



Mr Steven Bell  
tie Limited  
Citypoint  
First Floor  
65 Haymarket Terrace  
EDINBURGH  
EH12 5HD

Direct tel:  
Direct fax:



19 March 2009

Dear Steven

**Settlement Agreement up to September 2008**

Please find attached the executed version of the above agreement as agreed by ourselves for the full and final settlement of all issues which relate to or are associated with the works up to and including the 30<sup>th</sup> September 2008. As discussed and recorded in e-mail exchanges, our agreement to the attached is conditional on the following two points:

1. Payments received post-30 September 2008 in respect of milestones achieved will be excluded from any value-earned calculations relating to disruptions after 30 September.
2. In respect of Prelims staff and with reference to Clause 4.1 of the Agreement, I confirm our agreement that Prelims staff will be reimbursed for their duration on site, in line with subsequent reviews to the programme (Revision 07.9 issued under cover of project letter 1533) and agreements of required resource levels.

I trust the above is an accurate reflection of our agreement.

Please find attached two copies of the Agreement and two copies of this covering letter duly signed.

.....  
.....



.....Signed on behalf of tie Ltd

Date.....23/3/09.....

.....Signed on behalf of Carillion Utility Services

Date.....19/3/09.....

Enclosures

Carillion Utility Services is a trading name of Carillion Infrastructure Services Limited  
Registered in England No 728599  
Registered Office 24 Birch Street Wolverhampton WV1 4HY  
CARILLION and the logo are trade marks of Carillion plc

A Carillion company

**Carillion Utility Services**  
The Malthouse  
Elevator Road  
Trafford Park  
Manchester  
M17 1BR

T 0161 [REDACTED]  
F 0161 855 6004  
www.carillionplc.com

**CAR00000243\_0001**

## CUS Claims Settlement Agreement

### 1.0 Introduction

The following agreement is in full and final settlement of all issues which relate to or are associated with the works up to and including 30<sup>th</sup> September 2008 and notes the method of evaluation of a number of issues to completion of the works.

### 2.0 Background / History

tie entered into the Multi-Utilities Diversion Framework Agreement (MUDFA Agreement) with Carillion (the MUDFA Contractor) who act as a single point of delivery and responsibility with regard to the construction works associated with the utilities diversions required for the Edinburgh Tram Network. A settlement to end of September 2007 was agreed in December 2007 and formally executed on 9<sup>th</sup> April 2008 in respect of this.

#### 2.1 Position at end of September 2007

A settlement Sum was agreed to cover all issues to end of September 2007 and included the resetting of baseline programme (Revision 06) with a revised completion date of 30<sup>th</sup> November 2008.

#### 2.2 Position from October 2007 to date to 30<sup>th</sup> September 2008

Following the agreement reached in September 2007 a number of issues have adversely affected the delivery of the Contract as follows:

Delay and Disruption in relation to;

- Number and extent of unidentified services encountered
- Design delivery
- Resolution of technical queries
- Carillion production inefficiencies
- Traffic Management arrangements

In addition to the above and as part of the agreement for all issues up to 30<sup>th</sup> September 2008 a number of measurement issues between the parties have also been resolved and concluded, these are listed in Appendix A.

### **3.0 Contractual Entitlement**

It is acknowledged by tie that there is a contractual entitlement relating to:

Delay and disruption:

- the number and extent of unidentified utilities encountered
- design delivery
- Technical Queries
- Elements of Traffic Management

The above are Change Events under Clause 46 of the MUDFA Contract.

The contractual entitlement together with matters which are the responsibility of Carillion are assessed below under Section 4.0, Consequences of Contractual Entitlement.

### **4.0 Consequences of Contractual Entitlement**

As a result of the above issues and the subsequent delays to the construction works the MUDFA Revision 06 Programme for the Tram Project been prolonged resulting in the-preparation of the MUDFA Revision 07.9 programme.

Revision 06 MUDFA construction completion programmed 30<sup>th</sup> November 2008.

Revision 07.9 MUDFA construction completion programmed 1<sup>st</sup> April 2009.

The delays experienced and the resultant prolongation of the programme have resulted in the following agreed consequential impact:  
The programme, as originally priced by Carillion, for the MUDFA works has been extended.

