



Transport Edinburgh
Trams for Edinburgh
Lothian Buses

Tram Project Board/ tie Board / TEL Board

Papers for meeting 23rd January 2008

10.00am – 12:00pm

Distribution:

David Mackay (Chair – TPB)
Willie Gallagher (Chair – tie Board)
Neil Renilson
Bill Campbell
Andrew Holmes
Donald McGougan
Brian Cox
Peter Strachan
Neil Scales
Cllr Gordon Mackenzie
Susan Clark
Matthew Crosse

Stewart McGarrity
Alastair Richards
Jim Harries
Steven Bell
James Stewart
Graeme Bissett
Miriam Thorne (minutes)
Cllr Phil Wheeler
Cllr Allan Jackson
Cllr Rick Henderson
Jim McEwan

TRAM PROJECT BOARD

Agenda	4
Edinburgh Tram Network Minutes	5
1 Executive summary.....	9
1.1. Previous period update.....	9
1.2. Key issues for forthcoming period.....	14
1.3. Cost	15
1.4. Programme.....	17
1.5. Risk	17
1.6. Approvals / decisions / support required	18
Appendix A – Headline cost report.....	19
1.1. Current financial year	19
1.2. Next financial year	20
1.3. Total project anticipated outturn versus total project funding	21
1.4. Change control	21
1.5. Summary breakdown	22
Appendix B – Risk and opportunity	23
1.1. Summary	23
1.2. Review project risk register	23
REPORT ON TERMS OF FINANCIAL CLOSE (“CLOSE REPORT”)	35
AGREEMENT tie – CEC.....	83
AGREEMENT Tel – CEC (draft).....	94
Tabled paper	
Public Realm Works - St Andrew Square	111

Agenda

Brunel Suite – Citypoint II, 2nd Floor
23rd January 2008 – 10.00am to 12.00pm

Attendees:

David Mackay (Chair – TPB)	Stewart McGarrity
Willie Gallagher (Chair – tie Board)	Alastair Richards
Neil Renilson	Jim Harries
Bill Campbell	Steven Bell
Andrew Holmes	James Stewart
Donald McGougan	Graeme Bissett
Brian Cox	Miriam Thorne (minutes)
Peter Strachan	Cllr Phil Wheeler
Neil Scales	Cllr Allan Jackson
Cllr Gordon Mackenzie	Cllr Rick Henderson

Apologies: n/a

- 1 Review of previous minutes and matters arising
- 2 Approvals for final deal
- 3 Project Directors report for Period 10
- 4 Presentation - Prior and Technical Approvals
- 5 Date of next meeting
- 6 AOB

Edinburgh Tram Network Minutes

Tram Project Board

9th January 2008

tie offices – Citypoint II, Brunel Suite

Principals		Participants:	
David Mackay	DJM (chair)	Stewart McGarrity	SMcG
Willie Gallagher	WG	Steven Bell	SB
Donald McGougan	DMcG	Bill Campbell	WWC
Andrew Holmes	AH	Allan Jackson	AL
Neil Renilson	NR	Alastair Richards	AR
		Gill Lindsay	GL
		James Papps (for James Stewart)	JP
		Jim Harries	JH
		Phil Wheeler	PW
		Norman Strachan	NS
		Graeme Bissett	GB
		Miriam Thorne (minutes)	MT

Apologies: Gordon Mackenzie, Ricky Henderson, James Stewart

1.0	REVIEW OF PREVIOUS MINUTES	
1.1	The previous minutes were taken as read. Details discussed are outlined below:	
1.2	<p>Previous minute - 1.2: the board noted that the question of charges for CEC resources was still outstanding, therefore the following steps were agreed:</p> <ul style="list-style-type: none"> Initial review of outstanding question & items should take place with SMcG/MT/RA/DF/ACoy as soon as possible to inform CEC internal discussion (AH/DMcG) The output of these meetings is to inform a review between TA/DJM/NR of the agreements reached in the Sept. 07 meeting between TA and DJM. <p>The paper on CEC resource charges was not further discussed</p>	<p>SMcG / MT DMcG / AH / DJM / NR</p>
1.3	Previous minute – 2.2: SB informed the board that details of the planned peer reviews would be brought to the TPB in Feb. 08.	
1.4	Previous minute – 4.3: SMcG informed the board that he had briefed Alan Coyle of CEC finance on the proposals for tax structuring and was now awaiting feedback from CEC. DMcG to discuss with ACoy.	DMcG
1.5	Previous minutes – 5.4, 6.2 & 8.3: SDS design and risk transfer – SB stated that further details had been provided to AH regarding his queries. The discussion on risk transfer was continuing with BBS and progress updates would be presented to the TPB.	
1.6	Previous minute - 6.3: SB explained that due to Christmas holidays, the presentation by Andrew Fitchie on the various securitisation mechanisms was still outstanding but would take place asap.	Andrew Fitchie
1.7	Previous minute – 8.1: SB confirmed that the sequencing chart for the BBS	SB

	construction programme would be sent out as soon as possible to the attendees of the TPB	
2.0	MATTERS ARISING	
2.1	WG informed the board that SB was to take on full responsibilities as Project Director as of Jan 14 th .	
2.2	AH raised the concern whether sufficient work had been done to maximise opportunities to obtain stakeholder buy-in to the construction programme by shortening the time for on-street works. WG explained that the programme was not fully settled and that it was too early to commit giving up programme float. He also informed the board that discussions had been held with various Retail representatives who had been informed of the plans.	
3.0	DEVELOPMENTS SINCE 19TH DECEMBER	
3.1	SMcG provided an update on the developments since December 07 with particular focus on the agreement for contract price for Phase 1a.	
3.2	SMcG confirmed that the exchange rate exposure on the Tramco contract was now removed and that there was no similar issue for Infraco as the contract price was based on £'sterling.	
3.3	AR requested an update to the reconciliation of the full project estimate – SMcG to provide at the next TPB	SMcG / AR
4.0	GRANT AWARD LETTER	
4.1	SMcG outlined the key features of the approved Grant Award letter as follows: <ul style="list-style-type: none"> the grant is for Phase 1a but gives CEC the option to use unspent sums up to the £500m cap on Phase 1b under certain conditions the annual grant amount for 08/09 and 09/10 is fixed, any gaps would have to be funded by CEC the verbal offer that TS would cover additional borrowing costs had not yet been confirmed – CEC to follow up with TS a physically signed copy had not yet been received but TS confirmed that the Minister had given TS the authority to sign on his behalf. 	DMcG
4.2	DMcG and GL confirmed their acceptance of the Grant Award Letter.	
4.3	The board was informed that BBS had not yet received an official copy of the letter, however, the letter was in the public domain as it formed part of the CEC Council report in Dec. 07.	
5.0	APPROVALS	
5.1	SB requested approval from the TPB for the formal publication of contract award on or after 18 th Jan. The board confirmed its approval, conditional on further briefings to DJM / WG / NR and the Legal Affairs Committee.	
5.2	WG stated that SB had been in contact with Tramlines and there was no indication of a procurement challenge.	
5.3	WG also explained that although contract signing was still planned for the 28 th Jan, this was subject finalisation of certain legal matters and SDS and Tramco novation agreements, and that the date would be pushed out if it	

	was in the project's best interest.	
5.4	The board requested a comprehensive report on the key issues outstanding, together with an assessment of their risk for the next TPB	GB
6.0	GOVERNANCE	
6.1	GB provided an update on the status of the tie -CEC and TEL-CEC operating agreements. He outlined the changes to the operating agreement requested by the tie board, feedback is now awaited from CEC.	
6.2	GL confirmed that CEC's legal officers had the delegated authority to sign the operating agreements, and she stated her confidence that the tie -CEC operating agreement would be completed within a few days. She also stated that work had just begun on the TEL-CEC operating agreement. DMcG stressed the importance of agreeing all points of principle. The board tasked GB to take the matter forward and report back to the next TPB.	GB
7.0	TAX CLEARANCE	
7.1	GB confirmed that clearance on VAT and other tax issues had been sought from HMRC and a meeting had been set up to provide details to the HMRC. GB to report on outcome to next TPB.	GB
8.0	MEETING SCHEDULE	
8.1	The meeting schedule was accepted by the board and it was agreed that efforts should be made to rationalise respective attendance at the tie and TEL boards.	
8.2	PW stated that it was the intention to schedule the CEC's IPG at a mid-point between TPB meetings, and that membership details were still to be finalised.	
8.3	AH also stated his intention to introduce his successor to the TPB prior to his retirement.	
9.0	MUDFA UPDATE	
9.1	Graeme Barclay (GBa), Keith Rimmer (KR), Mike Connolly (MCon) and Colin McLauchlan (CMcL) provided an update on the planned intensive work phase for MUDFA as regards to site locations, traffic management arrangements, media liaison, the "open for business"-campaign and communication with businesses and the public.	
9.2	WG confirmed there had been little negative feedback from the business community.	
9.3	MCon explained that contacts had been established with relevant CEC departments and businesses for whom access issues would arise. Detailed management plans were currently being refined.	
10.0	BRANDING	
10.1	NR presented the brand guideline document on tram branding, confirming that input had been received from tie , TEL, and CEC. He confirmed that further work was required to ensure compliance with UK legislation, particularly in relation to the tram interior.	
10.2	The board considered the paper and approved it as the base position.	

Transport Edinburgh
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Lothian Buses

FOISA exempt
 Yes
 No

11.0	AOB	
11.1	DMcG's recommendation that the regular report on CEC contributions would be provided on a quarterly basis was approved by the board.	
11.2	Date of the next TPB meeting – 23 rd Jan 08.	

Prepared by Miriam Thorne, 21st January 2008

24.01.08

1 Executive summary

1.1. Previous period update

1.2.1 Commercial and procurement

Infraco / Tramco

The negotiations with the preferred bidders for Infraco and Tramco continued during the period to finalise the contracts and achieve Financial Close in January 08. The discussion with BBS resulted in the signing of the "Agreement for Contract Price for Phase 1a" on the 21st December, essentially fixing the Infraco contract price based on a number of conditions. Key points of the agreement are:

- Effective transfer of design development risk excluding scope changes to BBS;
- Construction programme to commence operations in Q1, 2011; and
- Certain exclusion from the fixed price of items outside the scope of the tram project, all of which are well understood and either separately funded or adequately provided for in the overall Tram project estimate.

Efforts in the period focussed on resolving any remaining price and contractual issues with a focus on contract alignment between Infraco and Tramco, value engineering, provisional items and third party agreements.

An agreement was signed with CAF to fix the exchange rate of the Tramco contract and minimise any further risk of adverse exchange rate fluctuations prior to Contract Award.

In order to maintain the overall completion date for Phase 1a of Q1, 2011, advance mobilisation agreements were signed on 20th December with Infraco and Tramco as previously advised.

MUDFA

The agreement on the impact of delayed commencement of AMIS MUDFA utility diversion works was settled during the period within previously advised parameters.

Further work was undertaken to define the scope and timing of utility diversionary works to be performed by Infraco where it provides advantages in terms of traffic management / construction sequencing. Details will be agreed with Infraco prior to contract signature.

A potential issue relating to access routes to Statutory Utility (SU) apparatus which will have to remain within the DKE of the tram continues to be progressed with input from the SU's, TEL and CEC. DLA were commissioned to draft a legal agreement addressing this potential issue.

SDS

The SDS novation plan is being followed to ensure that this can take place according to programme. Much of this work requires positions already notionally agreed to be formally recorded, or for information to be provided to enable confirmation of an agreed position. The most significant outstanding issue is

finalisation of the Employer's Requirement and establishing the degree of alignment with the work already undertaken by SDS.

1.2.2 Approvals / governance / funding

Governance

The detailed governance structure for the tram project during the construction phase, including committee structures and relationship with CEC, was approved by the TPB and CEC during the period.

