever called for in public statements and in any written publications relating to the Model Project;
 - 4.2.6 authorise the Project Manager to release statements to the media on their behalf, notwithstanding the right for the media to report on any public meeting;
 - 4.2.7 not to make public statements or release documentation relating to the Model Project without having due regard to obligations under clauses 4.2.3 – 4.2.5 inclusive and clause 7.
- 4.3 Ownership and operation of the Model shall vest with the Local Authority Shared Services Ltd (LASS), a Council Controlled Organisation duly constituted under Part Five of the Local Government Act 2002. The Funding Partners will retain shareholding under the shared service agreement based upon the proportional share detailed in Section 5.2 below.

5.0 Capital Funding and Costs

- 5.1 The total cost of the Model Build Project is estimated to be \$2,000,000.00 excluding GST (“Project Cost”) as identified and enumerated in the Scope Documents.
- 5.2 The Funding Partners agree that the capital costs of developing the model will be apportioned in the following manner:
- | | | |
|-------|---------------------|-------|
| i. | Transit New Zealand | 40% |
| ii. | Environment Waikato | 22.5% |
| iii. | HCC | 22.5% |
| iv. | Waikato DC | 5% |
| v. | Waipa DC | 5% |
| vi. | Taupo DC | 2% |
| vii. | MPDC | 2% |
| viii. | TCDC | 1% |
- 5.3 Notwithstanding anything else in this Agreement, any variation in the Project Cost as specified in clause 5.1, or any part of it, and any variation in the Funding Partners contributions to the Project Cost specified in clause 5.2 shall require the prior written agreement of the Funding Partners before being implemented.

- 5.4 Each Funding Partner shall bear its own administration costs incurred in relation to the Model Project and those shall not form part of the Project Cost.
- 5.5 Where any amount expressed in this Agreement is stated to exclude GST, GST shall be added to that amount.
- 5.6 This Agreement is conditional on all Funding Partners obtaining sufficient funding, to be determined at their own discretion, from Land Transport New Zealand to enable each to participate in the Model Project, such funding to be obtained within three (3) months of the date of this Agreement. If sufficient funding is not obtained for all Funding Partners, within three (3) months of the date of this Agreement, then the total costs for work completed up to that time shall be met by the Funding Partners in the proportions in which each Funding Partner has agreed to meet the capital costs as set out in clause 5.2.

6.0 Project Management

- 6.1 The Model Project shall be managed as follows:
- i. **Project Control Group.** A Project Control Group (“PCG”) has been established by the Funding Partners and is comprised of at least one representative of each of the Funding Partners. Each Funding Partner shall be entitled to nominate one representative on the PCG and replace representative from time to time. Additional members of the PCG shall be appointed only by agreement of all of the Funding Partners. The function of the PCG is to provide the main governance function in relation to the Model Project and be the conduit through which the Funding Partners, and Land Transport New Zealand, will exercise control over the Model Project.
 - ii. **Technical Working Group.** A Technical Working Group (“TWG”), which shall report to the PCG, has been established by the Funding Partners and is comprised of such persons as the Funding Partners shall nominate and agree from time to time. The TWG shall provide the technical leadership of the Model Project through the Project Manager and will provide intellectual leadership, and ‘local’ understanding of technical aspects such as model details, implementation, software and survey requirements.
 - iii. **Project Manager.** A Project Manager (“PM”) may be appointed by the Funding Partners, by agreement, to oversee the day-to-day management of the Model Project. The PM will report to the PCG and liaise regularly as required with a designated representative of the PCG and the TWG.
- 6.2 **Quorum.** Meetings of the PCG shall require a quorum of not less than four members.
- 6.3 **Lead Authorities.** The Funding Partners, may from time to time by agreement in respect of each component part of the Model Project, appoint one of their number to be the leader of that component part of the Model Project (“Lead Authority”). Each Lead Authority shall be responsible for the overall management of that component part of the Model Project. Each Lead Authority shall designate one of its employees who shall act as manager of that Lead Authority’s activity. The Lead Authority shall be entitled to incur those costs, which are contemplated or permitted by the Scope Documents or permitted by the Funding Partners by unanimous agreement in relation to the Model Project, which costs shall form part of the Project Cost.
- 6.4 The Project Manager may act as the Model Project representative in relation to specific tasks agreed by the PCG, but the Project Manager shall not be entitled to incur costs in relation to the Model Project without the prior consent or authorisation of the PCG. The Project Manager shall be responsible for adhering at all times to the agreed scope, timeframes and budgets relating to the Model Project and the Scope Documents. Any amendments or variations required outside or beyond the matters set down in the Scope Documents must be first referred to the PCG for approval.
- 6.5 Notwithstanding anything else, any work or activity which shall fall outside what is provided or contemplated by the Scope Documents must not be undertaken until and unless agreed to by the PCG.

7.0 Official Information and Release

7.1 The Funding Partners recognise that:

- i. Transit is subject to the Official Information Act 1982;
- ii. Environment Waikato, HCC, Waipa DC, Waikato DC, Taupo DC, MPDC and TCDC are subject to the Local Government Official Information and Meetings Act 1987; and
- iii. This Agreement, the Model Project, the Scope Documents, the PCG and TWG and meetings in relation to them are likely to be subject to those Acts.

7.2 The Funding Partners agree to co-operate fully and promptly in assessing any request to one or more of them for the release of information under any of those Acts, with particular regard to the time limits for transfer of requests and responding to requests under those Acts.

