



For The Attention of Richard Walker
Chairman of Consortium
Billfinger Berger Siemens CAF Consortium
9 Lochside Avenue
Edinburgh
EH12 9DJ

Our Ref: INF CORR 5008

Date: 10th May 2010

STRICTLY CONFIDENTIAL

Dear Sirs,

Project Carlisle

We write to confirm our mutual understanding in respect of Project Carlisle being an initiative for the Edinburgh Tram Project to:

- re-scope/re-phase the works for the Infraco Contract
- develop revised delivery dates for the re-scope/re-phase the works
- develop a Guaranteed Maximum Price for the revised scope and revised delivery dates

Revised Scope of Works

Includes:

- All work from an agreed Terminal Point to the Airport; and
- Enabling Works on or adjacent to the Forth Port's Estate.
- Provision of all Trams required under the Tram Supply Agreement
- Testing, Commissioning and Maintenance of the ETN infrastructure, systems and trams as provided under the Infraco Contract.
- Certification leading to full Service Commencement as provided under the Infraco Contract.

Excludes:

- All work from the Terminal Point to Newhaven.
- The proposed Gogar Interchange.

Subject to a tie Change Order tie will have the following options:

- Purchase unused equipment from Siemens
- Provisional contract with Siemens to provide E&M from Terminal Point to Newhaven.
- Provisional contract with Siemens and CAF to Test, Commission and Maintain from the Terminal Point to Newhaven.

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Registered in Scotland No: 28949 of City Chambers, High Street, Edinburgh, EH1 1YS, Edinburgh Trams is an operating division of the Ltd.

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Infraco will give **tie** an irrevocable price adjustment to the Contract Price which would be instigated by either **tie** or Infraco triggering **tie** step-in-rights (on terms to be agreed) for the following works:

- Civil Engineering Works from Haymarket Viaduct to the Terminal Point
- Remedial Work to Princes Street

Note: Step-in will be subject to an agreed deduction in Contract Price and subject to agreement of a **tie** Completion Date.

General Obligations

Other than the general obligations hereunder this letter places no legal obligation on the Parties or obligation to agree to or enter into any procedure to determine any dispute or difference which may arise from the Negotiations. Each party will bear all of their own costs of these Negotiations.

- 1 These Negotiations will be on a strictly without prejudice basis and the Parties agree that neither party will be able to rely on any issue, declaration, documentation or representation, implied or explicit, in any legal action, arbitration, adjudication, mediation or other form of negotiation.
- 2 These Negotiations will be kept strictly confidential and the Parties irrevocably agree that they will ensure that its employees, advisors, consultants and agents do not use any of the declarations, documentation or representations, implied or explicit, for any purpose other than these Negotiations.
- 3 These Negotiations will not prevent or restrict the Parties from relying on and pursuing their existing rights in Law and Contract until such time as the Parties may eventually agree to vary such rights under binding agreement.
- 4 The rights and obligations that **tie** has under Public Law, and owes to CEC and Transport Scotland, and under the Trams Acts will at all times be paramount in these Negotiations.
- 5 These Negotiations will not relieve **tie** of its obligations under the Infraco Contract nor any Infraco Members of their joint and several responsibilities to certify that the Design and Construction of the Infraco Works are in accordance with the terms of the Infraco Contract, and their obligations in the Infraco Contract in respect of certification and to procure certification by the Independent Competent Person at the time of testing and commissioning and full Service Commencement.
- 6 It is agreed that the intention of the Parties is that until one gives the other a written notice that they consider the Negotiations to have irrevocably broken down they will work together in mutual cooperation until such time as **tie** may be able to issue a binding **tie** Change Order on agreed terms (referred to as the "Change of Scope Order") agreed and signed by both parties.

We confirm that Mr Anthony Rush is authorised to act on behalf of **tie** Limited in this matter, subject always to board approval. Please confirm who will have authority to represent Infraco Members and let us have a signed copy of this letter to acknowledge your agreement.