The draft of the **tie** operating agreement with CEC was approved in principle by CEC and authority to sign the finalised agreement was delegated to the Council Solicitor. Only very minor adjustments are outstanding and it is anticipated that the agreement will be signed in Period 11.

A draft for the TEL – CEC operating agreement was provided to CEC for review.

Final Business Case

The FBC was approved by CEC on 20th December.

Funding

The final Grant Award Letter was approved by Transport Scotland during the period and the signed version is expected early in Period 11.

1.2.3 Design and engineering

The V24 programme indicates that, although there are potential conflicts with some elements of the BBS proposed construction programme, these are manageable and containable against a schedule of activity agreed for the purpose.

Because of project slippage to date, and of the need to contain the end-date for approved designs, the amount of time available for formal approvals for CEC is compressed and attention will need to be given to ensure that adequate time remains for them to undertake this task and they are adequately resourced to achieve this.

Roads Technical Approvals are the most critical of the approvals elements as:

1. They have more complex technical integration; and
2. They require submissions which are complete in context – it is difficult for CEC to start work on a 'part' submission'.

Although no Roads Technical Approvals are ready for transmission a number are substantially populated and the first is due in the w/c 14th January.

The IDC (interdisciplinary design check) process needs to be complete for each package to enable transmission and for this to be possible all aspects of design must be complete, including the Road Safety Audits. It is this requirement for absolute completeness which has caused delay through a relatively small number of outstanding items such as Balgreen Road, SRU, and Park and Ride. There are a number of further issues which require resolution to enable final delivery.

Approximately a quarter are the responsibility of **tie**, with most requiring SDS action. These are being progressed and managed.

1.2.4 MUDFA

		Period 10 07.12.07 to 03.01.08			Overall Performance to Date		
		PLANNED	ACTUAL	Variance	PLANNED	ACTUAL	Variance
TOTAL	Metres	1302	872	-430	6121	5621	-500
	Chambers	2	4	2	23	28	5
BT / Comm	Metres	613	281	-332	1412	1415	3
SGN	Metres	20	0	-20	161	128	-33
Scot W	Metres	542	578	36	2331	1924	-407
Scot P	Metres	127	13	-114	488	442	-46
Forth Ports	Metres	0	0	0	314	297	-17
Gogar Comm	Metres	0	0	0	683	683	0
Gogar Scot P	Metres	0	0	0	115	115	0
Gogar Scot W	Metres	0	0	0	617	617	0

Overall progress has slipped, largely due to the close proximity of a 450mm diameter sewer below the existing BT chamber in Jane Street. Remedial action has been taken with AMIS to address this and Jane Street is on target to re-open in the w/c 14 January, as planned originally.

Section 1A

Trial holes to inform construction commenced 4 December 2007. Of the 68 trial holes planned, 35 were completed pre Christmas, with the remaining 33 planned for completion in January 2008.

The approval of works to proceed during the Christmas embargo period was negotiated with Forth Ports, comprising works to transfer three water connections and Forth Ports supply onto new water main installed as part of pre-embargo MUDFA works.

Section 1B

The Jane Street road closure commenced 15 October 2007 for twelve weeks to accommodate a major exchange BT chamber. These works are being delayed due to the close proximity of an existing 450mm diameter sewer (directly below the existing BT chamber position). The team have raised a concern over the rate of progress here, as there are early indications that the programme is exhibiting signs

of slippage. Remedial action has been taken with AMIS to address this and Jane Street is on target to re-open in the w/c 14 January, as planned originally.

Section 1C

Five utility road crossings in Princes Street at the junctions of Frederick Street and Castle Street were completed in the w/c 26 November 2007. The remaining six will be carried out following the Christmas embargo.

The high level programme for city centre (St Andrews Sq – Haymarket) was signed off by Stakeholders with enabling works to commence 7 January 2008.

Communications notices were issued Monday 10 December 2007 in line with the four week notice period. Further detail of the communications strategy continues to be developed to support the MUDFA works in the city centre.

All works within the city centre were stopped earlier than planned (30 November 2007 as opposed to the revised 7 December 2007 as agreed with CEC), to manage key business stakeholders.

Section 1D

The high level programme for the city centre (St Andrews Sq – Haymarket) was signed off by Stakeholders. Enabling works commenced 7 January 2008 on Princes Street, Frederick Street, George Street, Charlotte Square, Hope Street, Queensferry Street, Melville Street and Manor Place. Comms notices were issued on Monday 10 December 2007 in line with four week notice period.

Section 5A, 5B and 5C

Section 5B plates 6-13 were issued as IFC on 19 October 2007. A total of ten areas were identified and all have been transferred to Infraco mainly for the installation of ducting due to the change of track levels.

5C IFC utility drawings are awaited for review by **tie**. The majority of the works in this section will be adjacent to the Gyle Roundabout. A number of private diversions required are for apparatus owned by Edinburgh Park, including CCTV ducts and mast and bollard mounted footpath lighting. Discussions are progressing well with key parties to develop diversionary routes / design.

Section 6 (Utilities)

The 250mm water main diversion is 90% complete under RATs (risk and trade off). Final acceptance of the method statement is awaited from Scottish Water for testing and commissioning of the main.

The 800mm water main diversion final levels are under design following the relocation to the depot access road with a reduced minimum cover of 900mm, agreed with Scottish Water. To the west side of the depot, the pipe will be located off the access road but at the foot of the embankment.

These works will be carried out under a RATs proposal – discussions continue with SW to this effect with commencement now anticipated in January 2008.

Section 6 (Gogar)

Gogar depot earthworks have been completed as far as practicably possible. The site was made safe and secure and transferred back to tie on 13 November 2007.

Section 7A & 7B

The 7A RATs are approximately 50% complete on site. A number of water pipes have not been located despite significant trial holes and it is anticipated that Infracore will install insurance ducts in the anticipated location to account for any future diversions.

Traffic Management

The detailed Traffic Management required to undertake the works starting in the city centre in January 2008 was further refined. The diversion routes required to allow progression of the MUDFA works are in the final stage of modeling, due for completion by 18th January 08. The earlier exercises have confirmed that the preferred routing of the traffic will operate sufficiently, subject to rephasing of the traffic signaling at key junctions. This information will be available in the w/c 21st January 08. This information is vital to allow the relevant changes to occur and the subsequent commencement of Phase I in February.

1.2.5 Delivery

The badger sett exclusion and completion report was delivered as per programme.

GVD6, the final tranche was issued on 14th December, for title in January 2008.

BAA agreements are in agreed form and will be executed by Financial Close. NR have confirmed that access to the remainder of NR lease land (excluding those plots affected by depot and station change) will be available to Infracore under the agreed terms of the APA. The documentation required for the change processes in relation to the depot and station was submitted to Network Rail on 21st December with an aim to fast-track conclusion by Financial Close. The depot change is expected to be approved by Financial Close and a letter of comfort is being sought from the train operating companies confirming that the station change proposal is in order. This is expected to enable sign-off of the APA.

The emerging results of modelling the wide area impacts suggest that changes in traffic patterns are likely to be localised around the tram corridor / catchment areas, and do not spread over a wide section of the city. Input has been received from the key stakeholders which required some tweaking of the traffic signal optimisation. CEC sign-off is anticipated on 18th January.

The modelling support to inform the design process is proceeding well. Work continues on the layout of a small number of key junctions, the most significant of which is Picardy Place.

1.2.6 Health, safety, environment and quality

There were no accidents reported in the period and the accident frequency rate remains at 0.00. There was one incident that was referred to the police – a member of the public confronted one of the contractors' staff from the kerb side at Leith Walk, producing a knife and had an exchange of words. The person was apprehended by the police and this requires no further action from **tie**. There was also one near miss in the period.

1.2.7 Stakeholder and communications

Preparation was delivered in advance of the MUDFA enabling works which were scheduled to commence on the 7th January in the city centre. Customer information packs including 'Special Needs Cards' were hand delivered to all residents and businesses in the area of the works. The period has seen a significant increase in return of these cards following the recent round of notifications to the city centre and the new areas of Leith Walk including identified needs such as loading / unloading, parking, noise and disability access.

Steps were taken to adequately inform businesses and residents of all arrangements that would be in place during the holiday period.

The only adverse publicity which the project received prior to the Christmas holidays was in relation to the Business Rates Reduction. Representatives of the small business community raised their concerns in the media that it was their view that this was inadequate. However, there were no complaints received by the stakeholder team during this period.

1.2. Key issues for forthcoming period

General

- Progress of the Preferred Bidder process – on price, programme, risk allocation, legals and contract elements;
- Progress of the novation of SDS and Tramco;
- Achievement of Infraco mobilisation milestones; and
- Continued work on Picardy Place.

MUDFA specific

- BT programme of cabling and jointing for diversions, particularly for section 1C. Development continues in order to identify and mitigate critical interface areas with Infraco;
- A significant increase in the Traffic Management and Construction works in the city centre is due to commence at the end of January 2008. This will require substantial liaison with all Key Stakeholders to ensure expectations of anticipated works are fully understood and appreciated;

- The project will continue to maximise recovery of costs associated with SUC C4 estimates via specialist consultant's advice / input. Feedback on the initial proposal is expected in the next period;
- First results from the independent dilapidation surveys along the tram route which commenced 10th Dec 07 are expected in the period;
- Settlement of the interfaces between the MUDFA / Infraco programmes to identify critical areas wherein synergies can be adopted through interface of programmes; and
- A proposal has been put to SGN regarding a 30" gas main at the Mound which is under review and discussion with SGN.

1.3. Cost

	COWD Period	COWD (YTD)	COWD YTD + forecast to year end	AFC
Phase 1a	£3.5m	£47.9m	£92.3m	£498.1m
Phase 1b	£0.0m	£ 1.1m	£ 2.0m	£ 87.3m
Phase 1a+1b	£3.5m	£49.0m	£94.3m	£585.4m

The COWD in the year to date primarily comprises continued development of design, advance works at the Gogar depot, utilities works under both MUDFA and direct works by utility companies, project management costs and land costs.

The cost of land included in the year to date totalling £16.6m (comprising both land acquired under the GVD process and land injected into the project by CEC) is included in this report for completeness. However, all payments have and will be made directly by CEC.

As previously reported, payments to be made in the current year for advance material purchases (£24.2m) will be treated as prepayments following discussion with TS. This is subject to confirmation by TS that there is a mechanism to provide cash to make these prepayments during the current year.

The new funding required during the current financial year is now **£17.2m** (£94.3m less £77.1m already authorised).

Forecast expenditure during FY 08/09 (now estimated at £163.5m on Phase1a) and subsequent years is subject to continuing finalisation of tendered costs and related cost profiles with the Infraco and Tramco bidders and the element of the risk allowance allocated to that year. Cognisance is being taken of the current £120m cap on TS funding for FY 08/09 to the extent it makes commercial sense.