This has resulted in:

#### **4.1 Extended and additional Prelims**

An increased duration is expected for certain preliminary cost items including staff and some additional staff as forecast and agreed in Appendix B.

Valuation of agreed staff and non staff costs to be undertaken in line with the Contract.

#### **4.2 Contract Works**

Delay and disruption to the resources employed by Carillion resulting in additional incurred costs. Agreement has been reached by establishing the reduced productivity associated with this element based upon a model produced in conjunction with Carillion to deal with the delay and disruption measures set out in Section 2.2 above.

#### 4.3 Effect of Indexation

Indexation to apply from 1<sup>st</sup> July 2008 to completion and valued in accordance with the Contract.

#### 4.4 Revised Programme and Target Milestones

To arrive at an agreement of the above issues, it has been necessary to agree a revised baseline and this has been agreed by the production of Revision 07.9, programme with a completion date of 1<sup>st</sup> April 2009.

A set of target programme incentive milestones have been established and these are detailed in Appendix C.

### 5.0 Commercial Settlement

5.1 The commercial settlement in relation to the above to the end of September 2008 is as follows:

Item	Description	Value to end of Sept 2008
1	Measurement Items (As Appendix A)	£ 150,000
2	Delay and disruption to 30 <sup>th</sup> September 2008	£ 1,050,000
	<b>Total</b>	<b>£ 1,200,000</b>

5.2 Period from 01 October 2008:

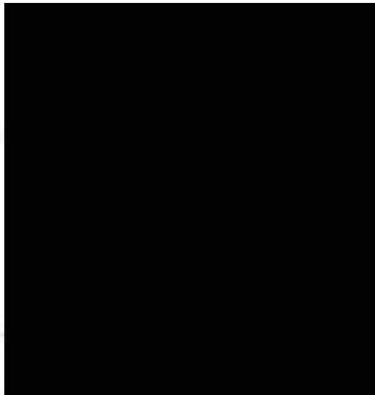
- 5.2.1 Measurement items – principles to apply as detailed within Appendix A.
- 5.2.2 Prelims evaluation - as agreed on a monthly basis, based upon the details contained within Appendix B. Any reduction or saving made against the total agreed prelims estimate to completion to be shared equally between tie and Carillion. Calculation of any saving will be carried out as part of the Final Certificate process within the Contract.
- 5.2.3 Indexation - to be applied from 1<sup>st</sup> July 2008 and valued in accordance with the Contract.
- 5.2.4 Incentive Payment Milestones - based upon achievement of the milestones listed in Appendix C (up to £800k).

## 6.0 Payment / Drawdown

Valuation No 24 to the end of November 2008 included a cumulative payment of £1,200,000 in respect of the items in 5.1.

Further payments in respect of this agreement will be made in the relevant monthly valuations always subject to the contract valuation rules.

The final date for payment by **tie** shall be 20 days from the date of the issue of the relevant Interim Certificate by **tie** and not 30 days as Clause 49.4 of the Contract.



... Signed on behalf of **tie** Ltd

Date .....<sup>js</sup> 23/3/09.....

... Signed on behalf of Carillion Utility Services

Date ..... 19/3/09.....

MUDFA

Appendix A (Rev 6) - Tabulation of Commercial Issues to end September 2008

Notes & Assumptions

1. This is an agreement of all issues which originate, relate to or are associated with the works up to and including 30th September 2008.

2. It includes full and final settlement of a number of measurement issues as identified below for the period up to and including 30th September 2008 and a method of dealing with these issues from the 1st October 2008

