

PRIVATE AND CONFIDENTIAL

David Mackay
Interim Chairman
tie
City Point
65 Haymarket Terrace
Edinburgh
EH12 5HD

Our Ref: transproject/dispute

Your Ref:

Date: 5 March 2009

Dear David,

EDINBURGH TRAM - CONTRACTUAL DISPUTE WITH INFRASTRUCTURE CONTRACTOR

I refer to our ongoing discussions about the contractual dispute between tie and BBS. I appreciate the effort you and the tie team have put into keeping Council representatives informed in what has been a very fast-moving situation. However, to ensure that proper procedures and good governance arrangements are followed, it is now necessary to move things onto a more formal footing.

You are very familiar with the background to the Edinburgh Tram Project and I do not need to repeat any of that here. However, as you know, the Council will be held accountable financially, through the Guarantee of tie's obligations and also reputationally, by the public, media, Scottish Government and Transport Scotland. It is for these and other reasons that we need to systematise our joint working on the Dispute Resolution Procedure (DRP) in accordance with our Operating Agreement.

Although the Council is not a party to the main suite of contracts, it nevertheless carries major obligations through the Guarantee and by virtue of the Transport Scotland Grant Award and agreement. In order to ensure it meets all of these obligations, and that tie supports the Council in this regard, I have listed below a number of action points to be met by tie. These are essential requirements of the Council, having regard to the good governance of the project, as well as being imperative for a sound audit trail and consistent with tie's obligations under the Operating Agreement.

- The Tram Monitoring Officer (TMO) to be given, within three days of receipt of this letter, a report on the detailed terms of the matters (from the point of view of both tie and the Consortium) which are being pursued through the DRP. This should explain the root cause of the dispute. Supporting legal explanation from DLA will also be expected as part of this report. A full copy to be supplied of all correspondence between tie and its agents and BBS relating to the subject matter of the dispute.
- The Council's TMO should be provided with a daily high level update from tie reflecting developments in the DRP and any other relevant matters. I am pleased that this has already started. The need for this daily update will be kept under review.

Waverley Court, 4 East Market Street, Edinburgh EH8 8BG Tel 0131 [REDACTED] Fax 0131 [REDACTED]



- The Council will ensure that the information supplied in the daily update will be restricted to a number of named elected members and officers, to ensure confidentiality. A provisional list of named individuals is attached to this letter. Arrangements will be put in place to ensure that decisions are taken on a collective basis between **tie** and the Council before information is passed to the media or other sources.
- Over and above the daily updates, a written report on developments and progress should be submitted by **tie** to the TMO by close of business each Monday. I propose that the Tram Project Director and the TMO agree the format for the report, with the first one being delivered on 9 March 2009.
- The work you have done to date on examining the timetable implications arising from the DRP is appreciated. This should be expanded to include all the strategic options currently under review.
- The TMO should be provided with a status report on the circa 250 changes which have been identified and an estimate of their financial implications should be provided. Details should also be provided as to those issues which have already been referred to the dispute resolution process. I appreciate that some of this information has already been provided to Council representatives in briefings but it is necessary to have this consolidated.
- The work which **tie** has started on the review of strategic options is appreciated. This should be taken forward in association with the TMO and an interim report should be presented within one week.
- While I appreciate that there are none at present a strategy for managing any future claims from the Consortium should be prepared in conjunction with the TMO and, if necessary, the Council's Director of Finance.
- A written assurance is required from **tie** that assets required by the project vest with the Council in accordance with the Grant Award Letter.

This list may not be exhaustive given the constantly changing position between the contracting parties, but I hope it sets out for the benefit of the Council and **tie** an appropriate way forward for managing this dispute and any other potential claims. I shall let you know if there are any further requirements which need to be put in place.

I am copying this letter to the Council representatives listed in the attached Appendix.

Yours sincerely



TOM AITCHISON
Chief Executive

Provisional List of Council Representatives Authorised to Received Daily and Other Reports from tie

Councillor Dawe
Councillor Wheeler

Chief Executive
Director of Finance
Director of City Development
Director of Corporate Services
Council Solicitor
Head of Transport
Head of Corporate Communications
Leanne Maberley – Client Manager, Corporate Communications

Further discussion is required on the engagement with Councillor Cardownie, other Group Leaders and elected members who serve on the **tie** board.