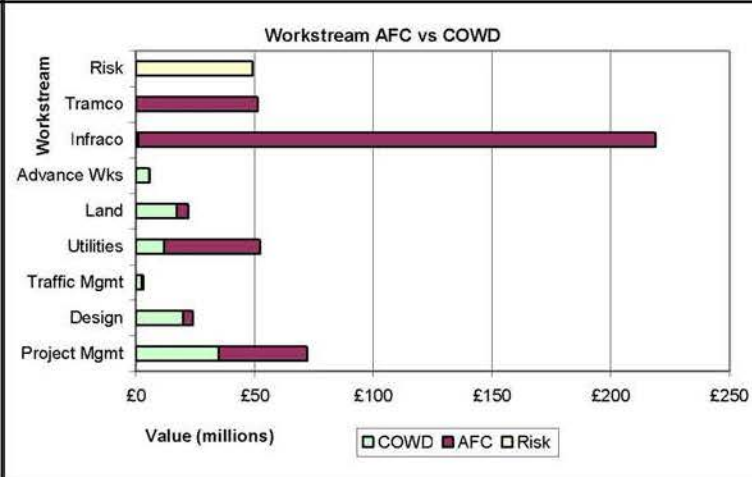
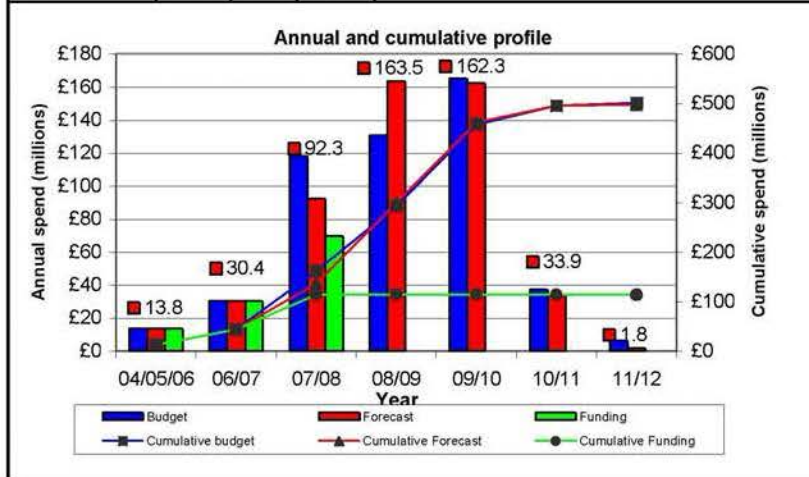
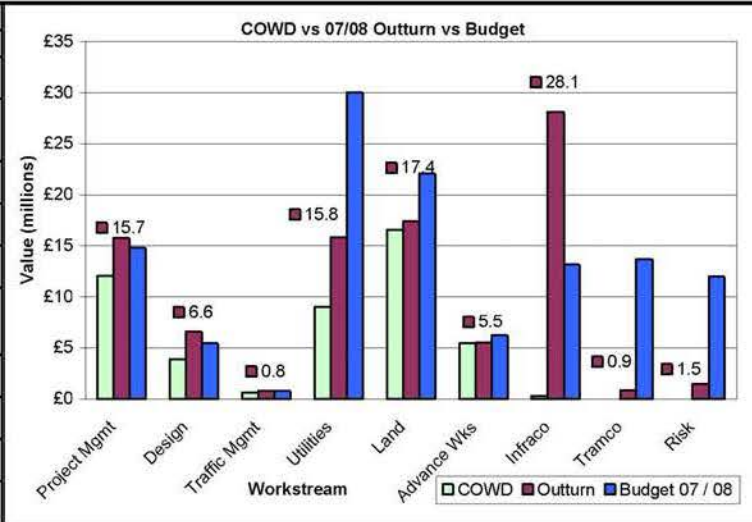
Costs for Phase 1b relate purely to finalising design works, as previously agreed by the Board.

Phase 1a only

FOISA exempt

Yes
 No

Period 10 - 07/08 COWD (£000s)				
Workstream	F/cast	Act	Var	Comments
Project Mgmt	1,248	1,138	(110)	
Design	663	712	49	
Traffic Mgmt	67	43	(24)	
Utilities	873	1,027	154	
Land	655	2	(653)	compensation to NR not yet actioned
Advance Wks	10	583	573	key variance due to Depot works excavation and design changes - details being confirmed
Infraco	4,131	31	(4,100)	delay in commencement of advance mobilisation
Tramco	100	0	(100)	delay in commencement of advance mobilisation
Risk	0	0	0	
Total	7,746	3,536	(4,209)	



1.4. Programme

The critical path is becoming clearer as the agreed in principal construction programme, developed in conjunction with BBS and the major stakeholders, is imported to the overall project programme. Critical issues include:

- Design - Section 5a Roseburn Junction to Gogar, particularly structures such as the Balgreen Road bridge, Baird Drive retaining wall, and structures around Murrayfield:
 - Other design issues that are now directly impacting the agreed in principal Infraco construction programme are due for review w/c 7th January with actions plans to be prepared for each;
- Network Rail immunisation works are showing as near critical – the final stages are tied to pre-booked possession dates in late December 2008 and early January 2009:
 - The modelling and testing study required to define the scope and programme for this works is progressing well and is expected to be complete by the end of January 08.
- MUDFA – The signed-off revision 06 construction programme highlights the previously critical area of works at St. Andrew Square, particularly now that the impact of BT Openreach programme is better understood:
 - Reviews are continuing on ways to reduce these timescales or to offer protection where possible to existing BT cabling to allow Infraco construction to proceed;

Other areas that need to be monitored closely include Picardy Place, Mound Junction (parallel working and dependencies on St. Andrew Square / Frederick Street) and Lothian Road Junction;

- Infraco – Section 1a around Forth Ports and Tower Bridge, Section 1c, Picardy Place, the depot building and access bridge, Section 5a around the structures at Murrayfield and Section 7 test track activities:
 - The final Phase of the advanced works contract is dependant on Scottish Gas Network delivering to programme. This situation is being monitored and discussions continue with SGN to complete by the end of March to allow commencement of Infraco without overall impact on the construction programme; and
 - During December 2007 agreement was reached between **tie**, BBS and major stakeholders including TEL, CEC, and Lothian and Borders Police on the Infraco construction programme with the exception of agreement on the construction sequencing and traffic management arrangements for the A8 underpass and the guided busway system.

1.5. Risk

In the period there have been no formal amendments to the project risk register.

There have been reviews conducted of various risk registers including MUDFA and SDS. The current risk profile is being monitored against the current contract negotiations with BBS. The project risk register will be updated where required as these negotiations progress however a full review of the register will be conducted

at contract close at which point we will be able to identify those risks relating to the procurement phase that can be closed.

1.6. Approvals / decisions / support required

Decisions / support required from TS

- A signed copy of the funding agreement; and
- Cash availability for advance material purchases.

Decisions / support required from CEC

- Finalisation of the **tie** – CEC and TEL – CEC Operating agreements;
- Approval for formal publication to award contract to BBS;
- Agreement on Contract Award; and
- Finalisation of Picardy Place.

Decisions / support required by others

- N/A

Appendix A – Headline cost report

1.1. Current financial year

	COWD (YTD)	COWD YTD + forecast to year end	Funding authorised current year	COWD YTD + forecast to period to Financial Close (end Period 11)
Phase 1a	£49.0m	£94.3m	£77.1m ²	£56.9m
Phase 1b	£ 0.0m ¹	£ 0.0m ¹	£ 0.0m ¹	£ 0.0m ¹
Phase 1a+1b	£49.0m	£94.3m	£77.1m ²	£56.9m

Notes:

1. Phase 1b design costs are to be expended against Phase 1a budget as agreed by the Tram Project Board and as previously reported;
2. This comprises £60m grant for 07/08 plus £10.6m grant carried over from 06/07 for land purchases plus £1.8m grant funding from 05/06 in respect of a single property purchase plus £4.7m free issue land which is an injection of funding by CEC rather than TS; and
3. The above estimates are predicated on achieving Financial Close by the end of period 11 (i.e. the end of January 2008).

As previously reported, following discussion with CEC and TS, it is now anticipated that milestone payments for advance material purchases to be made before the end of FY 07/08 will be classified as prepayments. The aggregate amount of these payments for advance material purchases has reduced from £26.7m to **£24.2m** as advised to CEC and TS on 11th December 2007. These prepayments will be reclassified as expenditure against funding in the periods in future years when the related materials are delivered to site and incorporated in the works. This is subject to written confirmation by TS that there is a mechanism to provide cash to make these prepayments during the current year.

New funding required for during the current financial year is now **£17.2m** (£94.3m less £77.1m already authorised).

The forecast outturn expenditure for the year has reduced from £95.0m to £94.3m. The forecast expenditure for the remainder of the year (periods 11 to 13) is summarised in the following table (NB - excludes payments for advance material purchases £24.2m, as explained above):

Nature of expenditure	P11 £m	P12 £m	P13 £m	Total £m
SDS design	0.37	0.29	2.01	2.67
MUDFA and other utilities	1.82	2.37	2.63	6.82
Infraco	4.09	17.47	6.22	27.78
Tramco	0.10	0.65	0.10	0.85
Land	-	-	0.51	0.51
Other	1.50	1.39	1.36	4.25
Risk	-	-	1.50	1.50
Phase 1a Total	7.88	22.17	14.33	44.38
Phase 1b (Design)	-	0.26	0.58	0.84
Overall Total	7.88	22.43	14.91	45.22

1.2. Next financial year

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total FYF
Phase 1a	£41.4m	£37.1m	£30.0m	£55.0m	£163.5m
Phase 1b	£ 0.5m	£ 0.1m	£ 0.9m	£ 2.3m	£ 3.8m
Phase 1a+1b	£41.9m	£37.2m	£30.9m	£57.3m	£167.3m

Note: Any variance in summation of table figures is due to rounding. The profile forecast for Phase 1b assumes commencement of utility works under MUDFA in Q3, 2008/9

The forecast for FY 08/09 remains highly sensitive to:

- Commencement of Infraco works in February 08;
- Treatment of advance material purchases as prepayments (see above);
- The continued negotiation of the Infraco / Tramco expenditure profiles which will take cognisance of the current £120m cap on TS funding for FY 08/09 to the extent it makes commercial sense; and
- The proportion of the overall risk allowance allocated to the year (the estimate for FY 08/09 includes £23.6m).

1.3. Total project anticipated outturn versus total project funding

	FUNDING (total project)			Total COST (To funders)
	TS	Other	Total	Promoter TOTAL AFC
Phase 1a	£500m	£ 45m	£545m	£498.1m ²
Phase 1b	£ 0m	£ 0m	£ 0m	£ 87.3m ^{1,2}
Phase 1a + 1b	£500m	£ 45m	£545m	£585.4m
Phase 1a + 1b concurrent	£500m	£ 45m	£545m	£580.4m

Total anticipated outturn is as per the Final Business Case.

Notes:

1. If Phase 1b did not proceed then £3.0m of design costs for Phase 1b would require to be expended against Phase 1a funding.
2. Estimate is valid for Phase1b if option under Infraco contract is exercised prior to 31st March 2009 as per FBC.

Significant work remains through to Financial Close to ensure the current position is maintained include the pricing of provisional sections contained within the bid and realising the targeted savings from value engineering initiatives.

1.4. Change control

The current change control position is summarised in the table below.

£m	Phase1a	Phase 1b	Phase 1a+1b
Project baseline (FBC)	498.1	87.3	585.4
Anticipated changes	-	-	-
Potential AFC	498.1	87.3	585.4

1.5. Summary breakdown

Latest estimate / AFC (including escalation)

	Base Cost	Risk	Opportunity	OB	(or)Contingency	Total
Phase 1a	£449.1m	£49.0m	£0	£0 ¹	£0 ²	£498.1m
Phase 1b	£ 77.7m	£ 9.6m	£0	£0 ¹	£0 ²	£ 87.3m
Phase 1a + 1b	£526.8m	£58.6m	£0	£0 ¹	£0 ²	£585.4m

Notes:

1. OB included in risk (QRA at P90 confidence level) as agreed with TS; and
2. Contingency included as part of risk at present.

Appendix B – Risk and opportunity

1.1. Summary

In the period there have been no amendments to the project risk register.

There have been reviews conducted of various risk registers including MUDFA and SDS. The current risk profile is being monitored against the current contract negotiations with BBS. The project risk register will be updated, where required, as these negotiations progress. However, a full review of the register will be conducted at Contract Close at which point we will be able to identify those risks relating to the procurement phase that can be closed.