We confirm our intention to have this matter resolved by the 18 June 2010. Moreover, we reserve the right to withdraw from negotiations at any time before that date if the rate of progress and response times for any reason demonstrates that, in our reasonable opinion, ~~the~~ is going to be unable to report significant, fully approved and documented progress towards the achievement of an agreement.

This document is designated by ~~the~~ and by yourselves as "Strictly Confidential". It is understood that unauthorised or premature disclosure of this document, its context or related discussions to any third party (other than the parties' nominated advisers), whether intentional or accidental, would entail serious adverse reputational and commercial consequences for both the ETN Project and for ~~the~~ Limited and City of Edinburgh Council.

Yours faithfully,
for and on behalf of ~~the~~ Limited

A black rectangular redaction box covering the signature of Richard Jeffrey.

Richard Jeffrey

We agree to the terms of this letter:

Authorised Signatory for Bilfinger Berger (UK) Ltd

Date:

Authorised Signatory for Siemens plc

Date:

Authorised Signatory for Construcciones Auxiliar de Ferrocarriles S A.

Date



AGREEMENT

BETWEEN:

- (1) **TIE LIMITED** (Registered Number SC230949) whose registered office is at City Chambers, High Street, Edinburgh EH1 1YJ ("**tie**"); and
- (2) **Gordon Harris Partnership** ("**the Consultant Party**").

WHEREAS

- (A) The Consultant Party provides Services (as hereinafter defined) to **tie**; and
- (B) The Consultant Party has been (and will continue to be) involved, in the course of the Services, in various aspects of **tie**'s projects;

IT IS HEREBY AGREED AS FOLLOWS

1. DEFINITIONS

1.1 In this Agreement save as otherwise expressly stated or as the context otherwise requires:

1.1.1 the following words and expressions shall have the following meanings:

"Agreement" means this agreement between **tie** and the Consultant Party;

"Code" means the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 as the same code may be amended, varied or replaced from time to time;

"Confidential Information" means any and all information of whatsoever nature and from whatever source (whether oral, written or in any other form (whether eye or machine-readable)) which the Consultant Party has received, obtained or prepared in the performance of his duties for **tie** in the course of the Services including, information relating to the Scottish Executive, **tie** or any Related Party, information supplied by or emanating from the Scottish Executive, **tie**, any Related Party and any compilation of otherwise public information in a form not seen in the public domain but excluding:

- (a) information which was lawfully in the possession of the Consultant Party prior to the commencement of the Services (as evidenced by the Consultant Party's, the Consultant's or their advisors' written records) and which was not made available to the Consultant Party subject to any obligation of

confidentiality or in breach of any obligation of confidentiality imposed upon any other person;

- (b) information made available to the Consultant Party by third parties who were entitled to pass such information to it without the imposition of obligations of confidence in respect thereof; and
- (c) information in the public domain;

"Consultant" means **Gordon Harris Partnership** whose registered office is at **1 Dukes Court, Bognor Road, Chichester, West Sussex, PO19 8FX**;

"Environmental Information Regulations" means the Environmental Information (Scotland) Regulations 2004;

"FOISA" means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation;

"Information" has the meaning given under section 73 of FOISA;

"Related Party" means The City of Edinburgh Council or any parent undertaking from time to time of **tie** or any subsidiary undertaking from time to time of **tie**, The City of Edinburgh Council or of any such parent undertaking (other than **tie** and The City of Edinburgh Council) (for which purpose the expressions "parent undertaking" and "subsidiary undertaking" shall have the meanings ascribed thereto by section 258 of the Companies Act 1985) including any of their respective directors, officers, employees, agents, advisors and suppliers;

"Requests for Information" shall have the meaning set out in FOISA or any apparent request for information under FOISA, the Environmental Information Regulations or the Code;

"Services" means any services provided by the Consultant Party to **tie** including services in terms of the agreement dated 7 December 2009 between **tie** and the Consultant regarding the provision of technical advisory services by the Consultant Party to **tie**;

