

**FUNDING AGREEMENT FOR FERRY OPERATIONS TO SMBI**

<b>Objective Reference:</b>	<b>A650653</b> <b>Reports and Attachments (Archives)</b>
<b>Attachments:</b>	<a href="#"><u>Council Resolution</u></a> <a href="#"><u>DTMR Letter Response</u></a> <a href="#"><u>Funding Agreement</u></a>
<b>Authorising Officer:</b>	<b>Gary Soutar</b> <b>General Manager Infrastructure and Operations</b>
<b>Responsible Officer:</b>	<b>Murray Erbs</b> <b>Group Manager City Infrastructure</b>
<b>Report Author:</b>	<b>Christine Cartwright</b> <b>Adviser Infrastructure Projects</b>

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**PURPOSE**

This report presents a new agreement for the continuation of contributions between the Department of Transport & Main Roads (DTMR) and Redland City Council (RCC) through to December 2018 for Translink Southern Moreton Bay Islands (SMBI) passenger ferry services. The purpose of this report is to request approval for the agreement to be signed under the delegated authority of the Chief Executive Officer (CEO).

**BACKGROUND**

- 19 June 2013 – Council resolved to raise a special charge in the annual budget for 2013-2014 to fund the contribution agreed to under the Funding Agreement executed 18 December 2012 for ferry operations to SMBI between RCC and the State of Queensland (acting through DTMR).
- 27 June 2013 – Council adopted the SMBI TransLink Operations Special Charge Overall Plan and the 2013-2014 Annual Implementation Plan.
- 26 June 2014 – Council adopted the SMBI TransLink Operations 2014-2015 Annual Implementation Plan.
- 25 June 2015 – Council adopted the SMBI TransLink Operations Special Charge Amended Overall Plan and the 2015-2016 Annual Implementation Plan.
- 9 September 2015 – Council resolved to advise DTMR to investigate 3 items listed in the resolution. A letter regarding the resolution was provided to DTMR on 11 September 2015.
- 17 November 2015 – DTMR provided a response to the 3 resolution items.

## ISSUES

Three issues were raised as part of a resolution by Council at its General Meeting of 9 September 2015 (Attachment 1) about public transport for residents of SMBI. These issues have now been responded to by DTMR (Attachment 2).'

DTMR have indicated that they are committed to working collaboratively with RCC and local operators to continue to improve delivery of transport services.

## STRATEGIC IMPLICATIONS

### Legislative Requirements

Section 92 of the *Local Government Act 2009* (LGA) and Section 94 of the *Local Government Regulation 2012* (Regulation) require a resolution by Council to levy special rates or charges, and the adoption of an overall plan and an annual implementation plan to identify the rateable land and services/activities/facilities being supplied (whether or not the service is supplied or undertaken by the local government).

Council adopted the SMBI Translink Operations Special Charge Amended Overall Plan and the 2015-2016 Annual Implementation Plan on 25 June 2015.

### Risk Management

The adoption of a special charge for the payment of the financial obligations under the funding agreement will provide transparency for the SMBI residents and ratepayers in the benefited area regarding the purpose of the funds collected.

### Financial

The amount for the 2015-2016 financial year for the Annual Implementation Plan is \$962,084. This was calculated based on the CPI of the existing contribution in 2014-2015. The new agreement states a baseline contribution of \$950,000, meaning that the adopted levy will recover more than what is required in 2015-2016. It is anticipated that the 2016-2017 amount will be adjusted by the difference of these 2 amounts.

### People

Nil impact expected.

### Environmental

Nil impact expected.

### Social

Nil impact expected.

### Alignment with Council's Policy and Plans

This report aligns with Council's Corporate Plan 2015-2020:

2. Green Living
  - 2.5 Transport planning reflects a desire to maximise economic, environmental and liveability outcomes through quality road design, public transport, pedestrian and cycling strategies.

6. Supportive and vibrant economy
  - 6.1 Council supports infrastructure that encourages business and tourism growth.

## **CONSULTATION**

Consultation has been held with Councillors, the Executive Leadership team, senior management of City Infrastructure, Financial Services and General Counsel.

## **OPTIONS**

### **Option 1**

That Council resolves as follows:

1. To delegate authority to the Chief Executive Officer, under s257(1)(b) of the *Local Government Act 2009* to: execute agreement as attached; and
2. That the report and attachments remain confidential until a formal announcement relating to this agreement has been made by the State Government.

### **Option 2**

That Council resolve not to delegate this authority to the Chief Executive Officer and note the attached agreement.

## **OFFICER'S RECOMMENDATION**

That Council resolves as follows:

1. To delegate authority to the Chief Executive Officer, under s257(1)(b) of the *Local Government Act 2009* to execute agreement as attached; and
2. That the report and attachments remain confidential until a formal announcement relating to this agreement has been made by the State Government.

### **6.3 FUNDING AGREEMENT FOR FERRY OPERATIONS TO SMBI**

At the General Meeting of 12 August 2015 Council resolved 'that this item lie on the table until a Councillor workshop is conducted and further discussions are held with the State'.

This item will be presented to a future General Meeting for consideration.

#### **PROCEDURAL MOTION**

Moved by: Cr A Beard

That the matter be taken from the table.

CARRIED 10/0

Crs Boglary, Ogilvie, Hardman, Hewlett, Elliott, Talty, Beard, Gleeson, Bishop and Williams voted FOR the motion.

Cr Edwards was absent from the meeting.

#### **COUNCIL RESOLUTION**

Moved by: Cr A Beard

Seconded by: Cr W Boglary

That Council resolves that the Minister be requested to:

- 1. Undertake a review of the ferry arrival times at Weinam Creek to achieve a minimum of 10 minute difference between scheduled ferry arrivals and connecting bus departures;**
- 2. Include SMBI TransLink services into the recently announced Fare Review that seeks a new fare path strategy that promotes fairness, addresses affordability, and promotes patronage growth for public transport in South East Queensland; and**
- 3. Ensure that TransLink negotiations with the SMBI ferry services include options for increased vessel capacity and/or frequency to address shortfalls in peak travel time demand.**

CARRIED 10/0

Crs Boglary, Ogilvie, Hardman, Hewlett, Elliott, Talty, Beard, Gleeson, Bishop and Williams voted FOR the motion.

Cr Edwards was absent from the meeting.



Deputy Premier  
Minister for Transport, Minister for Infrastructure,  
Local Government and Planning and Minister for Trade

Our ref: MC83356

Your ref: KW:DS:fm

17 NOV 2015

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100 George Street  
PO Box 15009 City East  
Queensland 4002 Australia  
Telephone +61 7 3719 7100  
Email deputy.premier@ministerial.qld.gov.au

Councillor Karen Williams  
Mayor  
Redland City Council  
PO Box 21  
CLEVELAND QLD 4163

Dear Councillor Williams

*Karen,*

Thank you for your letter of 11 September 2015 about a resolution passed by Redland City Council (RCC) at its 9 September 2015 general meeting about public transport for residents of the Southern Moreton Bay Islands (SMBI).