1.2. Review project risk register

1.2.8 The principal changes in the risk position since the last period are:

No changes to the risk position have been processed as yet pending the final position at Financial Close

1.2.9 Risks added

No new risks added

1.2.10 Risks closed

No risk closed

1.2.11 Risks reassessed

No risks formally re-assessed

1.2.12 The updated primary risk register is attached below

ETN Primary Risk Register Dec 2007

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
286	Infraco lack of confidence in SDS designs or delivery programme	Infraco refuses to accept or fully engage in novation of SDS.	Possible delay to award; Damage to reputation; Possible extra costs or risk transfered back to tie.	B Dawson		Project	Complete designs and allow due dilligence to be undertaken by bidders	On Programme	On Programme	31-Dec-08	B Dawson
							Consult with legal on options relating to due dilligence to be carried out on design and availability of consents	On Programme	Complete	31-Dec-07	B Dawson
							Introduce and	Complete	Complete	28-	B Dawson

ETN Primary Risk Register Dec 2007

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
							engage Infraco bidders to SDS as early as possible			Feb-07	
915	Policy or operational decision	Transport Scotland and CEC do not provide indemnities on payment	Bidders will not commit to contract without this assurance; Delay in bid process; Possible bidder withdrawal from negotiations and bid process.	G Gilbert		Project	Ensure Transport Scotland understand implication of not resolving the funding agreement and obtain buy-in from them	On Programme	On Programme	30-Jan-08	G Gilbert
916	CEC do not	CEC do not honour	Potential	S McGarrity		Project	CEC has	On	On	30-	CEC

ETN Primary Risk Register Dec 2007

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
	achieve capability to deliver	funding obligations	showstopper to project if contribution not reached; Line 1B may depend on incremental funding from CEC				formed a multi discipline Tram Contributions Group to monitor identified sources of £45m contribution including critically developers contributions. tie are invited to that group. (see add info)	Programme	Programme	Jan-07	
							Tram Project Board to monitor progress towards gaining contributions	On Programme	On Programme	30-Jan-07	D MacKay
995	Failure to reach	Short term funding beyond the existing	Future of project	G Bissett		Project	Identify extent and timing of	On Programme	On Programme	1-Apr-	G Bissett

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ETN Primary Risk Register Dec 2007

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
	agreement on funding	arrangements of £60m plus 2006-07 rollover of £10.6m cannot be agreed.	placed in jeopardy				potential shortfall including allowance for cost overrun and short term programme slippage and seek agreement with CEC/TS of funding for the shortfall in the context of the New Award Letter anticipated from TS.			08	

ETN Primary Risk Register Dec 2007

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
							If short term funding is resisted, assess scope to reduce short term expenditure and the implications for programme and cost. Tram Project Board to determine appropriate action	On Programme	On Programme	1-Apr-08	G Bissett
996	CEC and TS cannot agree on any of the following: Scope of project, quantum of funding, rate of release of funding,	Funding agreement between CEC and TS not concluded and financial close cannot be achieved	Project unable to proceed	G Bissett		Project	Seek to negotiate mutually acceptable terms between CEC and TS in the context of the New Award Letter	On Programme	On Programme	31-Jan-08	G Bissett

ETN Primary Risk Register Dec 2007

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
	contribution percentages, governance arrangements										
997	Timescale for funding package is unachievable	Components of the funding package cannot be delivered in the necessary timescale	Significant delay which threatens project continuation	G Bissett		Project	Seek agreement that scope of project follows Phase 1a commitment	On Programme	On Programme	31-Jan-08	G Bissett
998	One or more aspects create a tax exposure	Funding arrangements cannot be concluded because a material tax exposure emerges which cannot be resolved	Failure to achieve financial close	G Bissett		Project	Seek advice from PWC timeously to avoid creating funding arrangements, corporate structure or other aspects which create such a tax exposure.	On Programme	On Programme	31-Mar-08	G Bissett
999	Concessionary fare support from TS is insufficient	Extent of concessionary fare support commitment from TS provides inadequate comfort to CEC	CEC withdraw support for FBC and project fails	G Bissett		Project	Negotiate the terms of Government commitment to	On Programme	On Programme	31-Jan-08	G Bissett

ETN Primary Risk Register Dec 2007

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
							concessionary fare support to level which is satisfactory to CEC				
977	Legal challenge. Extension of statutory consultation process. Large number of objections. TRO process is subject to a public hearing process.	Delay in achievement of TRO(s) due to a large number of public objections and/or a legal challenge to using a TTRO to construct Infraco.	Requirement to start construction using TTROs	K Rimmer	High - 25.00		Use of TTROs to undertake construction of permanent works in advance of permanent TROs being approved.	On Programme	On Programme	30-Jan-11	K Rimmer
139	Utilities diversion outline specification only from plans	Uncertainty of Utilities location and consequently required diversion work/ unforeseen utility services within LoD	Increase in MUDFA costs or delays as a result of carrying out more	G Barclay	High - 25.00		Carry out GPR Adien survey	Complete	Complete	31-Oct-07	J Casserly

ETN Primary Risk Register Dec 2007

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
			diversions than estimated				Identify increase in services diversions. MUDFA to resource/re-programme to meet required timescales.	On Programme	Complete	23-Nov-07	J McAloon
164	Utilities assets uncovered during construction that were not previously accounted for; unidentified abandoned	Unknown or abandoned assets or unforeseen/contaminated ground conditions affect scope of MUDFA work.	Re-design and delay as investigation takes place and solution implemented; Increase in Capex cost as a result of	I Clark	High - 25.00		Carry out GPR Adien survey	Complete	Complete	31-Oct-07	J Casserly

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ETN Primary Risk Register Dec 2007

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
	utilities assets; asbestos found in excavation for utilities diversion; unknown cellars and basements intrude into works area; other physical obstructions; other contaminated land		additional works.				Identify increase in services diversions. MUDFA to resource/re-programme to meet required timescales.	On Programme	Complete	23-Nov-07	J McAloon

ETN Primary Risk Register Dec 2007

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
							In conjunction with MUDFA, undertake trial excavations to confirm locations of Utilities and inform designer	On Programme	On Programme	31-Jan-08	A Hill
870	SDS Designs are late and do not provide detail Infraco requires	Infraco does not have detail to achieve contract close	Delay to due diligence and start on site and need to appoint additional design consultants	T Glazebrook	High - 25.00		Monitor design progress and quality	On Programme	On Programme	30-Jan-08	T Glazebrook
							Obtain Design Progress Dashboard from SDS	Complete	Complete	15-May-07	T Glazebrook

ETN Primary Risk Register Dec 2007

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
							Review AIPs for Structural Information	On Programme	Complete	2-Feb-07	S Clark

REPORT ON TERMS OF FINANCIAL CLOSE (“CLOSE REPORT”)

FOR THE ATTENTION OF THE TRAM PROJECT BOARD, TEL BOARD AND TIE BOARD

DRAFT 21.01.08

Purpose of report

The principal contractual commitments to be entered into at Financial Close are :

- Infraco Contract Suite – incorporating Infraco and Tramco construction / supply and maintenance ; Tramco and SDS Novation ; security documentation ; ancillary agreements and schedules including Employer’s Requirements
- Council Financial Guarantee
- Grant Award Letter
- Operating Agreements between the Council and respectively tie and TEL

Various important agreements with third parties have also been completed or are in substantially agreed form.

The purpose of this report is to provide the Boards with an up to date view of the principal terms of the contracts and related documentation which are being committed to at Close. A reasonable degree of prior knowledge is assumed.

It is understood that the Council will prepare appropriate papers for its own approval purposes, specifically to support the provision of delegated authority to the tie Executive Chairman to execute the contracts.

Approvals & Recommendations required

TPB	approval of terms of Infraco and all related documents including note of main open areas, recommendation to TEL on those terms and on the proposed delegated authority to approve and sign ; approval of governance and delegation paper
TEL	approval of terms of Infraco and all related documents including note of main open areas, recommendation to Council on those terms and the proposed delegated authority to approve and sign ; acknowledgment of terms which will be assigned to TEL in due course ; approval of the TEL Operating Agreement and; approval of governance and delegation paper
Tie	approval of terms of Infraco and all related documents as basis for commitment, including note of main open areas; acknowledgement of the proposed delegated authority to approve and sign ; approval of the tie Operating Agreement ; approval of governance and delegation paper

The Council will require to confirm its approval of the Grant Award Letter and the Financial Guarantee in addition to the contracts which will be entered into by tie.

Report Contents [Status in brackets]

1. Introduction [Complete]
2. Infraco contract suite [Work in progress]
3. Council financial guarantee [Complete]
4. Grant Award letter [Complete]
5. Notification of Award stage and risk of challenge [Complete]
6. Third party agreements [Work in progress]
7. Land acquisition arrangements [Complete]
8. Governance arrangements & corporate matters [Complete]
9. Risk allocation matrix and DLA letter [awaited]
10. Risk assessment of in-process and provisional arrangements [complete]
11. Update on critical workstreams and readiness for construction [awaited]

(1) Introduction

The significant stages in the project to date include :

April 2003 award	Ministerial approval of initial Business Case and grant
December 2003	Finalisation of STAG and submission of Bills to Parliament
May 2004 Transdev	Commencement of early operator involvement with
October 2005	Commencement of design work under SDS
April / May 2006	Royal Assent to Tram Bills
April 2007	Commencement of utility diversion work under MUDFA
May / June 2007	Change of government and re-confirmation of project
October 2007	OGC Gateway 3 Review
October 2007	Final Business Case for fully integrated system
approved by CEC	
December 2007	Resolutions to proceed approved by CEC
January 2008	Financial Close – construction and vehicle supply

Although there have been several key events, the completion of the contract suite which commits delivery of the system is highly significant in terms of the scale of commitment and the definitive nature of the programme to complete the project.

To reach this stage has involved close collaboration over a number of years between tie, TEL and the Council along with principal consulting and contractual partners. Throughout, progress has been monitored by the Project Board and the tie and TEL Boards, with full Council approval at key stages. Until mid-2007, Transport Scotland (and predecessor departments) played an active role in the project, since then a more arms length role has been played but crucially this has supported the commitment to the majority of the funding.

The balance of this report summarises the main features of the project and its supporting documentation as a basis for the Boards to assess readiness for commitment. More detailed information is available on every aspect on request.

(2) Infraco contract suite

NOTE THAT THIS SECTION IS SUBJECT TO ROLLING AMENDMENT AS THE FINAL TERMS OF THE CONTRACT SUITE ARE NEGOTIATED. THIS DRAFT SHOULD BE VIEWED AS A HOLDING POSITION, WITH A DEFINITIVE VERSION TO BE CIRCULATED PRIOR TO COMMITMENT

Process of drafting, negotiation, review and quality control

The structure, membership and competence of the tie / TEL negotiating team have been assessed previously and has remained largely consistent since the bid evaluation process commenced. Council officers have operated in an integrated manner with the main negotiating team, which has also had extensive support from our legal advisors, Transdev and other advisors.

When the Infraco contract suite is substantially agreed, a full-scale consistency and quality control review will be performed on the documents. In a number of critical areas, senior tie and TEL people have performed a review of terms independent of the main negotiating team, the important elements of which are set out in this report. The TPB, TEL and tie Boards have been regularly kept abreast of progress in all important areas and have confirmed or redirected effort as appropriate. Communications on these key matters with senior Council officers has been conducted both through the TPB and its sub-committees and also through frequent informal contact. Finally, the OGC Gateway 3 Review Team examined key areas of the contract suite before approval in advance of the October 2007 Council meeting.

In broad terms, the principal pillars of the contract suite in terms of programme, cost, scope and risk transfer have not changed materially since the approval of the Final Business Case in October 2007. It is felt that the process of negotiation and quality control has operated effectively to ensure the final contract terms are robust.

