

Roy Brannen, Director
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Karen Kelly
Treasurer
Forth Estuary Transport Authority
Waverly Court
4 East Market Street
Edinburgh
EH8 8BG

Your ref:

Our ref: A2709381

Date:
31 March 2012

Dear Karen,

OFFER OF CAPITAL GRANT TO FORTH ESTUARY TRANSPORT AUTHORITY (FETA) FOR EXPENDITURE ON FORTH ROAD BRIDGE

On behalf of Scottish Ministers, in exercise of their powers under Section 70 of the Transport (Scotland) Act 2001, I hereby offer to give to FETA ("the Grantee") a grant of up to £6,280,000 STERLING, payable over financial year 2012/13, to undertake its statutory functions to maintain, manage and operate the Forth Road Bridge as provided for in "Forth Estuary Transport Authority Order 2002", and subject to the following Terms and Conditions.

This capital Grant offer complements an offer of revenue Grant to FETA.

1. Definitions and Interpretation

- 1.1 In these Conditions, the words and expressions set out in **Schedule 4** shall have the meanings ascribed to them in that Schedule.
- 1.2 In these Conditions unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.3 The headings in these Conditions are for convenience only and shall not be read as forming part of the Conditions or taken into account in their interpretation.
- 1.4 Except as otherwise provided in these Conditions, any reference to a clause, paragraph, sub-paragraph, or schedule shall be a reference to a clause, paragraph, subparagraph, or schedule of these Conditions.

2. Purposes of the Grant

- 2.1 The Grant is made to enable the Grantee to fulfil its statutory functions. It shall only be used to fund capital expenditure, as set out in the Grantee's capital spending programme, as agreed with the Scottish Ministers.
- 2.2 The Grant shall only be used for the statutory purposes, as set out in the Forth Estuary and Transport Authority Order 2002, as specified at Schedule 1, part 1, and for no other purpose whatsoever.

2.3 The Grant can be used to fund option appraisals or feasibility studies only where these can be properly accounted for in accordance with accepted accounting practice applicable to the Grantee. These option appraisals or feasibility studies must be as set out in the Grantee's capital spending programme, as agreed with the Scottish Ministers.

2.4 No part of the Grant shall be used to fund any activity or material, which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.

2.5 The eligible costs exclude reclaimable Value Added Tax.

3. Payment of Grant

3.1 The Grant shall be paid by the Scottish Ministers to the Grantee in accordance with the terms of **Schedule 1** attached.

3.2 The Grantee shall **by end of June 2013** following the end of each financial year in respect of which the Grant has been paid submit to the Scottish Ministers a statement of compliance with the Conditions of the Grant using the form of words provided in **Schedule 3**. The statement shall be signed by the Grantee's Treasurer.

3.3 In the event that the amount of the Grant paid by the Scottish Ministers to the Grantee at any point in time is found to exceed the amount of the expenses reasonably and properly incurred by the Grantee in connection with its statutory functions, the Grantee shall repay to the Scottish Ministers the amount of such excess within 14 days of receiving a written demand for it from or on behalf of the Scottish Ministers. In the event that the Grantee fails to pay such amount within the 14 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of 2 per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand from the date of the written demand until payment in full of both the sum and the interest.

3.4 The Grantee may, subject to agreement by the Scottish Ministers, carry over sums arising from slippage on specific capital projects into the next financial year. This would include slippage on specific option appraisals or feasibility studies as set out in the Grantee's capital spending programme.

3.5 Agreement to carry forward such sums will not be unreasonably withheld where there has been unforeseen slippage on projects during the financial year, and where such projects form part of the agreed capital spending programme.

3.6 The Scottish Ministers' agreement to carry forward sums from one financial year to the next shall be confirmed by letter at the start of each financial year following completion of the Grantee's draft accounts for the previous financial year. Agreement shall be subject to ongoing monitoring of the Grantee's capital programme, and agreement on the appropriate level of financial reserves which might be held at any time. The Grantee should account for any unspent Grant in accordance with proper accounting practices.

3.7 The Scottish Ministers shall not be bound to pay to the Grantee, and the Grantee shall have no claim against the Scottish Ministers in respect of, any instalment of the Grant which has not been claimed by the Grantee by 31 March of the applicable financial year as set out in Schedule 1, unless otherwise agreed in writing by the Scottish Ministers.