I am advised the Department of Transport and Main Roads (TMR) has investigated the three items listed in the resolution, with its response to each item provided below.

Before responding to the resolution, I wish to assure you that, as per the proposed funding agreement which is with your office for review, no financial contribution for the funding of SMBI ferry services is required from RCC beyond December 2018. Further, as part of this agreement, free inter-island travel will be maintained until the conclusion of the proposed agreement in December 2018.

In response to the first item of RCC's resolution requesting a review of connection times at Weinam Creek, I am pleased to hear that, TMR has received advice from RCC that it is in the process of writing to TMR to confirm its support for restarting the Weinam Creek bus station upgrade project, which I understand was previously halted in 2014.

If upgraded, customers using the Weinam Creek bus station will benefit from improved, safe and comfortable facilities that are compliant with the *Disability Discrimination Act 1992* (Qld), with the station also increasing in capacity to allow for more buses to access it.

Should the station upgrade proceed, based on RCC's support and on the condition the proposed SMBI funding agreement is executed by RCC, TMR will commit to reviewing the connection time between bus and ferry services at Weinam Creek as part of a package of changes aligned with the delivery of the upgraded infrastructure.

In response to the second item of RCC's resolution requesting SMBI services be considered by the fare review taskforce, I can confirm that the taskforce has received a submission on behalf of SMBI residents regarding its thoughts on the TransLink network.

Comments from this submission, which are deemed within the scope of the taskforce's mandate, will be considered as part of the taskforce's holistic review of the network and I can assure you that, once the taskforce's recommendations are released for public consultation in early- to mid-2016, SMBI residents will be able to provide further comment on any proposed changes.

In response to the third item of RCC's resolution, requesting the investigation of shortfalls in capacity with SMBI ferry services, I can advise that, similar to the response to item one of the resolution, if support is provided by RCC to restart the project, and on the condition that RCC executes the proposed funding agreement for SMBI services, TMR is committed to reviewing the capacity of SMBI services. Any agreed changes will be delivered as part of the upgraded Weinam Creek bus station infrastructure.

I also note your letter requested support regarding the facilitation of on-island transport for Macleay and Russell Islands and funding for a park 'n' ride facility. While I can appreciate the benefits both of these projects would have for the SMBI region, the Queensland Government's two major priorities in the region are the permanent extension of TransLink ticketing to SMBI, and delivering an upgraded bus interchange at Weinam Creek.

Due to the precedence of these two projects, unfortunately, the Queensland Government is unable to provide funding for additional projects at this time.

I do however, look forward to seeing TMR working collaboratively with RCC and local operators, to further improve delivery of transport services across Redland, and identify future improvements in the region.

I trust this information is of assistance.

Yours sincerely



**JACKIE TRAD MP**  
**DEPUTY PREMIER**  
**Minister for Transport, Minister for Infrastructure,**  
**Local Government and Planning and Minister for Trade**

Our ref: DG30007



Councillor Karen Williams  
Mayor  
Redland City Council  
PO Box 21  
CLEVELAND QLD 4163

Office of the  
Director-General

Department of  
**Transport and Main Roads**

27 JUL 2015

*Karen*  
Dear Councillor Williams

As you know, the Department of Transport and Main Roads (TMR) in partnership with Redland City Council (RCC) and Bay Islands Transit have collaboratively worked together in delivering the Southern Moreton Bay Islands (SMBI) trial service from 1 July 2013.

From early 2015, TMR began an evaluation process in consultation with key stakeholders to review the trial integration and I am pleased to advise that the SMBI passenger ferry will transition into the TransLink Ticketing Network on an ongoing basis from 1 January 2016.

Following our conversation, I understand that Mr Keith Boyer, Director Taxi & Limousine Services, and Mr Murray Erbs, Group Manager, City Infrastructure, RCC, have discussed, and in principle agreed to RCC's ongoing financial support through to 31 December 2018.

I note that this will be the final agreement for the ongoing financial contribution for SMBI passenger ferry service between TMR and RCC.

I would like to take this opportunity to thank RCC for its commitment to the ongoing financial support through to 31 December 2018. This support has played a crucial role in ensuring the service continues within the TransLink network, and in turn provides significant financial, economic and social benefits to the SMBI community.

To finalise the discussed ongoing support, please find enclosed two copies of the new funding agreement to be signed by a duly authorised RCC officer. Once signed, please return both copies to TransLink Division:

Attention: Mr Keith Boyer  
Director (Taxi & Limousine Services)  
TransLink Division  
GPO Box 50  
BRISBANE QLD 4001

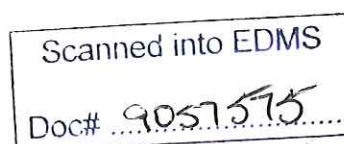
Should you require further information about the new funding agreement, please contact Mr Boyer, on 3338 4192 or email at [keith.boyer@translink.com.au](mailto:keith.boyer@translink.com.au).

Yours sincerely

Neil Scales  
**Director-General**  
**Department of Transport and Main Roads**

Enc (2)

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ABN 39 407 690 291

# Funding Agreement for Ferry Operations to the Southern Moreton Bay Islands

STATE OF QUEENSLAND

(acting through the Department of Transport and Main Roads)

(the "State")

Redland City Council (the "Council")



**Queensland**  
Government

Department of Transport and Main Roads

Legal Services

**Telephone:** (07) 3066 7074

**Facsimile:** (07) 3066 7022

**Reference:** 145/01791/JCOF



THIS AGREEMENT is made on

**BETWEEN:**

**THE STATE OF QUEENSLAND** acting through the **DEPARTMENT OF TRANSPORT AND MAIN ROADS** of Level 13,  
420 George Street, Brisbane 4000 in the State of Queensland

(the "**State**")

**AND**

**REDLAND CITY COUNCIL** of Cnr Bloomfield and Middle Streets, Cleveland 4163 in the State of Queensland

(the "**Council**")

**RECITALS:**

- A. The State is responsible for the delivery and management of public transport services in South East Queensland.
- B. The State and the Council (together the Parties) wish to promote and improve public transport to all communities in Redland City.
- C. The Parties are committed to the staged extension of public transport services between Weinam Creek and the Southern Moreton Bay Islands to reduce the costs of living and broaden the economic benefits to the areas.
- D. This agreement is for the period from the Commencement Date and Expiry Date
- E. The Parties agreement is evidenced by the terms and conditions set out in this agreement.

**The Parties agree as follows**

## **1. DEFINITIONS AND INTERPRETATION**

- 1.1** Unless the context otherwise requires or the contrary intention appears in this Agreement, the following terms have the following meanings assigned to them:

"**Agreement**" means this Agreement, as amended from time to time and includes all Schedules to this Agreement.

"**Annual Funding Amount**" means the amount set out in Item 4 of Schedule A.

"**Business Day**" means a day other than a Saturday, Sunday or public holiday, on which banks are open for normal banking business in Brisbane.