Infraco

Overview of contract terms

The Infraco Works are to be carried out pursuant to an Infraco Contract between tie Ltd and Bilfinger Berger (UK) Limited and Siemens plc. Bilfinger Berger (UK) Limited and Siemens plc have formed a consortium to carry out the Infraco Works and are together called the 'Infraco', each company separately being an Infraco Member. Both Bilfinger Berger (UK) Limited and Siemens plc have joint and several liability for the performance and discharge of the Infraco Contract.

The Infraco Contract comprises an Agreement executed by tie Limited, Bilfinger Berger (UK) Limited and Siemens plc and a series of referred to Schedules to the Infraco Contract which fully details and further amplifies the scope of the Infraco Works.

Under the Agreement the 'Infraco' has a duty of care and general obligation to carry out and complete the Infraco Works fully in accordance with the Agreement. Infraco are further obligated to procure that the Infraco Parties which shall include the Infraco member and their agents, advisors, consultants and sub contractors carry out the Infraco Works in accordance with inter alia, the Agreement, the Employer's Requirements, the Infraco Proposals, tie and

CEC policies to enable the Edinburgh Tram Network to be designed, constructed, installed, tested, commissioned and thereafter operated and maintained. The Employer's Requirements are suitably detailed such as to elaborate on the intent and to ensure that the Infraco can develop and complete the Infraco Works to enable the delivery of the Edinburgh Tram Network.

'Infraco' shall ensure that the system integration of the Infraco Works are implemented.

The Agreement contains permission for the transfer of title to CEC in all materials, goods, and equipment included to be part of the completed Edinburgh Tram Network. 'Infraco' shall procure that each Tram is supplied free from security interests.

A contract price has been agreed. The contract price and pricing schedules for carrying out the Infraco Works is contained in schedules to the Infraco Contract. A substantial portion of the Contract Price is agreed on a lump sum fixed price basis however there are certain work elements that cannot be definitively concluded in price and as such Provisional Sums are included. Section 10 below provides an up to date view on the contract sums.

The Agreement provides that 'Infraco' shall progress the Infraco Works to achieve timeous delivery and completion of the Infraco Works (or parts thereof) and in their obligations under the Agreement all in accordance with an agreed Programme which is bound into the Schedules.

The Agreement provides that, as a condition precedent, Infraco shall enter into and execute Novation Agreements to incorporate and bind previous agreements between tie and the design provider (SDS), the Tram supplier (Tramco) and the Tram Maintenance provider (Tramco), into the Infraco Contract. These agreements therefore become the full responsibility of 'Infraco' in the completion of the Infraco Works. In addition to the Novation Agreements, collateral warranties are to be provided to tie by the design provider (SDS), the Tram supplier (Tramco) and the Tram Maintenance provider.

Under the Agreement 'Infraco' acknowledges that it will require to comply with the Asset Protection Agreement (APA) with Network Rail in relation to the Edinburgh Tram Network and that tie has certain specific obligations owed to Network Rail through a framework agreement between Transport Scotland and Network Rail. Infraco are to comply with the APA and undertake that if shall not put tie in breach of the APA or the framework agreement. 'Infraco' has also obligations which concern interface or co-operation with the operator.

'Infraco' shall provide a permanent representation for the Project Safety Certificate Committee and shall develop and implement a safety management system to address all aspects of safety. tie has granted a non exclusive license to Infraco to enter and remain upon the permanent land of the term of

the contract and exclusive license to enter and remain upon designated working area for the duration of the Infraco scheme and shall permit 'Infraco' with all necessary land consents.

Possession of permanent land or temporary site by Infraco shall always be subject to the requirements of Third Party Agreements executed by tie and/ or CEC.

[Infraco has a substantive responsibility in relation to consents and approvals but there is a critical interface with tie / CEC which is being defined at this stage.]

Infraco shall comply with the requirements of the Code of Construction and Code of Maintenance Practice with regard to the maintenance of access properties, bus stops, bus services and closure of roads.

'Infraco' shall procure the appointment of a Tram Inspector and agree the identity of such Tram Inspector to enable the execution of a Tram Inspector Agreement. It is a condition precedent that Infraco enters with the Tram Inspector Agreement with tie and the Tram Inspector in the agreed form.

The construction sequence is broken down into construction milestones and critical milestones and procedures have been agreed for the monitoring of progress toward each milestone based upon milestone schedules. Interim Payments will be made to 'Infraco' monthly subject to and in accordance with the completion of stated Milestones. The Agreement obliges 'Infraco' to complete the Infraco Work in sections and 'Infraco's failure to complete sections by the sectional completion date will result in Infraco becoming liable to pay liquidated and ascertained damages to tie at amounts stated in the Agreement. If 'Infraco' are delayed by reason of certain prescribed events they may be able to apply for a Extension of Time and/or claim costs in connection with certain prescribed events listed in the Agreement.

The Agreement contains provisions in relation to the management of variations. Variation rules depend upon the type of change instructed whether it is a tie change or an 'Infraco' change.

'Infraco' acknowledges that tie may, subject to notice' instruct the Phase 1b works to be carried out provided that this is no later than 31st March 2008. The Agreement contains provisions for 'Infraco' to carry out Phase 1b works if so instructed.

If tie defaults on certain prescribed matters 'Infraco' may serve a termination notice in accordance with the Agreements. The Agreement sets out the rules relating to any such proposed termination. If 'Infraco' defaults in certain prescribed matters tie may, after giving required notice terminate the Agreement. The Agreement sets out the rules relating to such proposed termination.

The Agreement contains provision for the settlement of any disputes under a Dispute Resolution Procedure contained in the Schedules to the Infraco Contract.

Infraco Payment mechanism

Construction

Payment under the contract is entirely against a 4 weekly claim from Infraco in respect of milestones which have previously been certified by tie as having been achieved. The milestone schedule reflects the Infraco price allocated in amounts to series of construction milestones and critical milestones and to the future period in which each milestone is expected to be achieved in accordance with the agreed programme.

The milestone schedule and certification mechanism has been prepared and agreed in accordance with the following key principles:

- Infraco will not be paid in advance of its own outgoing cash flows through its own supply chain
- The individual milestones are defined such that the process of determining whether or not they have been achieved will be subject to the minimum of uncertainty or dispute
- The certification of a milestone will require evidence that all required consents and approvals have been delivered in respect of the related works

The contract provides an effective mechanism for the addition and variation to milestones (valuation or date) initiated by either tie or Infraco.

Infraco will submit a detailed claim for payment within 3 business days of the end of each 4 week reporting period in respect of milestones certified as achieved following which tie will have 5 business days to certify the total payment and a further 15 business days to make payment. There are no retentions of payment but a retention bond is provided as explained below.

Commissioning and Maintenance

Infraco will commission Phase 1a in 4 key sections, transfer title accordingly and hand over control of each section to the operator and maintainers:

- Section A – The depot, certified after system acceptance test T1 has been passed for that section;
- Section B – Depot to the Airport, certified after system acceptance test T1 has been passed for that section;

- Section C – The rest of Phase 1a, certified after system acceptance test T1 has been passed for that section and system acceptance test T2 has been passed for Phase 1a, and
- Section D – Driver training and commissioning, certified after system performance test T3 has been passed for Phase 1a.

Certification of Section D requires that in addition to passing the system performance demonstration all consents and approvals have been obtained and documentation and initial spares have been delivered.

After the period of trial running without passengers has been completed, then passenger service will commence.

During the commissioning period Infraco will be paid Mobilisation Milestone Payments according to the programme for establishing the maintenance organisation and systems. The Operator will be paid on a 4 week reporting period basis up to a maximum of a capped sum for the commissioning activities as a whole.

After the commencement of passenger operation, the Operator and the Infraco will be paid their respective operating and maintenance fees on a 4 week reporting period basis. The performance of the delivered systems in passenger service will be monitored against two final system acceptance test criteria, Network Performance test T4 and Reliability test T5. After the Reliability Certificate has been certified then the 4 weekly fees paid will be subject to the performance regime.

Performance security arrangements

Bonds during construction period

Two bonds are provided by Infraco from financial institutions of good credit, a Performance Bond and a Retention Bond. Both bonds are in substance 'on-demand', meaning there is no requirement that proof of failure by Infraco must be produced by tie before a claim can be made under the bond.

The Performance Bond is in the amount of £20m throughout the construction period reducing to £10m when a certificate of Revenue Service Commitment is issued and further reducing to £8m when a certificate of Network Certificate relating to the achievement of performance criteria is issued. The issue of the aforementioned certificates is subject to a rigorous testing regime as defined in the Employers Requirements, including evidence that all consents and approvals have been delivered, and provides both security for tie/CEC and incentive to Infraco to perform.

The Retention Bond is in the amount of £2m initially adjusting to the following amounts at sectional completion:

£4m section A – The depot
£6m section B – Depot to the Airport
£8m section C – The rest of Phase 1a
£10m section D – Driver training and commissioning
£6m at issue of Network Certificate (pertaining to reliability as defined in the Employers Requirements)

The Retention Bond is released when a Reliability Certificate is issued and the required bond for the maintenance stage of the contract has been provided.

The Operator provides a Performance Bond from a financial institution of good credit. The Bond is 'on-demand', meaning there is no requirement for proof of failure by the Operator to be produced by tie before a claim can be made under the bond.

The Performance Bond provided by the Operator is in the amount of £10m.

Infraco is required to provide a security at any time that there is determined by survey to be remedial work of a value greater than £50,000 to reinstate the Edinburgh Tram Network assets to the Handback Condition, This may either be in the form of a cash deposit or an on-demand Handback Bond covering the full value.

The bonds are provided by banks of global standing.

Parent Company Guarantees (PCGs)

PCGs are provided by the ultimate holding companies of both Infraco consortium members in respect of all performance, financial and other obligations of their subsidiaries which are contracting with tie. The substance of these entities, which are the group holding companies in each case, has been subject to legal verification.

The PCGs respect the joint and several liability provisions in the Infraco contract; each claim by tie under the PCG's must be served on each of the parent companies in the proportion of their share of the Infraco consortium but in the event of either parent company to honour payment of such a claim the other parent company is liable up to the limit of overall liability specified in the Infraco contract (20% of the Infraco contract price).

The PCGs provide that in the event of a change in control or ownership of the subsidiary companies which are entering into the Infraco contract, the PCG's remain in force until a replacement PCG has been provided on terms which are acceptable to tie.

In all other respects the PCGs are constructed such that the obligations and liabilities of the parent companies mirror that of the two subsidiaries in the Infraco consortium including the dates on which obligations expire.

All necessary collateral warranties have been agreed.

Performance securities during maintenance period

[o/s]

Tramco contract with CAF

Overview of contract terms

Trams will be supplied pursuant to a Tram Supply Agreement between tie Limited and Contruccion y Auxilliar de Ferrocarriles S.A (CAF) "Tramco". Tramco are to carry out the Tram works and design, manufacture, engineer, supply, test, commission deliver and provide 27 trams and if required any additional trams in accordance with the Employer's Requirements, the tram Suppliers Proposal and agreed programme. Tramco shall ensure that all data, component, systems, devices, equipment, software and mechanism incorporated in the trams are fit for purpose and compatible with each other. Tramco shall operate under good industry practice, comply with all applicable laws and consents and ensure that each tram meets the required standards. The parties have agreed to work in mutual cooperation to fulfil the agreed roles and responsibilities to carry out and complete the tram works in accordance with the Agreement.

Tramco shall provide support in respect of the key elements of system integration of the tram works with the Edinburgh Tram Network.

Tramco acknowledges that the operator shall be responsible for the Operator Maintenance of the Edinburgh Tram Network and that Tramco would at all times liaise with the Operator.

Tramco shall deliver and finalise the designs, design data and all other deliverables as prescribed in the Employer's Requirements.

The Agreement allows for the introduction of changes either by tie or Tramco always subject to notices and prescribed rules. tie may, subject to notice and terms, order additional trams with related spare parts and special tools.

Tramco shall at all times utilise a Project Quality Assurance Programme compliant to standards.