4. Inspection and Information

4.1 By 31 July 2012, 31 October 2012, 31 January 2013 and 30 April 2013, the Grantee will submit to the Scottish Ministers a summary statement of Grant received and capital expenditure incurred in the previous quarter. Details shall include actual expenditure to date compared with profiled expenditure and any change to estimated expenditure for the financial year and the reasons for any such changes.

4.2 The Grantee shall, by 30 June following the end of the financial year in respect of which the Grant has been paid, submit a report to the Scottish Ministers summarising how the Grant has been used in that financial year.

4.3 The Grantee shall by 30 June 2013 submit to the Scottish Ministers a copy of the Grantee's unaudited accounts, and shall submit audited accounts by 15 October 2013.

4.4 The Scottish Government and the Grantee will review throughout the year the actual expenditure against the financial profile, and the amount of Grant paid. Subject to the outcome of these exchanges, the Grantee will adjust the financial profile for the remainder of the financial year and submit this to the Scottish Ministers for approval.

4.5 The Grantee shall provide the Scottish Ministers with prompt access to any information they reasonably require to ensure compliance with these Conditions.

4.6 The Grantee shall submit an outline capital spending programme for the following financial year by 30 November 2012, setting out the overall requirement for capital Grant funding.

4.7 The Grantee shall submit, for the agreement of the Scottish Ministers, a detailed capital spending programme for the following financial year by 28 February 2013.

4.8 The Grantee shall keep and maintain for a period of 6 years after the expenditure occurs, adequate and proper records and books of account recording all receipts and expenditure of monies paid to it by the Scottish Ministers by way of the Grant. The Grantee shall afford the Scottish Ministers, their representatives, the Auditor General for Scotland, his/her representatives and such other persons as the Scottish Ministers may reasonably specify from time to time, such access to those records and books of account as may be required by them at any reasonable time in response to a written request for such access from the person seeking it. The Grantee shall provide such reasonable assistance and explanation as the person carrying out the inspection may from time to time require.

4.9 In the event of the Grantee becoming aware of or suspecting any irregular or fraudulent activity that may have any impact on its statutory functions or on the use of the Grant, or any part of it, the Grantee shall immediately notify the Scottish Ministers of such activity and provide such other information as the Scottish Ministers may reasonably require in relation to the impact on FETA's ability to fulfil its statutory functions and the use of the Grant.

5. Confidentiality and Data Protection

5.1 The Grantee will respect the confidentiality of any commercially sensitive information that they have access to as a result of its statutory functions.

5.2 Notwithstanding the above, the Grantee may disclose any information as required by law or judicial order. All information submitted to the Scottish Ministers may need to be disclosed

and/or published by the Scottish Ministers. Without prejudice to the foregoing generality, the Scottish Ministers may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further, the Scottish Ministers may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland, in right of the Scottish Administration or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament, or the United Kingdom Parliament it is recognised and agreed by both parties that the Scottish Ministers shall if they see fit disclose such information but are unable to impose any restriction upon the information that it provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this agreement.

5.3 The Grantee shall ensure that all requirements of the Data Protection Act 1998 are fulfilled in relation to its statutory functions.

6. Disposal of Assets

6.1 The capital programme, as agreed by the Scottish Ministers, shall reflect any receipts, actual or projected, arising from the disposal of capital assets. The Grant offered to the Grantee by the Scottish Ministers reflects the amount required to fund the capital programme, net of any such receipts.

6.2 The Scottish Ministers shall be entitled to the proceeds of the disposal – or the relevant proportion of the proceeds based on the percentage of grant funding used in connection with the acquisition or improvement of the asset against the whole proceeds. The Scottish Ministers shall also be entitled to the relevant proportion of any proceeds resulting from any provision included as a condition of sale. Recovery by the Scottish Ministers shall not be required where the value of the asset is less than £10,000.

7. Publicity

7.1 The Grantee shall, where requested to do so by the Scottish Ministers and where reasonably practicable, acknowledge in all or in such specified publicity material relating to the capital spending programme the contribution of the Scottish Ministers to the costs of the programme.

7.2 The Scottish Ministers may require to approve the form of such acknowledgement prior to its first publication.

8. Intellectual Property Rights

8.1 All Intellectual Property Rights of the Grantee shall be retained by the Grantee, or by the Grantee's statutory successor. Those rights shall not be assigned or otherwise transferred to a third party without the written consent of the Scottish Ministers.