		Current Status	Way Forward
Surplus & Unproductive Resources During Embargo	0	Agreed as nil	Agreed as nil
Kerb Materials	35,000	Joint tie/CUS view is that £35k can be accepted in full and final up to and including the end of Sept, with no further measurement/substantiation required.  tie view proposed settlement figure of £1.2m as full offer (i.e. if this increases or decreases then other portions of the settlement will require adjustment)	Current EO Rate of £30.14 agreed. The EO rate will only apply where kerbs fall within the excavation limits of a diversion excluding crossings which are included in the tendered rates.
Disrupted Plant	42,000	tie proposed settlement figure considering that £1.2m is full offer (i.e. if this increases or decreases then other portions of settlement will require adjustment)	tie/CUS agree the principles already established for activities that incur disrupted plant will be applied going forward. No adjustments to disrupted plant recorded will be made going forward (i.e. 100% of recorded resources not utilised in actual activity will be recoverable)
Hand Digging	40,000	tie proposed settlement figure considering that £1.2m is full offer (i.e. if this increases or decreases then other portions of settlement will require adjustment)	tie acknowledges the principle that hand digging based upon agreed site records which are in excess of 25% of excavation will be subject to a 5% uplift in the measured work tendered rate applicable.  CUS view is that the 25% applied by tie is excessive. A more agreeable percentage may lie somewhere between the CUS and tie assessments.  Regardless, a proposal to analyse the plant and labour elements affected by hand digging needs to be developed. This would consider an agreed tender allowance (i.e. plant & labour) for excavation portion of a diversion multiplied by the agreed uplift (i.e. from above).
Traffic Management	35,000	tie proposed settlement figure considering that £1.2m is full offer (i.e. if this increases then other portions of settlement decrease)  Includes equipment contention only Excludes prelims/staff/separate CC items etc	The principle of valuing the equipment element with substantiating invoices will be adopted up to the embargo period. It was agreed that a control mechanism will be investigated to establish the TM requirements (post Embargo). A proposal for post embargo will be investigated and issued if appropriate by CUS for discussion/agreement with tie
Indices	0	Date effective from to be agreed	
<b>Measured Works Total</b>	<b>152,000</b>		
<b>Agreed as £150,000 for settlement</b>			

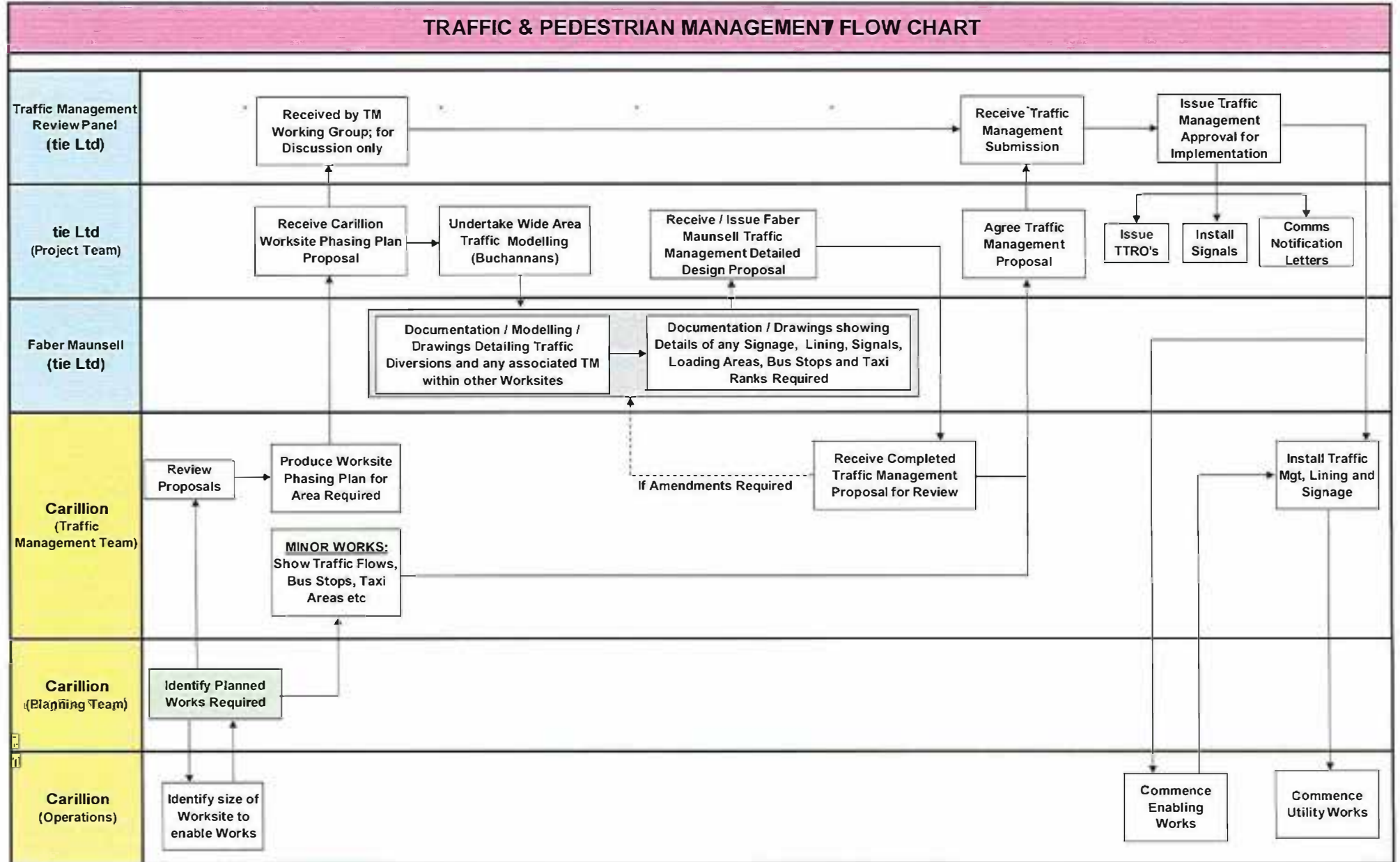
**Appendix B - Summary Table For Agreed Staff Prelims Certified To End Of October 2008 - Which Takes Cognisance Of the Agreed Historical Staff Costs To End Of October 2008 & The Agreed 64No CUS Staff Positions Going Forward**