A tram manufacturing and delivery programme is agreed and regular monitoring of progress will take place.

There is provision in the Agreement for tie to be involved in inspecting the trams at various stages of the manufacturing process. Tramco shall deliver the

trams to the designated point of delivery at the depot and delivery tests shall be conducted.

Tramco, tie and the operator shall agree a training programme and the detailed implementation.

Tramco shall provide Trams free from all security interests transforming title to CEC.

Termination of the Agreement may be made by either party subject to certain prescribed defaults and terms.

Tramco Payment mechanism

Supply agreement

The payment mechanism under the supply contract conforms substantially to that under the Infraco contract as described above with the milestone payments heavily weighted towards:

- Initial mobilisation and establishment of supply chain
- Delivery of tram vehicles
- Attainment of performance and reliability standards as specified

Maintenance agreement

Infraco is required to provide a security at any time that there is determined by survey to be remedial work of a value greater than £50,000 to reinstate the Edinburgh Tram Network assets to the Handback Condition. This may either be in the form of a cash deposit or an on-demand Handback Bond covering the full value.

Performance security arrangements

Bonds during supply period

Tramco will provide a Reliability bond in the defined amount of 5% of the Tramco price such bond to be provided on or before the due date of delivery of the first Tram vehicle.

Parent Company Guarantee (PCG)

The supply and maintenance contracts with Tramco are with the ultimate holding company so the issue of a PCG does not arise. The liability cap of Tramco under the tram supply agreement is 20% of the Tramco supply price.

Performance securities under maintenance agreement

Tramco is required to provide a security at any time that there is determined by survey to be remedial work of a value greater than £50,000 required to reinstate

the Tram assets to the Handback Condition,. This may either be in the form of a cash deposit or an on-demand Handback Bond covering the full value of the remedial work outstanding. The liability cap of the Tramco under the tram maintenance agreement is 18.5% of the aggregate 30 year Tram maintenance price.

(3) CEC Financial Guarantee

CEC are required to provide a guarantee to Infraco of the financial obligations (including future variations) of tie under the Infraco contract in recognition of the fact that tie on its own has no capacity to bear any financial commitment insofar as it is not 'back to back' with the funding of the project which is channelled through CEC. In this sense it is materially consistent with the provisions of the PCGs (including periods allowed for payment of amounts due and duration of the agreement) provided by Infraco except that it is a guarantee of financial obligations only and not of performance.

The guarantee is provided to Infraco meaning either or both of Bilfinger & Berger UK Limited or Siemens PLC or their assignees as permitted and approved under the Infraco contract. The guarantee remains in force until the Infraco contract ceases, or when tie has met all payment obligations if earlier, and would remain in force in the event of any change in function, control or ownership of tie.

The provisions of the guarantee ensure that tie will not be compromised in it's management of the contract by virtue of an ability on the part of BBS to go directly from CEC for recompense. CEC will benefit from the same contractual rights and remedies as tie and will have no liability greater than tie's. No claim can be made for an amount which is in dispute if it has been referred under the dispute resolution provisions of the contract.

The practical day to day implication of the guarantee is that its provisions will not be invoked so long as the process for drawdown of cash from CEC to tie to meet payment obligations as they fall due is uninterrupted.

(4) Grant Award Letter

Transport Scotland will provide up to £500m of the total capital cost and the balance will be provided by CEC, which has initially allocated £45m for this purpose. The source of these funds is a matter for the two funders. The Government grant is documented in an award letter which is specific to the project but follows standard terms for grants under S70 of Transport (Scotland) Act 2001. CEC has identified a range of sources and an independent review confirmed the validity of the assumptions made by the Council.

The programme concentrates on Phase 1a initially and the parties have the opportunity to commit to Phase 1b before 31 March 2009 on pre-agreed terms with BBS. During 2008-9, an assessment will be made of funding availability to support Phase 1b. Government contribution will not exceed £500m under the current arrangements.

Grant will be drawn down pro rata with Council contribution. The amounts of grant available in each financial year will be capped, with the balance of any undrawn grant added to the sum available in 2010-11. There are detailed arrangements for payment approval and audit.

With the contributions agreed, the pro rata drawdown mechanism becomes an accounting process each month and within tolerances will not create any difficulty. The annual capping does have potential to create difficulty, but it is felt there is sufficient tolerance in the spend plans versus funding availability that this limitation is manageable.

The terms of the grant letter are weighted in favour of the awarding body and fall short of the sort of protection which a borrower would seek from a commercial lending bank. This is however normal and the Council are satisfied that the terms of the award offer sufficient protection bearing in mind the relationship between Government and the Council.

The letter was negotiated with TS by tie and Council Finance and Legal officials with support from DLA. See Section 8 for taxation assessment.

(5) Notification of Award, challenge process and cooling-off period

This section contributed by Jim McEwan, who performed a review of procurement process integrity independent of the main procurement team.

Summary

Over the last 12 months tie has pursued the procurement of both the Infraco contract for the construction of the Tram infrastructure in its entirety and the Tramco contract for the supply and delivery of the Tram vehicles. The focus of the procurement strategy was to deliver fixed price contracts for each.

The process followed for each contract was consistent with that specified by the EU directive on Public procurement and details of the evaluation methodology employed are outlined below.

The Bilfinger Berger and Siemens (BBS) consortium have been duly awarded the Infraco contract.

CAF has been awarded the Tramco contract.

In the event of any challenge to these awards tie is well placed to successfully defend the fairness and integrity of the process undertaken in the selection.

Infraco

The Evaluation Methodology employed by tie in the Tram Project is detailed in a document dated 8th January 2007 'Evaluation Methodology for submissions in response to the invitation to negotiate issued on 3rd October 2006 for the procurement of the Infraco for Edinburgh Tram Network' .

In the process 6 key areas were identified in the evaluation and a stream leader appointed to each :

- Financial
- Programme and Project Execution Proposals
- Project Team and Resources
- Technical and Design proposals
- Legal and Commercial
- Insurance

Evaluation team members were identified in the methodology together with stream leaders for each of the key areas

Each team was charged to prepare a 'consensus' score matrix on each of the key areas, these have been duly completed and lodged in the central document repository.

Proper probity on the process was maintained with financial information being restricted to only those in the finance stream and to the tie executive team.

Security employed on maintaining confidentiality was consistent with best practice with documentation stored in a locked room and the financial documentation stored in a locked cabinet within the room. (Note: The details of the financial bids were only available to those in the Financial stream, the evaluation of the other streams was therefore carried out without prejudice on costs.)

All meetings with Suppliers were documented and the notes of said proceedings are held in the central repository.

Financial position was reviewed as was the normalisation process which ensures bids are viewed on an equal footing basis

Tramco

The Evaluation Methodology employed by tie in the Tram Project is detailed in a document dated 11th October 2006 and titled Tramco Evaluation Methodology.

The process employed was identical to that employed in the Infraco evaluation as detailed above with 6 streams and the same methods of approach on scoring, confidentiality, probity and security. All required documents have been lodged in the central document repository.

(6) Third Party Agreements

This section contributed by Alasdair Sim, who took the lead role developing the agreements. A second (and consistent) view on risk is provided by Stewart McGarrity in Section 10.

THIS SECTION WILL BE UPDATED ON A ROLLING BASIS UNTIL FINANCIAL CLOSE.

In addition to the principal Infraco Contract Suite, there are a number of agreements which are of varying significance to Financial Close. This section describes the purpose and status of these agreements, together with an assessment of the level of risk to programme / cost arising from the agreements remaining open at the date of Financial Close.

THE AGREEMENTS ASTERISKED ARE REGARDED AS THE MOST IMPORTANT IN RELATION TO REACHING A ROBUST POSITION AS AT FINANCIAL CLOSE.

6.1 Edinburgh Airport Limited - Licence *

Purpose of Agreement

This is a licence agreement between Edinburgh Airport Ltd and City of Edinburgh Council, the purpose of which is to enable/facilitate the construction of the Edinburgh Tram within the boundary of Edinburgh Airport. This agreement covers MUDFA and INFRACO works as well as the construction of the Burnside Road alternative access route, and sets out the working arrangements between EAL, tie/CEC and contractors working on the Edinburgh Tram Network.

Current Status of Agreement

This agreement is expected to be signed by CEC in week beginning 21/01/08 and countersigned by EAL immediately afterwards. This agreement has been drawn down into Schedule 13 of the INFRACO Contract.

Risk to INFRACO Contract Award

MUDFA programme within Airport expected to commence on 30 March 2008; INFRACO works are expected to commence in September 2008. Risk to award of INFRACO Contract is considered insignificant.

6.2 Edinburgh Airport Limited – Lease *

Purpose of Agreement

This is a 175 year lease between Edinburgh Airport Limited and City of Edinburgh Council to facilitate the operation of the Edinburgh Tram Network. This lease follows the terms of the Minute of Agreement signed by the two parties during the Parliamentary process in September 2005.

Current Status of Agreement

This agreement is expected to be signed by CEC in week beginning 21/01/08 and countersigned by EAL immediately afterwards.

Risk to INFRACO Contract Award

The lease will commence following construction and prior to commencement of passenger services. The commencement of the lease is suspensive on the completion of an operating agreement between EAL and CEC/TEL. Risk to award of INFRACO Contract is considered insignificant.

6.3 Edinburgh Airport Limited – Operating Agreement

Purpose of Agreement

The purpose of the operating agreement is to set out operational interface arrangements and procedures for running passenger services to and from the airport. This agreement will be an evolving document which will be updated periodically during the lifetime of the project.

Current Status of Agreement

An outline document is current under review by tie and TEL. The intention is to develop this document into draft agreement form during the first quarter of 2008, and complete the agreement prior to commencement of passenger services.

Risk to INFRACO Contract Award

The Operating Agreement is a non-construction related document, and for this reason, it offers insignificant risk to CEC for award of the INFRACO Contract.

6.4 CEC/tie Licence *

Purpose of Agreement

The purpose of this licence is to pass over responsibility for land acquired for the ETN from CEC to tie. This will enable tie to manage the process of making land available to INFRACO on a programme/needs basis using the agreed Land Access Permit Procedure. CEC will manage the land/asset until the point that INFRACO take occupation of each worksite.

Current Status of Agreement

The agreement is currently in final draft format, with the expectation that the document will be executed in week beginning 21/01/08.

Risk to INFRACO Contract Award

If this agreement is not executed, then responsibility for managing the procedures to allow access to work sites will reside with CEC and not with tie. This could potentially lead to unbudgeted resource and programme implications. There are significant compensation event risks in the INFRACO contract if land is not available to the contractor when required.

6.5 SRU Side Agreement

Purpose of Agreement

This agreement governs design and construction activities in the vicinity of the Murrayfield Stadium. The agreement includes the construction of the Murrayfield Tram Stop, Roseburn Street Viaduct, Murrayfield Retaining Wall, the Wanderers Clubhouse remodelling and the relocation of the training pitches. The agreement also sets out the requirement to develop a local construction plan which the INFRACO contractor will be obliged to comply with. This will also include arrangements in relation to the temporary occupation of land within the Murrayfield site. The draft SRU agreement has been stepped down into Schedule 13 of the INFRACO Contract.

Current Status of Agreement

The agreement is currently in near final draft format. However it is now unlikely that this will signed by financial close. This is because of a number of technical matters which will take some time to resolve, including VE savings arising from design of Roseburn Viaduct and the specification of pitch relocation and ancillary works related to flood prevention. The latter point is being pursued to optimise works and lower overall cost. The fallback arrangement should final execution of the agreement be held back whilst technical/design matters are concluded, is that SRU will provide a letter confirming that the wording of key elements of the document is in agreed form.

Risk to INFRACO Contract Award

INFRACO works are expected to commence in the vicinity of Murrayfield in August 2008. Risk to award of INFRACO Contract is considered low.