- 1.1.2 words importing gender include masculine, feminine and neuter;
- 1.1.3 the singular includes the plural and vice versa;
- 1.1.4 a reference to any part, Clause or sub-clause is, except where it is expressly stated to the contrary, a reference to such part, Clause or sub-clause of this Agreement;
- 1.1.5 any reference to this Agreement or to any other document shall include any variation, amendment, or supplement to this Agreement or such document;
- 1.1.6 any reference to any enactment, order, regulation or other similar instrument (including any EU instrument) (whether specifically named

or not) shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted and shall include any orders, consents, regulations, legally binding codes of practice or subordinate legislation (within the meaning of section 21(1) of the Interpretation Act 1978) made thereunder;

- 1.1.7 a reference to a person includes individuals, firms, partnerships, bodies corporate, joint ventures, government departments and any organisation capable of suing or being sued and references to any of the same include the others and their successors and assignees and transferees;
- 1.1.8 headings are for convenience of reference only and do not affect the interpretation of this Agreement;
- 1.1.9 the ejusdem generis rule does not apply and the meaning of general words is not to be restricted by any particular examples preceding or following those general words;
- 1.1.10 an obligation not to do something includes an obligation not to wilfully allow it to be done;
- 1.1.11 the word "including" means "including without limitation"; and
- 1.1.12 a reference to "consent" shall mean consent in writing.

1.2 In the case of any inconsistency or conflict in the Agreement, or any inconsistency or conflict between the Agreement and any instructions from **tie**, or any inconsistency or conflict between the Agreement and any agreement relating to the Services, the Consultant Party shall notify **tie** immediately and **tie** shall issue in writing such further instructions as **tie** considers appropriate in its absolute discretion to resolve the inconsistency or conflict.

2. CONFIDENTIAL INFORMATION

- 2.1 The Consultant Party acknowledges that all Confidential Information obtained by the Consultant Party shall remain the property of **tie** or other relevant party and no rights whatsoever in the Confidential Information shall be deemed to have been conferred upon the Consultant Party except as set out in this Agreement.
- 2.2 The Consultant Party shall not at any time use or permit the use of any Confidential Information except in the proper performance of the Consultant Party's duties to **tie** for the purpose of the Services.
- 2.3 The Consultant Party shall not without **tie's** prior written consent disclose any Confidential Information or any part thereof, for any purpose, at any time, in any way or to any person including the Consultant or any other officer, employee agent or advisor of the Consultant, except as strictly necessary for the purpose of the Services.
- 2.4 Where the Consultant Party obtains **tie's** written consent to a disclosure in terms of Clause 2.3, the Consultant Party shall ensure that such disclosure is conducted in such manner as to protect fully the confidentiality of the

Confidential Information and as is not directly or indirectly detrimental to **tie** or any Related Party and shall procure that before any Confidential Information is so disclosed to any person;

- 2.4.1 such person acknowledges in writing that such information is confidential before it is imparted to them; and
 - 2.4.2 such person undertakes to abide by the obligations of confidence in respect of the Confidential Information set out in this Agreement as if he, she or it had given an undertaking to **tie** in terms similar to this Agreement.
- 2.5 If the Consultant Party is required by law or by any binding regulation or any governmental or quasi-governmental authority or by any supervisory or regulatory body to whose rules the Consultant Party is subject, to disclose any part of the Confidential Information, the Consultant Party shall be entitled to disclose such Confidential Information, to the minimum extent required to satisfy the relevant requirement, provided that the Consultant Party shall provide **tie** with prompt written notice of such requirement and shall consult with **tie** as to the content of such disclosure prior to any disclosure being made with a view to agreeing the timing and content thereof.
- 2.6 The Confidential Information shall not be:
- 2.6.1 used;
 - 2.6.2 reproduced;
 - 2.6.3 stored in any externally accessible computer or electronic information retrieval system; or
 - 2.6.4 transmitted by any system using telecommunications links outside **tie's** usual place of business.
- 2.7 The Consultant Party shall, and shall procure that the Consultant and its advisors and agents shall, upon receipt of a written demand from **tie** or upon termination or completion of the Services:
- 2.7.1 return to **tie** or destroy all Confidential Information (and any and all copies thereof or of any part thereof whether made by the Consultant Party or provided by **tie** or by any third party) and confirm in writing the destruction of such Confidential Information;
 - 2.7.2 delete any and all information from any computer or other device in its or its advisors' possession, custody or control containing any Confidential Information; and
 - 2.7.3 destroy all copies of any notes, analyses, computations, studies or other documents prepared by or on behalf of the Consultant Party or by or on behalf of its advisors and agents containing or reflecting any of the Confidential Information.
- 2.8 The Consultant Party shall upon written demand from **tie** certify in writing that the Consultant Party and all persons to whom it has disclosed Confidential Information have complied with their obligations under this Agreement.