"**Commencement Date**" means 1 January 2016.

"**Confidential Information**" means this Agreement (including its terms) and, in relation to a Party, any information that:

- (a) is by its nature confidential;
  - (b) is communicated by that Party to the other Party as being confidential; or
  - (c) the other Party knows, or ought reasonably to know, is confidential,
- but does not include information which:
- (d) is lawfully received from a third party who is not bound by a duty of confidentiality;
  - (e) has become public knowledge (other than through a breach of an obligation of confidence under this Agreement); or
  - (f) was independently developed or released by the other Party without reference to the Confidential Information.

"CPI" means the Consumer Price Index (All Groups) for Brisbane published by the Australian Bureau of Statistics.

"Expiry Date" means 31 December 2018.

"State Services" means the services set out in Item 3 of Schedule A and the Ticketing Services.

"Party" means a party to this Agreement, including the Party's successors or permitted assigns, including any person or entity taking by way of novation.

"Personal Information" has the meaning given in the *Information Privacy Act 2009* (Qld).

"Southern Moreton Bay Island Areas" means the islands of Russell, Macleay, Karragarra and Lamb.

1.2 "Ticketing Services" includes all products and services necessary to provide Go Card including, but not limited to the provision and maintenance of the ticketing hardware system and includes the ongoing utilisation of integrated ticketing products on the Southern Moreton Bay Island Services. In this Agreement unless the contrary intention appears:

- (a) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) the expressions "in particular", "including", "includes" and "include" have the meaning as if followed by "without limitation";
- (c) where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (d) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day such sum must be paid and such act, matter or thing must be done on the immediately subsequent Business Day;
- (e) a reference to a month is a reference to a calendar month;
- (f) a reference to "\$" or "dollar" is to Australian currency;
- (g) words importing the singular include the plural and vice versa;

- (h) clause headings are for convenience only and do not affect the interpretation of this Agreement;
- (i) a reference to a clause or Schedule is a reference to the corresponding clause or Schedule to this Agreement;
- (j) all obligations of each Party pursuant to this Agreement will be completely at the cost of that Party, unless expressly provided otherwise in this Agreement;

## **2. COMMENCEMENT**

- 2.1** This Agreement will, once signed by both Parties, commence with effect from the Commencement Date and will continue until the Expiry Date or until terminated earlier in accordance with this Agreement.

## **3. OBLIGATIONS OF THE PARTIES**

- 3.1** The Council agrees to:

- 3.1.1 pay the Annual Funding Amount to the State in accordance with clause 4;
- 3.1.2 provide the State and its authorised agents access to enter the Council's premises, terminals or other installation sites under its control for the purposes of maintaining, implementing and administering the State Services in order to allow the State to fulfil its powers and functions under all applicable laws and standards;
- 3.1.3 be responsible for ensuring related ferry infrastructure is maintained in reasonable condition and complies with all applicable laws, including the *Disability Discrimination Act 1992 (Cth)*; and
- 3.1.4 not increase fees payable by the ferry operator for mooring and access charges by any more than annual CPI without the agreement of the State.

- 3.2** The State agrees that in consideration of the Council agreeing the obligations in clause 3.1, it will:

- 3.2.1 provide the State Services;
- 3.2.2 provide the Ticketing Services;
- 3.2.3 use its best endeavours to market and promote the State Services in Redland City and specifically to the Southern Moreton Bay Island Areas;
- 3.2.4 brand the ferries and ferry infrastructure used in the Southern Moreton Bay Island Areas with the TransLink name and logos;
- 3.2.5 use the Annual Funding Amount only for the purpose of providing the State Services and the Ticketing Services to the Southern Moreton Bay Island Areas.

- 3.3** Without limiting the Council's rights in relation to the State Services, the Council agrees that if, at the end of the term of this Agreement or upon the early termination of this Agreement, any part of the Annual Funding Amount paid by the Council to the State has not been applied, or committed by the State to be applied, towards the operation of the State Services, the State will not be liable to refund that amount to the Council.

- 3.4** Without limiting any other clause in, or rights of a Party under, this Agreement, the Parties agree that:

- (a) the State may provide the State Services at its own discretion;
- (b) may review and discuss the SMBI State Services on dates to be agreed between the State and Council delegates (**review meetings**);
- (c) the review meetings may be attended by such operational or other staff of each Party as that Party considers appropriate.

**3.5** The State agrees to provide the Council with reasonable prior notice of intent to access a site to ensure that Workplace Health and Safety and insurance obligations can be met by all parties.

#### **4. PAYMENT**

**4.1** The Council will pay the Annual Funding Amount pro-rata quarterly in arrears within 28 days of the due date for the payment of Local Government rates for the Southern Moreton Bay Island Areas.

**4.2** The Council will pay the Annual Funding Amount payable in accordance with clause 4.1, via electronic transfer to the State's nominated bank account.

**4.3** If Council requires it, the State will issue a tax invoice for the quarterly amount payable under clause 4.1.

**4.4** The Council is not required to make any payment until the State has provided a valid tax invoice if considered necessary by Council.

#### **5. WARRANTIES**

**5.1** Each Party acknowledges and warrants to the other Party that as at the date of this Agreement that Party is free to and has the authority to enter into this Agreement.

#### **6. INDEMNITY**

**6.1** The Council indemnifies the State and its officers and employees (each "an Indemnified") from and against any claim, action, demand, loss, damage, cost (including legal costs on a full indemnity basis) or expense which may be brought against, or suffered or incurred by, any of the Indemnified as a result of or in connection with any:

- (a) negligent or unlawful act or omission of the Council, its employees, officers, agents or contractors;
- (b) breach of this Agreement by the Council;
- (c) contravention of any legislative requirement by the Council, its employees, officers, agents or contractors;
- (d) personal injury (including sickness, injury or death);
- (e) loss of, or damage to tangible property;
- (f) infringement by the Council, its officers, employees, agents or contractors of any intellectual property rights of any third party; or
- (g) unauthorised use of the State's IP Rights by the Council,

except to the extent that any act or omission of the Indemnified caused or contributed to the claim, action, demand, loss, damage, cost or expense.

**6.2** The Council releases each of the Indemnified from all actions, claims, proceedings, or demands which, but for this clause, might be able to be brought or made against the Indemnified by the Council.

## **7. STATE'S INTELLECTUAL PROPERTY RIGHTS**

**7.1** All intellectual property rights embodied in or used in connection with TransLink's name and logos are, and will at all times remain, the sole property of the State.

**7.2** For the term of this Agreement, the State grants to the Council a royalty-free, non-exclusive licence to use and reproduce TransLink's name and such logos and marks as the State may from time to time consent in writing for the Council to use (together, "TransLink's IP Rights") for the purposes of operating the ferry services and performing its obligations under this Agreement, provided that the Council:

- (a) must not, except with the State's prior approval (at the State's discretion) on-sell, licence, sublicense or otherwise deal with TransLink's IP Rights;
- (b) obtains the prior approval of the State (at the State's discretion) regarding the positioning, prominence and contextual use of TransLink's name, logos and marks; and
- (c) must comply with any standards or guidelines notified to it by the State from time to time in relation to the use of TransLink's IP Rights.