6.6 Royal Bank of Scotland Agreement

Purpose of Agreement

This agreement builds upon the existing Section 75 Agreement between RBS and CEC which sets out the funding arrangements for the Gogarburn Tram Stop. The current proposal is for the INFRACO contractor to undertake the works within RBS land under licence, and sets out the procedure for CEC to later acquire the operational land based on the 'as built' (and at nil cost) using the GVD process. The agreement also covers the desire of RBS to maintain the landscaping between the Gogarburn Tram Stop and the A8 Glasgow Road.

Current Status of Agreement

The agreement is currently in draft format, with finalisation expected on completion of the detail design, as this will allow final costs for the tram stop to be calculated. RBS have provided written confirmation that access to the land will be secured under licence.

Risk to INFRACO Contract Award

INFRACO works are expected to commence in the vicinity of Gogarburn from June 2008. Risk to award of INFRACO Contract is considered low.

6.7 Local Code of Construction Practice – Forth Ports *

Purpose of Document

The existing Minute of Agreement between Forth Ports and CEC requires the development of a Local Code of Construction Plan to govern how the construction works are to be undertaken within the Forth Ports area. This would include method statements, programme details and consultation/notification requirements to be agreed prior to the commencement of construction. The Forth Ports Minute of agreement is included with Schedule 13 of the INFRACO Contract.

Current Status of Document

tie are currently drafting a local COCP for the Forth Ports area to a template format. This will require BBS input which will need to be included prior to engagement with Forth Ports. tie meet with the Forth Ports Project Manager on a weekly basis and will arrange confirmation by side letter that matters are in progress and on schedule and that Forth Ports do not intend imposing further restrictions beyond those placed within the existing agreement that would impact negatively on either INFRACO costs or programme.

Risk to INFRACO Contract Award

INFRACO works are expected to commence in the Forth Ports area from June 2008. MUDFA works will recommence in the Leith Docks area following the Easter embargo period from April 2008, and is currently being undertaken on a work by works licence basis, which contains the relevant elements that INFRACO will include within the final Local Code of Construction Practice document.

On confirmation of Forth Ports' position as indicated above, risk to award of INFRACO Contract is considered low.

6.8 Local Code of Construction Practice – New Edinburgh Limited *

Purpose of Document

The existing Minute of Agreement between New Edinburgh Ltd and CEC requires the development of a Local Code of Construction Plan to govern how

the construction works are to be undertaken within Edinburgh Park. This would include method statements, programme details and consultation/notification requirements to be agreed prior to the commencement of construction.

Current Status of Document

tie are currently drafting a local COCP for Edinburgh Park to a template format. This will require BBS input which will need to be included prior to engagement with New Edinburgh Ltd. tie to meet with NEL and arrange for confirmation by side letter that there are no other restrictions beyond those placed within the existing agreement that would impact negatively on either INFRACO costs or programme.

Risk to INFRACO Contract Award

INFRACO works (track) are expected to commence in Edinburgh Park from June 2008, with construction of the Edinburgh Park Station Bridge commencing in August 2008.

On confirmation of NEL position as indicated above, risk to award of INFRACO Contract is considered low.

6.9 Local Code of Construction Practice – Edinburgh Airport *

Purpose of Document

The licence between EAL and CEC sets out construction requirements in Schedule Part 5 – Development Rights and Obligations. This agreement has been drawn down into Schedule 13 of the INFRACO Contract.

Current Status of Document

tie are currently drafting a local COCP based on the obligations set out in Schedule Part 5 to a template format. This will require BBS input which will need to be included prior to engagement with EAL. tie meet with the EAL Project Manager on a four weekly basis and will arrange confirmation by side letter that matters are in progress and on schedule and that EAL do not intend imposing further restrictions on construction beyond those placed within the existing agreement that would impact negatively on either INFRACO costs or programme.

Risk to INFRACO Contract Award

MUDFA programme within Airport expected to commence on 30 March 2008; INFRACO works are expected to commence in September 2008.

On confirmation of EAL position as indicated above, risk to award of INFRACO Contract is considered low.

6.10 Network Rail Asset Protection Agreement *

Purpose of the Agreement

The APA is an agreement between NR and CEC which governs design/construction activities as well as access to Network Rail land. The APA is designed to ensure that the heavy rail network can operate in tandem with the construction and commissioning of the ETN.

Current Status of Agreement

There are issues to resolve between NR and CEC in relation to indemnities and future costs. These have been referred to Transport Scotland and the Office of Rail Regulation (ORR) for resolution. Closure on this issue is currently being pursued.

Setting the indemnities issues aside, a final APA draft was received from NR on 18/01/08, which is currently being reviewed and an agreed form of wording is expected to be confirmed by CEC and NR on 25/01/08.

The finalisation of the APA is suspensive on the approval of the Station and Depot Change Proposals (these are Regulated Processes also covered in later sections below). The APA will require to be signed before the INFRACO contractor can take access to Network Rail land.

Risk to INFRACO Contract Award

The most significant risk relates to the proposed BBS construction programme in the vicinity of Haymarket Station Car Park. The demolition of the Caley Ale House followed by the construction of the Haymarket Tram Stop viaduct is scheduled from commencement on 31 March 2008. At this stage therefore, reaching agreement on the principal terms of the APA and related agreements is an important risk to the date of financial close.

6.11 Network Rail Depot Change *

Purpose of Document

This is a regulated process between Network Rail and First ScotRail, the operator of the Haymarket Light Maintenance Depot. Depot change is the process which defines the revised lease arrangements which will be required as a result of the tram construction and operation. This procedure also defines the methodology of undertaking works in the vicinity of the Haymarket Depot and sets out the interface requirements of the Depot Manager. A key requirement of FSR is that only one contractor (at a single work site) will be permitted to conduct works within the depot area at any given time. BBS are aware of this constraint, and have sequenced their programme and depot construction methodologies accordingly.

Current Status of Document

The formal submission of the Depot Change (by NR) to FSR was completed on 11/01/08. The regulated process allows for a maximum review period of 45

calendar days for comments to be submitted. If no comments are received then the proposal receives deemed consent. The review period expires on 28 Feb 2008.

tie and BBS met with NR and FSR on 08/01/08 and agreed the content and detail contained within the Depot Change Proposal. Whilst the formal regulated change will not be completed by Financial Close, tie are seeking written confirmation from FSR that they have no objection to the proposals. It is expected that this confirmation will be provided by 25/01/08.

Risk to INFRACO Contract Award

The risk arising from depot change agreement in itself is considered low. However, the INFRACO works at Haymarket Depot are scheduled for commencement after completion of the NR Pollution Prevention Works Contract (PPLMD). It is a legislative requirement for NR to comply with environmental standards, and the proposed works involve a number of activities within the Haymarket Depot, including the relocation of diesel fuel tanks, in close proximity to the proposed Roseburn Street viaduct. These NR managed works are scheduled for completion at the end of July 2008.

There is a residual risk that should the PPLMD works be delayed, which is outwith the control of tie, then the INFRACO programme in this area would also be delayed.

Risk to award of INFRACO Contract is considered moderate and we are seeking confirmation from NR as to progress in order to fully assess this risk.

6.12 Network Rail Station Change *

Purpose of Document

This is a regulated process between Network Rail and First ScotRail as the operator of Haymarket Station. The Station Change procedure also requires the consent of the other Train Operating Companies (TOC's) using the station and these are; Arriva Cross Country, Virgin, Trans Pennine Express, National Express East Coast and EWC.

The station change concerns the permanent loss of 49 parking spaces at Haymarket Station Car Park and the temporary closure of the car park as a result of the construction of the Haymarket Viaduct and Tram Stop, as well as the relocation of taxis currently operating from the forecourt of station.

Current Status of Document

NR formally submitted the Station Change proposal to FSR on 16/01/08, which triggers the start of the 45 calendar day consultation process which ends on 01/03/08.

tie are working with NR and FSR to fast track this process and are aiming to get written confirmation from the TOC's at a workshop scheduled for 24 January 2008 that they have no in principle objection to the Station Change Proposal pending conclusion of the formal regulated consultation process.

Risk to INFRACO Contract Award

Risk to award of INFRACO Contract is considered low.

6.13 Car Park Compensation Agreements

Purpose of Document

The loss of income generating car park spaces at Haymarket Station is a compensation matter for both NR and FSR. Under Station Change, FRS receives a standard indemnity from Network Rail to cover losses, so the commercial arrangements can be negotiated separately and do not form part of the Station Change approval process.

Current Status of Document

tie are awaiting FSR to provide a date to commence these discussions, and FSR have confirmed that the compensation formulae adopted for the Platform Zero settlement can be used as a basis for this negotiation.

Risk to INFRACO Contract Award

The compensation settlement to both NR and FSR are commercial arrangements which have a budget allocation within the FBC and are not part of the Station Change approval process. There is therefore minimal risk to the award of the INFRACO contract.

6.14 Network Rail Framework Agreement

Purpose of Agreement

This is an overarching document beneath which reside a suite of construction, property and operations related agreements.

Current Status of Agreement

The Framework Agreement is in largely agreed form, pending NR confirmation that they accept the CEC negotiating position that the use of CPO Powers will be limited to resolving any future title issues in relation to the proposed lease. A side letter from NR is to be provided confirming the status of this agreement.

Risk to INFRACO Contract Award

The Framework Agreement is not a construction related document, so the Risk to award of INFRACO Contract is insignificant.

6.15 Network Rail Lease Agreement

Purpose of Document

This is a 175 year lease between NR and CEC to allow operation of the ETN.

Current Status of the Agreement

The lease is substantially in agreed form, pending drafting on protecting CEC position in relation to the treatment of contamination in the vicinity of Haymarket Light Maintenance Depot. The lease does not become active until after construction and commissioning have been completed, and is suspensive on the execution of an Operating Agreement with Network Rail.

A side letter from NR is to be provided confirming the status of this agreement.

Risk to INFRACO Contract Award

The lease is not a construction related document, so the Risk to award of INFRACO Contract is insignificant.

6.16 Forth Ports Agreement/Stanley Casinos

Purpose of Agreement

A variation of the existing Minute of Agreement between CEC and Forth Ports is currently in draft. This agreement is based around changes to the design in the Leith Docks area, which will be funded by Forth Ports.

The Stanley Casinos side agreement is also design dependant, and takes cognisance of the revised junction and access proposals at the Constitution Street/Ocean Drive junction. The agreement will also include provision for remodelling the Casino car Park.

Current Status of Agreements

Heads of Terms have been agreed and signed by CEC and Forth Ports. The highways and track design activities will be completed by October 2008, and a full understanding of the cost implications of these changes will not be attained until then. It is envisaged that the Stanley Casinos agreement will be concluded at the same time as the Forth Ports agreement.

The transfer of land from Forth Ports to CEC will be part of the FP contribution to the project, and this is part of the existing Section 75 agreement.

Risk to INFRACO Contract Award

INFRACO under novation assume responsibility for the SDS Programme, which will dictate the construction programme in the Forth Ports area. CEC risk to award of the INFRACO contract is therefore considered low.

6.17 Other Site Specific Code of Construction Plans

Purpose of Documents

As part of the suite of side agreements drawn down into Schedule 13 of the INFRACO Contract, there is a requirement in several agreements for the contractor to develop a local construction plan or CoCP as part of the notification/consultation process in advance of the works commencement. The relevant agreements are:

- USS
- Safeway/Morrisons
- Murrayfield Indoor Sports Club
- ADM Milling
- Ocean Terminal
- Royal Yacht Britannia
- Baird Drive Residents (Community Liaison Group undertaking)

Current Status of Documents

tie have prepared a suite of drafts setting out the construction related requirements of the relevant side agreements. BBS input will be required as these plans are developed and presented to the relevant 3rd parties.