8.0 Other persons

8.1 This Agreement does not and is not intended to confer any benefit or create any obligation enforceable at the suit of any person who is not a party to this Agreement.

9.0 Activity Change Reporting to Land Transport New Zealand

9.1 Each of the Funding Partners, as it may affect them, will make such requests to Land Transport New Zealand for changes to the activity funding from Land Transport New Zealand as and when necessary.

9.2 Changes in any member of the Funding Partner's Land Transport New Zealand funding shall be made as a review request and advised to the other Funding Partners.

10.0 Termination

10.1 This Agreement will terminate upon the completion of the Model Project. For the purposes of this clause the Model Project shall be completed when payment of all costs forming part of the Project Cost has been made, all contracts relating to the Model Project have been completed and all of the Funding Partners to this agreement have complied with their obligations under this Agreement.

10.2 This Agreement may be terminated in the following circumstances:

- i. If tenders received for any contract forming part of the Model Project exceed the estimates for the Model Project and any of the Funding Partners is unable to obtain the necessary funds to cover the excess required to be paid by it then it may immediately terminate this Agreement. In that event the costs for work completed up to that time shall be met by the Funding Partners in the proportions in which each Funding Partner has agreed to meet the capital costs as set out in clause 5.2.
- ii. If the Project Costs at any time exceed the funding available to any Funding Partner and that Funding Partner is unable to obtain the necessary additional funds to meet the excess cost then it may immediately terminate this Agreement. In that event the costs for work completed up to that time shall be met by the Funding Partners in the proportions in which each Funding Partner has agreed to meet the capital costs as set out in clause 5.2.

10.3 Termination of this Agreement shall be without prejudice to the rights of the Funding Partners against each other.

10.4 Should any of the Funding Partners terminate this Agreement, then the remaining Funding Partners may resolve to continue the relationship specified in this Agreement without the terminating party by entering into a new Agreement.

- 10.5 Amendments to this Agreement shall only be effective if agreed by all the Funding Partners in writing.
- 10.6 Amendments to the Scope Documents shall only be effective if agreed by all the Funding Partners in writing.

11.0 General

- 11.1 **No Partnership.** Nothing in this Agreement is intended to create or be construed as creating the relationship of partnership, principal and agent, or joint venture between the Funding Partners and neither party has fiduciary duties to the other.
- 11.2 **Statutory Obligations of Funding Partners.** Each Funding Partner recognises that the other(s) has statutory accountabilities and obligations, including reporting obligations, and that each must perform them without improper influence of or consideration for the other(s).
- 11.3 **Severance.** The legality, invalidity or unenforceability at any time of any provision of this Agreement shall not affect the legal, validity or enforceability of the remaining provisions in this Agreement.
- 11.4 **Disputes.** All differences and disputes between the Funding Partners concerning this Agreement shall be dealt with as follows:
- i. The Funding Partners shall meet and discuss in good faith any dispute between them arising out of this Agreement.
 - ii. If the dispute cannot be resolved through discussion within 30 days of first being raised in writing, the issues shall be referred to the Chief Executives of the respective Funding Partners, or their nominees, who shall endeavour to resolve the dispute.
 - iii. If the cannot be resolved by the Chief Executives or their nominees within 60 days of first being raised in writing, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator between the Funding Partners. In the event of any such submission to mediation:
 - (a) The mediator shall be deemed to be not acting as an expert but as an arbitrator;
 - (b) The mediator shall determine the procedure and timetable for the mediation; and
 - (c) The cost of the mediation shall be shared equally between the Funding Partners involved.
 - iv. No legal proceedings shall be issued in respect of any such dispute, unless all steps set out in clauses 11.4.i to 11.4.iii have been made to comply with.
- 11.5 **Further Assurances.** Each of the Funding Partners agrees to execute and deliver any documents and do all things as may reasonably be required by one or other of the Funding Partners to obtain the full benefit of this Agreement to its true intent.
- 11.6 **Reliance on Own Judgment.** Each of the Funding Partners confirms that it is acting on its own judgment and not in reliance upon any representation or warranty made by one or more of the other Funding Partners or their employees or agents.
- 11.7 **No assignment.** There shall be no assignment, transfer or creation of any encumbrance over any rights or obligations in this Agreement.
- 11.8 **No waiver.** A waiver of any right under this Agreement shall not be effective unless given in writing. A failure to exercise or delay in exercising any right under this Agreement shall not operate as a waiver of that right.

12.0 Signing

IN WITNESS THEREOF this Agreement has been signed on the date above written:

Signed for
Transit New Zealand
by:

Signed for
Environment Waikato
by:

Signed for
**Hamilton City
Council**
by:

Signed for
**Waikato District
Council**
by:

Rick van Barneveld
Chief Executive

Harry Wilson
Chief Executive

Michael Redman
Chief Executive

Gavin Ion
Chief Executive

In the presence of:

In the presence of:

In the presence of:

In the presence of:

Name:

Name:

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Name:

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Signed for
**Waipa District
Council**
by:

Signed for
Taupo District Council
by:

Signed for
**Matamata-Piako
District Council**
by:

Signed for
**Thames Coromandel
District Council**
by:

John Inglis
Chief Executive

Rob Williams
Chief Executive

Don McLeod
Chief Executive

Steve Ruru
Chief Executive

In the presence of:

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