**7.3** The Council agrees that the State is not under any liability to the Council for any claim, action, demand, loss, damage, cost or expense brought against, or suffered or incurred by, the Council, or in which the Council may be involved, resulting from or in connection with any unauthorised use of the TransLink's IP Rights by the Council.

## **8. DEFAULT AND TERMINATION**

**8.1** In the event of default by a Party of an obligation under this Agreement, the non-defaulting Party may give the defaulting Party notice in writing specifying:

- (a) the default; and
- (b) the period (which must not be less than ten Business Days) within which:
  - (i) the default must be rectified; or
  - (ii) reasonable cause must be shown as to why the default should not result in termination of the Agreement.

**8.2** The Parties agree that in the event that a Party, having received notice under clause 8.1, fails to remedy the default referred to in that notice or to show reasonable cause why the default should not result in the termination of this Agreement, by the date specified in that notice, then the non-defaulting Party may terminate this Agreement by written notice at any time after the specified date.

**8.3** Termination of this Agreement will not affect any claim either Party may have against the other by reason of antecedent breach of this Agreement and will not relieve either Party of any obligation under this Agreement which is expressed to continue after termination.

**8.4** In the event of early termination of this Agreement:

- (a) the Council must pay the State any unpaid proportion of the Annual Funding Amount owed to the State, such payment to be made within 14 days of the termination of the Agreement; and
- (b) both Parties will use their best endeavours to remove from the public domain any marketing materials in relation to the State Services provided pursuant to this Agreement.

**8.5** For clarity, in the event of early termination of this Agreement, it is agreed by the Parties, that any Annual Funding Amount already paid to the State by the Council at the date of termination is non-refundable.

## **9. GST**

**9.1** In this clause 9, the following terms have the following meanings assigned to them:

"**GST**" means the goods and services tax that is payable under the GST law.

"**GST amount**" means any payment (or the relevant part of the payment) multiplied by the appropriate rate of GST (currently 10%), together with any related interest, penalties, fines or other charges but only to the extent they arise from the payer's failure to pay when due.

"**GST law**" means the GST law as defined in *A New Tax System (Goods and Services Tax) Act 1999*.

"**Payment**" means any amount payable under or in connection with this Agreement including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST amount) and includes the provision of any non-monetary consideration.

"**Taxable Supply**" has the meaning given to that term by the GST law.

**9.2** All payments referred to in this Agreement have been calculated without regard to GST.

**9.3** If the whole or any part of any Payment is the consideration for a Taxable Supply, the payer will pay to the payee an additional amount equal to the GST amount either concurrently with that Payment or as otherwise agreed in writing.

## **10. CONFIDENTIALITY AND PRIVACY**

**10.1** Each Party undertakes not to disclose any Confidential Information under any circumstances without the prior consent of the other Party, except:

- (a) to its staff and officers requiring that information for the conduct of their duties pursuant to this Agreement;
- (b) to its accountants and legal advisors;
- (c) in the case of the State, to any Queensland Ministers and Parliament and otherwise for Queensland State government purposes;

- (d) in the case of the Council, to any Council Chairmen and Civic Cabinet and otherwise for the Council purposes; or
- (e) as required or permitted by law or any court order, provided that, in such case, the relevant Party will use its best endeavours to inform the other Party prior to the disclosure.

**10.2** The Parties agree that any media associated with this Agreement will be jointly undertaken.

**10.3** Where the Council has access to Personal Information in order to fulfil its obligations under this Agreement, it must:

- (a) where the Council is responsible for holding Personal Information, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
- (b) where the Council is required to collect Personal Information from any individual for the purposes of the Agreement, provide a notice to the individual in the form and manner advised by the State;
- (c) not use Personal Information other than for the purposes of the Agreement, unless required or authorised by law;
- (d) not disclose Personal Information without the written agreement of the State or any other persons authorised in writing by the State, unless required or authorised by law;
- (e) ensure that only authorised personnel have access to Personal Information;
- (f) immediately notify the State if it becomes aware that a disclosure of Personal Information is, or may be required or authorised by law;
- (g) make its employees, agents and subcontractors aware of the Council's obligations under this clause including, when requested by the State, requiring those employees, agents and subcontractors to promptly sign a Privacy Deed, relating to Personal Information;
- (h) indemnify the State for any liability arising from a breach by the Council of this clause notwithstanding any other provision of this Agreement; and
- (i) comply with such other privacy and security measures as the State reasonably advises the Council in writing from time to time.

**10.4** The Council must immediately notify the State upon becoming aware of any breach of this clause 10.

**10.5** The State will ensure that Personal Information is kept confidential and is not disclosed to any person other than the State except where required by law, or with the State's consent.

## **11. RIGHTS NOT TO BE ASSIGNED**

**11.1** The Council may not assign, transfer or novate all or any part of its rights or obligations under this Agreement, without the State's prior written consent (at the State's discretion).

## **12. DISPUTE RESOLUTION**

- 12.1** Subject to this clause 12, prior to resorting to external dispute resolution mechanisms, the Parties will agree to attempt to resolve any dispute regarding this Agreement or anything arising out of this Agreement through negotiation between the Parties, escalated as follows:
- (a) If a Party believes there is a dispute, it may give written notice to the other Party detailing the nature of the dispute;
  - (b) Within 10 Business Days of a dispute being notified, the Parties will negotiate a resolution through their respective representatives;
  - (c) If the dispute is not resolved within 10 Business Days of the Parties' representatives commencing negotiations, then the dispute is escalated to the Parties' respective senior executive officers;
  - (d) If the dispute is not resolved within 10 Business Days of the Parties' senior executive officers commencing negotiations, then the dispute is escalated to the Parties' respective chief executive officers;
  - (e) If the dispute is not resolved within 10 Business Days of the Parties' chief executive officers commencing negotiations, the Parties will seek to agree on an action or dispute resolution process in accordance with clause 12.2.

**12.2** The Parties will seek to agree on:

- (a) the process for resolving the whole or part of the dispute through means other than litigation, such as mediation, conciliation, independent expert determination or mini trial;
- (b) the procedure and timetable for any exchange of documents and other information relating to the dispute;
- (c) procedural rules and a timetable for the conduct with a selected mode of proceedings;
- (d) a procedure for selection and compensation of any neutral person who may be employed by the Parties; and
- (e) whether the Parties will seek assistance of a dispute resolution organisation.

**12.3** If a dispute is not resolved within the time established by or agreed under clause 12.2, a Party may terminate the dispute resolution process and commence court proceedings relating to the dispute.

**12.4** Any exchange of information or documents or the making of any offer of settlement pursuant to this clause 12 will be treated as "without prejudice" in any subsequent court proceedings.