3. FOISA

- 3.1 The Consultant Party acknowledges that **tie** is subject to the requirements of FOISA and the Environmental Information Regulations and shall assist and cooperate with **tie** to enable **tie** to comply with any Information disclosure requirements.
- 3.2 The Consultant Party shall:
 - 3.2.1 transfer any Request for Information to **tie** as soon as practicable after receipt and in any event within two working days of receiving a Request for Information;
 - 3.2.2 provide **tie** with a copy of all Information in his possession or power in the form that **tie** requires within five working days (or such other period as **tie** may specify) of **tie** requesting that Information; and
 - 3.2.3 provide all necessary assistance as reasonably requested by **tie** to enable **tie** to respond to a Request for Information within the time for compliance set out in section 10 of FOISA or regulation 5 of the Environmental Information Regulations.
- 3.3 In no event shall the Consultant Party respond directly to a Request for Information unless expressly authorised to do so by **tie**.
- 3.4 The Consultant Party shall ensure that all information produced in the course of the Services or relating to the Services is retained for disclosure and shall permit **tie** to inspect such records as requested from time to time.

4. SURVIVORSHIP

- 4.1 The termination or completion of the Services and the return of Confidential Information in accordance with the terms of this Agreement shall not release the Consultant Party from its obligations under this Agreement.

5. COMMENCEMENT

- 5.1 Notwithstanding the date(s) of execution hereof this Agreement commenced on the date when the Consultant Party first performed the Services.

6. INDEMNITY

- 6.1 The Consultant Party shall indemnify **tie** against any and all loss, damages, liabilities, costs and expenses suffered or incurred by **tie** (including without limitation legal fees and costs) as a result of the breach by the Consultant Party of this Agreement.

7. WAIVER

- 7.1 No failure or delay by **tie** in exercising any right or remedy under this Agreement shall constitute a waiver thereof and no waiver by **tie** of any breach by the Consultant Party of its undertakings herein shall be deemed to be a waiver of any other breach. No single or partial exercise by **tie** of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.

8. APPLICABLE LAW

8.1 This Agreement shall be governed by and construed in accordance with Scots law.

8.2 The parties hereby irrevocably submit to the jurisdiction of the Court of Session in relation to this Agreement.

9. VARIATIONS TO BE IN WRITING

9.1 No variation, or alteration of any of the provisions of this Agreement shall be effective unless it is in writing and signed by ~~tie~~ and the Consultant Party.

10. INVALID TERMS

10.1 If any term of this Agreement shall be held to any extent to be invalid, unlawful or unenforceable:

10.1.1 that term shall to that extent be deemed not to form part of this Agreement; and

10.1.2 the validity and enforceability of the remainder of this Agreement shall not be affected.

IN WITNESS WHEREOF these presents printed on this and the five preceding pages are executed as follows:-

Signed for and on behalf of the said TIE Limited

at
on




Authorised Signatory



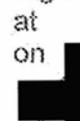

Witness

Address



Signed for and on behalf of Gordon Harris Partnership

at
on




Consultant Party




Witness

Address