<p><b>Certified value in AFP 23 In Respect of Staff Prelims to Oct 2008 (Inc work sector prelims staff and O/H at 8.8%)</b></p>	<p><b>Increase To Staff Prelims As Agreed To 31st October 2008 In Respect Of Historical Issues &amp; Agreed 64No CUS Staff</b></p>	<p><b>Total Agreed value In Respect of Staff Prelims to 31st October 2008 (Inc work sector prelims staff and O/H at 8.8%) - Includes The £175,449 Agreed For Historical Issues In Addition To Certificate No 23 &amp; The Agreed 64No CUS Staff</b></p>
<p><b>£4,243,443</b></p>	<p><b>£175,449</b></p>	<p><b>£4,418,892</b></p>

**Note:**

The 64No Staff detailed above excludes Side Entry Sewer, A8 Sewer, Gogar 1500mm Sewer and Logistics personnel already recovered and paid separately through Change Control

# TRAFFIC & PEDESTRIAN MANAGEMENT FLOW CHART





MUDFA - Proposed Milestones

	Location	Target	Date	Exclusions	Bonus Incentive
1	Leith Walk CH 350 to 600	Carillion to complete all elements of the MUDFA related works in these areas	12-Dec-08	Side entry manholes at New Orchardfield and Jameson Place Gas tie-in at Jameson Place Gas abandonments BO remedials Water service connections & associated abandonments Albert Street Broken Gas Main (Unable to backfill until SGN undertake repair) Scottish Power jointing if required – Trial holes can only be carried out after Embargo due to TM required	£200k
	Leith Walk CH 600 to 850		12-Dec-08	Side entry manhole at Balfour St Gas abandonments  Gas tie-in at Balfour St New change order received for 275Kv ducting, planned for Jan 09 Water service connections & associated abandonments Water service connections & associated abandonments BO remedials	
2	Section 5C	Completion of whole section by 31 January 2009	31-Jan-09	power diversion wayleave / power transfer and subsequent completion of directly adjacent BT works only	£200k
3	BT Remedials	Carillion to complete remedial works to all chambers and ducts installed to achieve BT approval.	31-Jan-09	BT Crossing at Masonic Lodge (1B): TM restriction 5C works associated with power wayleave only BT crossing at Jane St – only excluded if TM not available as planned w/c 19/1/09 BT box at launderette only excluded of structural survey shows replacement is on condition.	£200k
4	Traffic Management Proposals (If based on IFA drawings then this qualification to be added.) Submissions to be in accordance with the flow chart	Carillion to achieve 90% success rate with necessary information as required by the contract and in compliance with the agreed advance submission periods below for significant TM requirements.			£200k
			Month	Submission to TMRP	
			November	1 week	N/A
			December	2 weeks	
			January	4 weeks	
			February	6 weeks	
			March	8 weeks	