**12.5** The referral of a dispute to a dispute resolution process will not prevent either Party from commencing court proceedings relating to the dispute where the Party seeks urgent interlocutory relief or from exercising any of its rights under this Agreement.

**12.6** Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under this Agreement to the extent possible.

### **13. FORCE MAJEURE**



- 13.1** A Party is not liable for the performance of any obligation under this Agreement if such failure or delay is due to Force Majeure.
- 13.2** If either Party is unable to perform its obligations under this Agreement due to Force Majeure and the inability continues for a period of 120 days, either Party may terminate this Agreement immediately on providing notice to the other Party.
- 13.3** The term "Force Majeure" shall include:-
- 13.3.1 war, whether declared or undeclared, revolution or act of public enemies;
  - 13.3.2 riot or civil commotion;
  - 13.3.3 strike, stoppage, ban, limitation on work or restraint of labour;
  - 13.3.4 act of God;
  - 13.3.5 fire, flood, storm, tempest or washaway; and
  - 13.3.6 act or restraint of any governmental or semi-governmental or other public or statutory authority.
- 14. VARIATION AND WAIVER**
- 14.1** No variation, modification and waiver of any provisions of this Agreement, will be of any effect unless it is in writing and signed by the Parties and in the case of a waiver, by the Party giving it.
- 15. ENTIRE AGREEMENT**
- 15.1** This Agreement constitutes the entire agreement between the Parties about its subject matter.
- 16. PROPER LAW**
- 16.1** This Agreement will be governed and construed in accordance with the laws in force in the State of Queensland.
- 17. COUNTERPARTS**
- 17.1** This Agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same Agreement.
- 18. COSTS**
- 18.1** Each Party must bear its own legal costs and any incidental costs to this Agreement.
- 19. SEVERABILITY**
- 19.1** If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of the Agreement remains in force.
- 20. RELATIONSHIP**
- 20.1** Nothing in this Agreement creates a relationship of partnership, joint venture or employer and employee between the Parties.

**21. NO AGENCY**

21.1 The Council is not by virtue of this Agreement the agent or representative of the State and the Council will ensure that it conducts itself in dealings with others in such manner so as not to infer that the Council is the agent or representative of the State.

**22. SUBCONTRACTING**

22.1 Except as permitted by this Agreement or with the State's prior written consent (at the State's discretion), the Council must not subcontract, or purport to subcontract, any of its obligations under this Agreement.

**23. SURVIVAL**

23.1 The following clauses survive termination or expiration of this Agreement:

- (a) clause 3.24 (use and refund of Annual Funding Amount);
- (b) clause 6 (indemnity);
- (c) clause 7 (the State's intellectual property);
- (d) clause 10 (confidentiality and privacy); and
- (e) this clause 23.1.

**24. ADDRESSES FOR NOTICES**

24.1 Any notice in connection with this Agreement will be taken to have been given when made in writing and delivered or sent and received by post or facsimile to the Party to which it is intended to be given at the following respective addresses:

For the State:  
General Manager  
(Passenger Transport Services)  
TransLink Division  
61 Mary St  
BRISBANE QLD 4000  
  
Phone: (07) 3888 4196  
Facsimile: (07) 3888 4067

For the Council:  
Manager City Infrastructure  
91 to 93 Bloomfield Street  
CLEVELAND Qld 4163  
Phone: (07) 3829 8999  
Facsimile: (07) 3829 8765

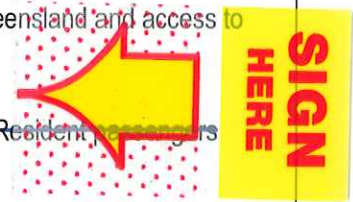
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24.4 Communications other than notices in connection with this Agreement may be given by delivery, posting and facsimile or other methods including email.

## SCHEDULE A

<b>Item 1</b>	<b>State's Delegate:</b> Keith Boyer, Director (Taxi & Limousine Services)
<b>Item 2</b>	<b>Council's Delegate:</b> Murray Erbs, Group Manager City Infrastructure
<b>Item 3</b>	<p><b>State Services:</b></p> <p>The State Services include:</p> <ol style="list-style-type: none"> <li>1. Southern Moreton Bay Island (SMBI) ferry routes being between Weinam Creek, Russell, Macleay, Karragarra and Lamb Islands will be declared as a TransLink route under s42 of the Transport Operations (Passenger Transport) Act 1994.</li> <li>2. The ongoing integration of SMBI route into the TransLink Mass Transit Network. This includes the utilisation of a single integrated ticket for travel across the TransLink network in South East Queensland and access to related products and benefits.</li> <li>3. Inter-Island travel between SMBI islands will be provided free of charge for Island Resident passengers <del>utilising a paper ticket.</del></li> <li>5. All ancillary and incidental activities to procure, provide, manage and promote the service, including representation at the steering committee.</li> <li>6</li> </ol>
<b>Item 4</b>	<p><b>Annual Funding Amount:</b> \$950,000 (GST Exclusive), which will be increased annually, such increase to be applied from 1 July each year and in accordance with the lesser of:</p> <ol style="list-style-type: none"> <li>(a) the March quarter CPI, or</li> <li>(b) Translink annual fare increase.</li> </ol>
<b>Item 5</b>	<p><b>Payments Schedule:</b></p> <p>Council will make payment to TransLink quarterly</p>



**EXECUTED AS AN AGREEMENT**

Signed for and on behalf of the **State of Queensland (acting through the Department of Transport and Main Roads)**

this 27<sup>th</sup> day of July, 2015

by NEIL SCALES  
(full name)

Director - General  
(designation)

a duly authorised representative,  
in the presence of:

Jennifer Grace  
(Name of witness)

J Grace  
(Signature of witness)

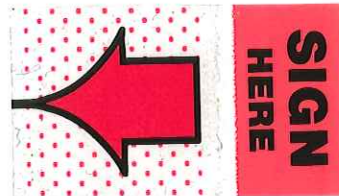
Neil Scales  
(signature)

**SIGNED** for and on behalf of **Redland City Council** by its duly authorised delegate on

this \_\_\_\_\_ day of \_\_\_\_\_, 2015

by \_\_\_\_\_  
(Name of Delegate)

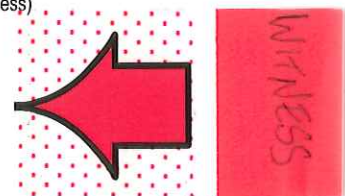
\_\_\_\_\_  
(Signature of Delegate)



in the presence of:

\_\_\_\_\_  
(Name of Witness)

\_\_\_\_\_  
(Signature of Witness)



# Funding Agreement for Ferry Operations to the Southern Moreton Bay Islands

STATE OF QUEENSLAND

(acting through the Department of Transport and Main Roads)

(the "State")

Redland City Council (the "Council")



**Queensland**  
Government

Department of Transport and Main Roads

Legal Services

**Telephone:** (07) 3066 7074

**Facsimile:** (07) 3066 7022

**Reference:** 145/01791/JCOF

**THIS AGREEMENT** is made on

**BETWEEN:**

**THE STATE OF QUEENSLAND acting through the DEPARTMENT OF TRANSPORT AND MAIN ROADS** of Level 13,  
420 George Street, Brisbane 4000 in the State of Queensland

(the "**State**")

**AND**

**REDLAND CITY COUNCIL** of Cnr Bloomfield and Middle Streets, Cleveland 4163 in the State of Queensland

(the "**Council**")

**RECITALS:**

- A. The State is responsible for the delivery and management of public transport services in South East Queensland.
- B. The State and the Council (together the Parties) wish to promote and improve public transport to all communities in Redland City.
- C. The Parties are committed to the staged extension of public transport services between Weinam Creek and the Southern Moreton Bay Islands to reduce the costs of living and broaden the economic benefits to the areas.
- D. This agreement is for the period from the Commencement Date and Expiry Date
- E. The Parties agreement is evidenced by the terms and conditions set out in this agreement.