8.2 The Grantee shall ensure that nothing contained in any materials produced or submitted to the Scottish Ministers by the Grantee or anyone acting on its behalf nor the reproduction of such materials shall constitute an infringement of any third party copyright or intellectual right and shall indemnify the Scottish Ministers against all actions, proceedings, claims and demands made by reason of any such infringement.

9. Default

9.1 The Scottish Ministers may re-assess, vary, make a deduction from, withhold, or require immediate repayment of the Grant or any part of it in the event that:

9.1.1 The Grantee commits a Default;

9.1.2 The Scottish Ministers consider that any change or departure from the purposes for which the Grant was awarded warrants an alteration in the amount of the Grant;

9.1.3 Grant paid to the Grantee exceeds the amount payable in accordance with the conditions in this letter; or

9.1.4 Any Grant is not used in accordance with these Grant conditions.

9.2 In the event that the Grantee becomes bound to pay any sum to the Scottish Ministers in terms of clause 9.1, the Grantee shall pay the Scottish Ministers the appropriate sum within 14 days of a written demand for it being given by or on behalf of the Scottish Ministers to the Grantee. In the event that the Grantee fails to pay the sum within the 14 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of 2 per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand, from the date of the written demand until payment in full of both the sum and interest.

9.3 Notwithstanding the provisions of this clause 9, in the event that the Grantee is in breach of any of the Conditions, the Scottish Ministers may, provided that the breach is capable of a remedy, postpone the exercise of their rights to recover any sum from the Grantee in terms of clause 9 for such period as they see fit, and may give written notice to the Grantee requiring it to remedy the breach within such period as may be specified in the notice. In the event of the Grantee failing to remedy the breach within the period specified, the Grantee shall be bound to pay the sum to the Scottish Ministers in accordance with the foregoing provisions.

9.4 Any failure, omission, or delay by the Scottish Ministers in exercising any right or remedy to which they are entitled by virtue of clauses 9.1 to 9.3 shall not be construed as a waiver of such right or remedy.

10. Assignment

The Grantee shall not be entitled to assign, sub-contract or otherwise transfer its rights or obligations under the Agreement without the prior written consent of the Scottish Ministers.

11. Termination

The Agreement may be terminated by the Scottish Ministers giving to the Grantee not less than 3 months' notice in writing from the date of the notice being sent. Prior to giving such notice, the Scottish Ministers will ensure that proper and sufficient alternative arrangements are in place for funding, maintaining and operating the bridge following the termination of this Agreement.

12. Corrupt Gifts and Payments of Commission

The Grantee shall not offer or give or agree to give any person any gift or consideration of any kind as an inducement or reward in relation to this Grant. The Grantee shall ensure that its

employees shall not breach the terms of the Prevention of Corruption Acts, 1889 to 1916 in relation to this or any other grant.

13. Continuation of Conditions

These Conditions shall continue to apply for a period of 5 years after the end of the financial year in which the final instalment of the Grant was paid.

14. Compliance with the Law

The Grantee shall ensure that in relation to fulfilment of its statutory functions, they and anyone acting on their behalf shall comply with the relevant law, for the time being in force in Scotland.

If you wish to accept the offer of this Grant on the whole terms and conditions as set out in this letter and annexed Schedules, you should sign and date both copies of the Grant Acceptance below and return one copy of the offer of Grant and Schedules to me at the address below. You should retain the second copy of the offer of Grant and Schedules for your own records.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Roy Brannen', with a stylized, flowing script.

ROY BRANNEN
Director

GRANT ACCEPTANCE [Grantee's Copy]

On behalf of the Forth Estuary Transport Authority (FETA), I accept the foregoing Grant offer on the terms and conditions contained therein and in any schedule referred to therein. I confirm that I hold the relevant signing authority.

Signed:

[Director/Company Secretary/Authorised Signatory]

Print Name:

Position in Organisation of Person Signing:

Date:

Place of Signing:

Signed:

[Witness]

Witness Name:

Address:

Date:

Place of Signing:

(Grantees copy)

GRANT ACCEPTANCE

On behalf of the Forth Estuary Transport Authority (FETA), I accept the foregoing Grant offer on the terms and conditions contained therein and in any schedule referred to therein. I confirm that I hold the relevant signing authority.

Signed:

[Director/Company Secretary/Authorised Signatory]

Print Name:

Position in Organisation of Person Signing:

Date:

Place of Signing:

Signed:

[Witness]

Witness Name:

Address:

Date:

Place of Signing:

SCHEDULE 1

Part 1: Statutory Functions

FETA shall be responsible for the management, maintenance and operation of the bridge.