**The Parties agree as follows**

## **1. DEFINITIONS AND INTERPRETATION**

1.1 Unless the context otherwise requires or the contrary intention appears in this Agreement, the following terms have the following meanings assigned to them:

"**Agreement**" means this Agreement, as amended from time to time and includes all Schedules to this Agreement.

"**Annual Funding Amount**" means the amount set out in Item 4 of Schedule A.

"**Business Day**" means a day other than a Saturday, Sunday or public holiday, on which banks are open for normal banking business in Brisbane.

"**Commencement Date**" means 1 January 2016.

"**Confidential Information**" means this Agreement (including its terms) and, in relation to a Party, any information that:

- (a) is by its nature confidential;
  - (b) is communicated by that Party to the other Party as being confidential; or
  - (c) the other Party knows, or ought reasonably to know, is confidential,
- but does not include information which:
- (d) is lawfully received from a third party who is not bound by a duty of confidentiality;
  - (e) has become public knowledge (other than through a breach of an obligation of confidence under this Agreement); or
  - (f) was independently developed or released by the other Party without reference to the Confidential Information.

"CPI" means the Consumer Price Index (All Groups) for Brisbane published by the Australian Bureau of Statistics.

"Expiry Date" means 31 December 2018.

"State Services" means the services set out in Item 3 of Schedule A and the Ticketing Services.

"Party" means a party to this Agreement, including the Party's successors or permitted assigns, including any person or entity taking by way of novation.

"Personal Information" has the meaning given in the *Information Privacy Act 2009* (Qld).

"Southern Moreton Bay Island Areas" means the islands of Russell, Macleay, Karragarra and Lamb.

## 1.2

"Ticketing Services" includes all products and services necessary to provide Go Card including, but not limited to the provision and maintenance of the ticketing hardware system and includes the ongoing utilisation of integrated ticketing products on the Southern Moreton Bay Island Services. In this Agreement unless the contrary intention appears:

- (a) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) the expressions "in particular", "including", "includes" and "include" have the meaning as if followed by "without limitation";
- (c) where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (d) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day such sum must be paid and such act, matter or thing must be done on the immediately subsequent Business Day;
- (e) a reference to a month is a reference to a calendar month;
- (f) a reference to "\$" or "dollar" is to Australian currency;
- (g) words importing the singular include the plural and vice versa;

- (h) clause headings are for convenience only and do not affect the interpretation of this Agreement;
- (i) a reference to a clause or Schedule is a reference to the corresponding clause or Schedule to this Agreement;
- (j) all obligations of each Party pursuant to this Agreement will be completely at the cost of that Party, unless expressly provided otherwise in this Agreement;

## **2. COMMENCEMENT**

- 2.1** This Agreement will, once signed by both Parties, commence with effect from the Commencement Date and will continue until the Expiry Date or until terminated earlier in accordance with this Agreement.

## **3. OBLIGATIONS OF THE PARTIES**

- 3.1** The Council agrees to:

- 3.1.1 pay the Annual Funding Amount to the State in accordance with clause 4;
- 3.1.2 provide the State and its authorised agents access to enter the Council's premises, terminals or other installation sites under its control for the purposes of maintaining, implementing and administering the State Services in order to allow the State to fulfil its powers and functions under all applicable laws and standards;
- 3.1.3 be responsible for ensuring related ferry infrastructure is maintained in reasonable condition and complies with all applicable laws, including the *Disability Discrimination Act 1992 (Cth)*; and
- 3.1.4 not increase fees payable by the ferry operator for mooring and access charges by any more than annual CPI without the agreement of the State.

- 3.2** The State agrees that in consideration of the Council agreeing the obligations in clause 3.1, it will:

- 3.2.1 provide the State Services;
- 3.2.2 provide the Ticketing Services;
- 3.2.3 use its best endeavours to market and promote the State Services in Redland City and specifically to the Southern Moreton Bay Island Areas;
- 3.2.4 brand the ferries and ferry infrastructure used in the Southern Moreton Bay Island Areas with the TransLink name and logos;
- 3.2.5 use the Annual Funding Amount only for the purpose of providing the State Services and the Ticketing Services to the Southern Moreton Bay Island Areas.

- 3.3** Without limiting the Council's rights in relation to the State Services, the Council agrees that if, at the end of the term of this Agreement or upon the early termination of this Agreement, any part of the Annual Funding Amount paid by the Council to the State has not been applied, or committed by the State to be applied, towards the operation of the State Services, the State will not be liable to refund that amount to the Council.

- 3.4** Without limiting any other clause in, or rights of a Party under, this Agreement, the Parties agree that:



- (a) the State may provide the State Services at its own discretion;
- (b) may review and discuss the SMBI State Services on dates to be agreed between the State and Council delegates (**review meetings**);
- (c) the review meetings may be attended by such operational or other staff of each Party as that Party considers appropriate.

**3.5** The State agrees to provide the Council with reasonable prior notice of intent to access a site to ensure that Workplace Health and Safety and insurance obligations can be met by all parties.

#### **4. PAYMENT**

**4.1** The Council will pay the Annual Funding Amount pro-rata quarterly in arrears within 28 days of the due date for the payment of Local Government rates for the Southern Moreton Bay Island Areas.

**4.2** The Council will pay the Annual Funding Amount payable in accordance with clause 4.1, via electronic transfer to the State's nominated bank account.

**4.3** If Council requires it, the State will issue a tax invoice for the quarterly amount payable under clause 4.1.

**4.4** The Council is not required to make any payment until the State has provided a valid tax invoice if considered necessary by Council.

#### **5. WARRANTIES**

**5.1** Each Party acknowledges and warrants to the other Party that as at the date of this Agreement that Party is free to and has the authority to enter into this Agreement.

#### **6. INDEMNITY**

**6.1** The Council indemnifies the State and its officers and employees (each "an Indemnified") from and against any claim, action, demand, loss, damage, cost (including legal costs on a full indemnity basis) or expense which may be brought against, or suffered or incurred by, any of the Indemnified as a result of or in connection with any:

- (a) negligent or unlawful act or omission of the Council, its employees, officers, agents or contractors;
- (b) breach of this Agreement by the Council;
- (c) contravention of any legislative requirement by the Council, its employees, officers, agents or contractors;
- (d) personal injury (including sickness, injury or death);
- (e) loss of, or damage to tangible property;
- (f) infringement by the Council, its officers, employees, agents or contractors of any intellectual property rights of any third party; or
- (g) unauthorised use of the State's IP Rights by the Council,

except to the extent that any act or omission of the Indemnified caused or contributed to the claim, action, demand, loss, damage, cost or expense.

6.2 The Council releases each of the Indemnified from all actions, claims, proceedings, or demands which, but for this clause, might be able to be brought or made against the Indemnified by the Council.

## 7. STATE'S INTELLECTUAL PROPERTY RIGHTS

7.1 All intellectual property rights embodied in or used in connection with TransLink's name and logos are, and will at all times remain, the sole property of the State.

7.2 For the term of this Agreement, the State grants to the Council a royalty-free, non-exclusive licence to use and reproduce TransLink's name and such logos and marks as the State may from time to time consent in writing for the Council to use (together, "TransLink's IP Rights") for the purposes of operating the ferry services and performing its obligations under this Agreement, provided that the Council:

- (a) must not, except with the State's prior approval (at the State's discretion) on-sell, licence, sublicense or otherwise deal with TransLink's IP Rights;
- (b) obtains the prior approval of the State (at the State's discretion) regarding the positioning, prominence and contextual use of TransLink's name, logos and marks; and
- (c) must comply with any standards or guidelines notified to it by the State from time to time in relation to the use of TransLink's IP Rights.

7.3 The Council agrees that the State is not under any liability to the Council for any claim, action, demand, loss, damage, cost or expense brought against, or suffered or incurred by, the Council, or in which the Council may be involved, resulting from or in connection with any unauthorised use of the TransLink's IP Rights by the Council.

## 8. DEFAULT AND TERMINATION

8.1 In the event of default by a Party of an obligation under this Agreement, the non-defaulting Party may give the defaulting Party notice in writing specifying:

- (a) the default; and
- (b) the period (which must not be less than ten Business Days) within which:
  - (i) the default must be rectified; or
  - (ii) reasonable cause must be shown as to why the default should not result in termination of the Agreement.

8.2 The Parties agree that in the event that a Party, having received notice under clause 8.1, fails to remedy the default referred to in that notice or to show reasonable cause why the default should not result in the termination of this Agreement, by the date specified in that notice, then the non-defaulting Party may terminate this Agreement by written notice at any time after the specified date.

**8.3** Termination of this Agreement will not affect any claim either Party may have against the other by reason of antecedent breach of this Agreement and will not relieve either Party of any obligation under this Agreement which is expressed to continue after termination.

**8.4** In the event of early termination of this Agreement:

- (a) the Council must pay the State any unpaid proportion of the Annual Funding Amount owed to the State, such payment to be made within 14 days of the termination of the Agreement; and
- (b) both Parties will use their best endeavours to remove from the public domain any marketing materials in relation to the State Services provided pursuant to this Agreement.

**8.5** For clarity, in the event of early termination of this Agreement, it is agreed by the Parties, that any Annual Funding Amount already paid to the State by the Council at the date of termination is non-refundable.

## **9. GST**

**9.1** In this clause 9, the following terms have the following meanings assigned to them:

"**GST**" means the goods and services tax that is payable under the GST law.

"**GST amount**" means any payment (or the relevant part of the payment) multiplied by the appropriate rate of GST (currently 10%), together with any related interest, penalties, fines or other charges but only to the extent they arise from the payer's failure to pay when due.

"**GST law**" means the GST law as defined in *A New Tax System (Goods and Services Tax) Act 1999*.

"**Payment**" means any amount payable under or in connection with this Agreement including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST amount) and includes the provision of any non-monetary consideration.

"**Taxable Supply**" has the meaning given to that term by the GST law.

**9.2** All payments referred to in this Agreement have been calculated without regard to GST.

**9.3** If the whole or any part of any Payment is the consideration for a Taxable Supply, the payer will pay to the payee an additional amount equal to the GST amount either concurrently with that Payment or as otherwise agreed in writing.

## **10. CONFIDENTIALITY AND PRIVACY**

**10.1** Each Party undertakes not to disclose any Confidential Information under any circumstances without the prior consent of the other Party, except:

- (a) to its staff and officers requiring that information for the conduct of their duties pursuant to this Agreement;
- (b) to its accountants and legal advisors;
- (c) in the case of the State, to any Queensland Ministers and Parliament and otherwise for Queensland State government purposes;

- (d) in the case of the Council, to any Council Chairmen and Civic Cabinet and otherwise for the Council purposes; or
- (e) as required or permitted by law or any court order, provided that, in such case, the relevant Party will use its best endeavours to inform the other Party prior to the disclosure.

**10.2** The Parties agree that any media associated with this Agreement will be jointly undertaken.

**10.3** Where the Council has access to Personal Information in order to fulfil its obligations under this Agreement, it must:

- (a) where the Council is responsible for holding Personal Information, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
- (b) where the Council is required to collect Personal Information from any individual for the purposes of the Agreement, provide a notice to the individual in the form and manner advised by the State;
- (c) not use Personal Information other than for the purposes of the Agreement, unless required or authorised by law;
- (d) not disclose Personal Information without the written agreement of the State or any other persons authorised in writing by the State, unless required or authorised by law;
- (e) ensure that only authorised personnel have access to Personal Information;
- (f) immediately notify the State if it becomes aware that a disclosure of Personal Information is, or may be required or authorised by law;
- (g) make its employees, agents and subcontractors aware of the Council's obligations under this clause including, when requested by the State, requiring those employees, agents and subcontractors to promptly sign a Privacy Deed, relating to Personal Information;
- (h) indemnify the State for any liability arising from a breach by the Council of this clause notwithstanding any other provision of this Agreement; and
- (i) comply with such other privacy and security measures as the State reasonably advises the Council in writing from time to time.

**10.4** The Council must immediately notify the State upon becoming aware of any breach of this clause 10.

**10.5** The State will ensure that Personal Information is kept confidential and is not disclosed to any person other than the State except where required by law, or with the State's consent.

## **11. RIGHTS NOT TO BE ASSIGNED**

**11.1** The Council may not assign, transfer or novate all or any part of its rights or obligations under this Agreement, without the State's prior written consent (at the State's discretion).

## **12. DISPUTE RESOLUTION**

**12.1** Subject to this clause 12, prior to resorting to external dispute resolution mechanisms, the Parties will agree to attempt to resolve any dispute regarding this Agreement or anything arising out of this Agreement through negotiation between the Parties, escalated as follows:

- (a) If a Party believes there is a dispute, it may give written notice to the other Party detailing the nature of the dispute;
- (b) Within 10 Business Days of a dispute being notified, the Parties will negotiate a resolution through their respective representatives;
- (c) If the dispute is not resolved within 10 Business Days of the Parties' representatives commencing negotiations, then the dispute is escalated to the Parties' respective senior executive officers;
- (d) If the dispute is not resolved within 10 Business Days of the Parties' senior executive officers commencing negotiations, then the dispute is escalated to the Parties' respective chief executive officers;
- (e) If the dispute is not resolved within 10 Business Days of the Parties' chief executive officers commencing negotiations, the Parties will seek to agree on an action or dispute resolution process in accordance with clause 12.2.