Part 2: Payment of Grant

PAYMENT OF GRANT

1. The total Grant of £6,280,000 shall be payable by the Scottish Ministers to the Grantee on receipt of a completed claim for Grant in the form set out in **Schedule 2** together with the associated monitoring information set out in paragraph 4.1 of the Offer of Grant. Where profiled spend exceeds the total Grant award, only the Grant award will be paid.
2. The total Grant shall be payable over the financial year 2012 to 2013 in twelve monthly instalments. The Grant will be paid on the 15th of each month, in accordance with the financial profile provided by the Grantee, or on such other basis as may be agreed between the Grantee and the Scottish Ministers.
3. The Scottish Ministers shall not be bound to pay any instalment of the Grant, which has not been claimed by the Grantee by 31 March of the applicable financial year, unless otherwise agreed in writing by the Scottish Ministers.
4. The Grantee shall provide a monthly profile of expenditure of the Grant before the start of the financial year. Any significant change to the costs of its capital programme shall be notified to the Scottish Ministers at the earliest opportunity via the quarterly monitoring reports.

SCHEDULE 2 - GRANT CLAIM FORM

Organisation: Forth Estuary Transport Authority

Statutory Duty: Forth Estuary Transport Authority Order 2002

Total agreed grant for 2012 - 2013 - £6,280,000

Estimated Carryover from 2011/12 £.....

We hereby claim total grant of £6,280,000 to be paid monthly in respect of the above period in accordance with the terms and conditions of the offer of Grant dated 31 March 2012 and the Schedules attached thereto.

Completed by:

Position:

Contact Details:

Date:

Section 70 – Capital Grant – Scheduled Payments 2012/13 – As at 30th March 2012

Month	Apr 2011	May 2011	June 2011	July 2011	Aug 2011	Sept 2011	Oct 2011	Nov 2011	Dec 2011	Jan 2012	Feb 2012	March 2012	Total*
Total	£787,700	£661,450	£674,950	£847,200	£592,950	£825,450	£530,700	£601,950	£304,950	£59,200	£118,750	£274,750	£6,280,000

* Note: The annual total should add up to the total expenditure claimed for the period.

Items of Expenditure

To insert a monthly expenditure profile illustrating all significant discrete items of capital expenditure relevant to the above period.

SCHEDULE 3 - STATEMENT OF COMPLIANCE WITH CONDITIONS OF GRANT

Forth Estuary Transport Authority (FETA).

This is to confirm that the grant claimed by FETA in relation to its statutory functions during the financial year ended 31 March 2013 was properly due and was used for its intended purpose(s) in accordance with the terms and conditions of the Grant. This statement is supported by the records of FETA.

Signed:

Name in block capitals:

Position:

Date:

SCHEDULE 4

DEFINITIONS

"Agreement" means the agreement constituted by the Scottish Ministers' invitation to apply for a grant, the Grantee's Application, these Conditions and the Grantee's acceptance of these Conditions;

"Conditions" means these grant conditions;

"Default" means:

- (a) Any breach of the obligations of either party under this Agreement (including, but not limited to, any breach of any undertaking or warranty given under or in terms of this Agreement);
- (b) Any failure to perform or the negligent performance of any obligation under this Agreement;
- (c) Any breach of any legislation; or
- (d) Any negligence or negligent or fraudulent mis-statement or misappropriation of Grant, or any other default,

In all cases by either party, its employees, agents or representatives;

"Financial Year" means a period from 1 April in one year until 31 March in the next;

"Grant" means the grant offered by the Scottish Ministers to the Grantee as specified in the Award Letter, as varied from time to time in accordance with these Conditions;

"Grantee" means the person, organisation or body to which the Grant will be payable as specified in these Conditions. Where two or more persons, organisations or bodies are the Grantee, references to the "Grantee" are to those persons, organisations or bodies collectively and their obligations under the Agreement are undertaken jointly and severally;

"Intellectual Property Rights" means all rights of ownership, including all copyrights and other intellectual property rights in books, leaflets and other printed and published materials in whatever form produced as part of its statutory functions by or on behalf of the Grantee including all reports and any such published materials stored in or made available by means of an information technology system and the computer software relating thereto and all patents, trademarks, registered designs and other rights in the nature of intellectual property;

"Payment" means each of the payments specified in Schedule 1 hereto.

"Statutory functions" means those functions described in the Forth Estuary Transport Authority Order 2002.