**12.2** The Parties will seek to agree on:

- (a) the process for resolving the whole or part of the dispute through means other than litigation, such as mediation, conciliation, independent expert determination or mini trial;
- (b) the procedure and timetable for any exchange of documents and other information relating to the dispute;
- (c) procedural rules and a timetable for the conduct with a selected mode of proceedings;
- (d) a procedure for selection and compensation of any neutral person who may be employed by the Parties; and
- (e) whether the Parties will seek assistance of a dispute resolution organisation.

**12.3** If a dispute is not resolved within the time established by or agreed under clause 12.2, a Party may terminate the dispute resolution process and commence court proceedings relating to the dispute.

**12.4** Any exchange of information or documents or the making of any offer of settlement pursuant to this clause 12 will be treated as "without prejudice" in any subsequent court proceedings.

**12.5** The referral of a dispute to a dispute resolution process will not prevent either Party from commencing court proceedings relating to the dispute where the Party seeks urgent interlocutory relief or from exercising any of its rights under this Agreement.

**12.6** Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under this Agreement to the extent possible.

### **13. FORCE MAJEURE**

- 13.1** A Party is not liable for the performance of any obligation under this Agreement if such failure or delay is due to Force Majeure.
- 13.2** If either Party is unable to perform its obligations under this Agreement due to Force Majeure and the inability continues for a period of 120 days, either Party may terminate this Agreement immediately on providing notice to the other Party.
- 13.3** The term "Force Majeure" shall include:-
- 13.3.1 war, whether declared or undeclared, revolution or act of public enemies;
  - 13.3.2 riot or civil commotion;
  - 13.3.3 strike, stoppage, ban, limitation on work or restraint of labour;
  - 13.3.4 act of God;
  - 13.3.5 fire, flood, storm, tempest or washaway; and
  - 13.3.6 act or restraint of any governmental or semi-governmental or other public or statutory authority.
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- 14.1** No variation, modification and waiver of any provisions of this Agreement, will be of any effect unless it is in writing and signed by the Parties and in the case of a waiver, by the Party giving it.
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- 15.1** This Agreement constitutes the entire agreement between the Parties about its subject matter.
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**21. NO AGENCY**

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22.1 Except as permitted by this Agreement or with the State's prior written consent (at the State's discretion), the Council must not subcontract, or purport to subcontract, any of its obligations under this Agreement.

**23. SURVIVAL**

23.1 The following clauses survive termination or expiration of this Agreement:

- (a) clause 3.24 (use and refund of Annual Funding Amount);
- (b) clause 6 (indemnity);
- (c) clause 7 (the State's intellectual property);
- (d) clause 10 (confidentiality and privacy); and
- (e) this clause 23.1.

**24. ADDRESSES FOR NOTICES**

24.1 Any notice in connection with this Agreement will be taken to have been given when made in writing and delivered or sent and received by post or facsimile to the Party to which it is intended to be given at the following respective addresses:

For the State:  
General Manager  
(Passenger Transport Services)  
TransLink Division  
61 Mary St  
BRISBANE QLD 4000  
  
Phone: (07) 3888 4196  
Facsimile: (07) 3888 4067

For the Council:  
Manager City Infrastructure  
91 to 93 Bloomfield Street  
CLEVELAND Qld 4163  
Phone: (07) 3829 8999  
Facsimile: (07) 3829 8765

24.2 Any notice or other communication sent by post will be taken to have been received at the expiration of three (3) Business Days after the date of posting.

24.3 Any notice sent by facsimile transmission will be taken to have been received upon completion of an apparently successful transmission. However, if a facsimile is sent on a Business Day after 5.00 p.m. or on a day which is not a Business Day, it will be deemed to have been received on the next Business Day.

24.4 Communications other than notices in connection with this Agreement may be given by delivery, posting and facsimile or other methods including email.

EXECUTED AS AN AGREEMENT

Signed for and on behalf of the **State of Queensland (acting through the Department of Transport and Main Roads)**

this 27<sup>th</sup> day of July 2015

by NEIL SALES  
(full name)

Director-General  
(designation)

a duly authorised representative,  
in the presence of:

Jennifer Grace  
(Name of witness)

JGrace  
(Signature of witness)



Neil Sales  
(signature)

**SIGNED** for and on behalf of **Redland City Council** by its duly authorised delegate on

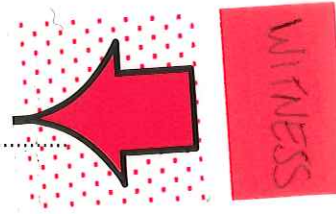
this \_\_\_\_\_ day of \_\_\_\_\_ 2015

by \_\_\_\_\_  
(Name of Delegate)

\_\_\_\_\_  
(Signature of Delegate)

in the presence of:

\_\_\_\_\_  
(Name of Witness)



\_\_\_\_\_  
(Signature of Witness)



## SCHEDULE A

<b>Item 1</b>	<b>State's Delegate:</b> Keith Boyer, Director (Taxi & Limousine Services)
<b>Item 2</b>	<b>Council's Delegate:</b> Murray Erbs, Group Manager City Infrastructure
<b>Item 3</b>	<p><b>State Services:</b></p> <p>The State Services include:</p> <ol style="list-style-type: none"> <li>1. Southern Moreton Bay Island (SMBI) ferry routes being between Weinam Creek, Russell, Macleay, Karragarra and Lamb Islands will be declared as a TransLink route under s42 of the Transport Operations (Passenger Transport) Act 1994.</li> <li>2. The ongoing integration of SMBI route into the TransLink Mass Transit Network. This includes the utilisation of a single integrated ticket for travel across the TransLink network in South East Queensland and access to related products and benefits.</li> <li>3. Inter-Island travel between SMBI islands will be provided free of charge <del>for Island Resident passengers utilising a paper ticket.</del> <span style="color: green;">for Island Resident passengers</span></li> <li>5. All ancillary and incidental activities to procure, provide, manage and promote the service, including representation at the steering committee.</li> <li>6</li> </ol>
<b>Item 4</b>	<p><b>Annual Funding Amount:</b> \$950,000 (GST Exclusive), which will be increased annually, such increase to be applied from 1 July each year and in accordance with the lesser of:</p> <ol style="list-style-type: none"> <li>(a) the March quarter CPI, or</li> <li>(b) Translink annual fare increase.</li> </ol>
<b>Item 5</b>	<p><b>Payments Schedule:</b></p> <p>Council will make payment to TransLink quarterly</p>