It is notable that the construction requirements laid down in these side agreements generally relate to those aspects of site working such as confirmation of programme, maintenance of access during the works, pedestrian management, dealing with dust/noise, site cleanliness, reinstatement of property etc, that one would normally expect a competent contractor to be cognisant of.

Risk to INFRACO Contract Award

All relevant 3rd Party agreements are detailed within the INFRACO contract in Schedule 13. The requirements on Infraco are entirely in line with normal construction practice and the risk to CEC for award of the INFRACO contract is considered low.

6.18 Licence – The Gyle

Purpose of Document

The licence will allow the INFRACO contractor to undertake the works within Gyle owned land prior to permanent acquisition. In agreeing to undertake this work under licence, CEC will be able to meet the terms of the existing side agreement whereby permanent land take is to be minimised. At this stage in the design process, SDS cannot define with certainty the extent of the operational land. The proposal made to The Gyle is therefore to defer permanent acquisition until this certainty is available.

The acquisition of the 'as built' operational land will eliminate the risk of not meeting the obligations of the side agreement. The existing side agreement already makes provision for a licence to undertake works.

Current Status of Agreement

tie have put this proposal to The Gyle and are seeking confirmation in writing that this is acceptable. It is expected that a positive outcome will be received by 25/01/08.

Risk to INFRACO Contract Award

INFRACO works are expected to commence in the vicinity of The Gyle from June 2008. Risk to award of INFRACO Contract is considered insignificant, as CEC still has the ability to invoke the GVD for this land, a process that can be concluded in 28 days.

6.19 Licence – West Craigs

Purpose of Document

The licence will allow the INFRACO contractor to undertake the works within West Craigs owned land prior to permanent acquisition. In agreeing to undertake this work under licence, CEC will be able to meet the terms of the existing side agreement whereby permanent land take is to be minimised. At this stage in the design process, SDS cannot define with certainty the extent of the operational land. The proposal made to West Craigs is therefore to defer permanent acquisition until this certainty is available.

The acquisition of the 'as built' operational land will eliminate the risk of not meeting the obligations of the side agreement. The existing side agreement already makes provision for a licence to undertake works.

Current Status of Agreement

tie have put this proposal to West Craigs and are seeking confirmation in writing that this is acceptable. It is expected that a positive outcome will be received by 25/01/08.

Risk to INFRACO Contract Award

INFRACO works are expected to commence on the proposed licence site from January 2009. Risk to award of INFRACO Contract is considered insignificant, as CEC still has the ability to invoke the GVD for this land, a process that can be concluded in 28 days.

6.20 Network Rail – Neighbour Agreement

Purpose of Agreement

This agreement sets out the ongoing relationship between CEC and Network Rail for managing the interface between tram lease land, NR operational land

and other CEC land which is adjacent to the railway. The Neighbour Agreement will be updated as required over the period of lease.

Current Status of the Agreement

This agreement is approaching agreed form with NR, the latest draft is with the NR legal team for review.

Risk to INFRACO Contract Award

The Neighbour Agreement is a non-construction related document, and for this reason, it offers insignificant risk to CEC for award of the INFRACO Contract.

6.21 Network Rail – Operating Agreement

Purpose of Agreement

The purpose of the operating agreement is to set out operational interface arrangements and procedures for running tram passenger services adjacent to the railway line. This agreement will be an evolving document which will be updated periodically during the lifetime of the project.

Current Status of Agreement

A draft is current under review by tie and TEL. The intention is to develop this document into draft agreement form during the first quarter of 2008, and complete the agreement prior to commencement of passenger services.

Risk to INFRACO Contract Award

The Operating Agreement is a non-construction related document, and for this reason, it offers insignificant risk to CEC for award of the INFRACO Contract.

6.22 Network Rail – Bridge Agreement

Purpose of Agreement

The purpose of the Bridge Agreement is to set ongoing maintenance and operational responsibilities for the Carrick Knowe and Edinburgh Park Station Bridges, as these structures interface directly with the heavy rail network

Current Status of Agreement

A draft is current under review by CEC, and subject to finalisation of the detail design of the relevant structures (scheduled for July 2008), the intention is to finalise this agreement by end of August 2008.

Risk to INFRACO Contract Award

The Bridge Agreement is a non-construction related document, and for this reason, it offers insignificant risk to CEC for award of the INFRACO Contract.

6.23 DPOFA 2007 Revision

A negotiation was concluded with Transdev to amend the DPOFA signed in 2004. The process is now complete and the principal agreed changes relate to :

- Improved performance bond underpinning both mobilisation and operating obligations
- Alignment with Infraco contract where previous drafting was based on anticipated Infraco terms
- Scope revised to reflect the Phase 1a / 1b configuration from the originally anticipated Lines 1 and 2
- Revisals to KPI performance regime based on up to date commercial view.
- Replacement of original tram revenue incentive mechanism with a reduced cost recharge, reflecting a fully integrated bus and tram system
- Alignment of insurance arrangements under OCIP
- Obtained tram cost synergy savings with introduction of TEL being responsible for transport integration

6.24 Mobilisation agreements (Infraco and Tramco)

The pre-close mobilization agreements with Infraco and Tramco are designed to enable works necessary to maintain programme. The agreements are The Advance Works and Mobilisation Contract ("AWM") and Tram Advance Works Contract ("TAW").

The core of the AWM is that Infraco will perform a schedule of works with payment determined by "Agreed Element Estimates" agreed by the parties in respect of each element of work.

The AWM does not overlap with the Infraco Contract because, when the Infraco Contract is entered into, the AWM automatically terminates. The Infraco Contract therefore deals with payment and other terms relating to advance works underway at that time. The AWM also states that it terminates if the Infraco Contract is not entered into by 28 January and an extension will therefore need to be agreed. The TAW works similarly, in that it ends automatically when the Tram Supply Agreement is entered into. Again, the deadline for this to occur is 28 January subject to agreed extension.

The work on utility diversion under the MUDFA contract and related arrangements is described in Section 11 below.

(7) Land acquisition arrangements

Purpose of process

The process of assembling land required for the construction and operation of the Edinburgh Tram Network has been managed using a combination of Compulsory Purchase (using the General Vesting Declaration Procedure), and entering into long term lease arrangements with Network Rail and Edinburgh Airport Limited.

Current Status of Agreement

By financial close, the position in regard to Land available to INFRACO is as follows:

Nature Of Land	Land	Available to	Land Take	Target	No
	Area (sqm)	INFRACO	Achieved	Date	Plots
Pre GVD	498	Yes	0.1%	Nov-05	3
GVD 1&2	177467	Yes	21.0%	Feb-07	43
GVD 3	167854	Yes	19.9%	Jul-07	22
GVD4	43323	Yes	5.1%	Sep-07	19
GVD5	2381	Yes	0.3%	Dec-07	5
GVD6	83588	Yes	9.9%	Dec-07	17
Licences	24885	Yes	2.9%	Jan-08	14
BAA Licence	18388	Yes	2.2%	Nov-07	17
NR APA	42480	See above	5.0%	Feb-08	37
Forth Ports (S75)	80293	Yes	9.5%	Mar-08	51
Adopted Roads	202521	Yes	24.0%	Achieved	78
	843679		100.0%	Total	306

Of the total land required, 85.5 % is under the control of CEC through ownership or license, a further 9.5% is committed under Forth Ports existing S75 agreement with the balance of 5% subject to the Network Rail APA agreement discussed above.

Risk to INFRACO Contract Award

The risks to CEC for award of the INFRACO Contract are programme related, with the conclusion of the APA with NR the key factor.

(8) Governance & corporate arrangements

8.1 Governance & delegations

The Governance model deployed to oversee and control the project has evolved as the project itself has moved through different stages of development. Appendix 1 is a detailed paper which requires specific approval from the Boards. The paper sets out :

- 1) the proposed governance model for the construction period ; and
- 2) the proposed levels of delegated authority

The paper is an update of previous submissions to the Boards and differs only in two material respects – the inclusion of specific levels of delegated authority and alignment with the terms of the tie and TEL Operating Agreements (see below). Neither of these factors should cause concern : the levels of delegated authority are in line with those previously deployed by the TPB and the terms of the operating agreements have been subject to significant scrutiny by senior people over recent months.

8.2 Operating agreements

These agreements require specific approval by the tie and TEL Boards and the draft documents are attached at Appendices 2 and 3.

tie

The tie agreement was previously reviewed by the tie Board in December 2007 and the changes since then are in line with the request made by the tie Board. The tie agreement supercedes the existing agreement and sets out tie and the Council's mutual responsibilities for delivering the tram project.

Aside from a limited number of technical tweaks, the tie agreement is now in agreed form between tie and the Council. Any significant outstanding matters – from any source - should be tabled at the Board meeting for debate and resolution.

TEL

The TEL agreement reflects TEL's role but the detailed wording is consistent with the tie agreement. The TEL agreement sets out the specific authority delegated to it by the Council with acknowledgement that TEL will sub-delegate its authority to the TPB.

The wording of the clause which provides delegated authority to TEL (3.1) has to be agreed. Aside from marginal tweaks, the document is otherwise approved

in principle by the TEL Chairman and CEO. The Council's review procedures are not yet complete but any significant outstanding matters – from any source - should be tabled at the Board meeting for debate and resolution.

8.3 Taxation

Advice has been taken from PwC on two principle areas :

- 1) The tax effect of the Infraco contract suite structure ; and
- 2) The VAT status of the grant funding

The main objective in tax planning has been to ensure that the arrangements were VAT neutral such that there would be no irrecoverable input VAT and that no unforeseen output VAT would require to be accounted for. We have a formal report from PwC addressed to tie, CEC and TEL confirming this. We have also engaged with HMRC and have a clearance letter from them confirming that the objective is achieved.

The contract structure has also been assessed by PwC to ensure that it will be possible in due course to establish a cost base in TEL by either selling or leasing system assets owned by CEC which will create corporation tax shelter in TEL. This could prove very valuable over the operating period of the integrated system.

(9) Risk allocation matrices and DLA Report

[THIS SECTION IS DEPENDENT UPON THE FINAL TERMS OF THE INFRACO CONTRACT SUITE]

(10) Risk assessment of in-process and provisional arrangements

This section contributed by Stewart McGarrity, who reviewed those areas of the documents which are provisional in nature and the documents which will be in draft form at Close.

tie's approach to identifying and managing risks was fully explained in the Final Business Case. This section reviews the current status of the risks relating to the Infraco and Tramco contracts which were identified as wholly or partly retained by the public sector beyond financial close which were:

- The process for granting of approvals and consents;
- The process for granting of permanent TRO's
- The interface with the implementation of utility diversion works
- Delays to design approvals for reasons outside the control of the Infraco
- Stakeholder instructed design changes

Specific areas covered are:

- Price certainty achieved through the Infraco and Tramco contracts with a view on items included in the contract price which will remain provisional at Financial Close
- Specific exclusions from the Infraco contract price
- Responsibility for consents and approvals

And as an area of particular concern to stakeholders:

- The risks associated with significant 3rd Party Agreements not concluded in full at Financial Close.

Price certainty achieved

The Tramco price agreed at £54.4m is a fixed sum in pounds sterling for the supply of trams. The overall capital costs estimate for Tramco also includes a fixed sum of £2.3m for mobilisation costs associated with the maintenance contract and to be paid prior to the commencement of operations.

The Infraco price of £216.3m comprises

- £219.9m of firm costs
- less £13.8m of Value Engineering initiatives taken into the price with the agreement of BBS but with qualifications attached
- plus £10.2m of items which remain provisional at Financial Close.

A thorough risk appraisal has been carried out on the deliverability of the Value Engineering initiatives with reference to the qualifications which attach to them. As a result a prudent allowance of £4m has been made (in the Base Cost estimate for Infraco) against the possibility that for certain items these qualifications will not be removed.

Provisional items comprise a defined list of 13 Items each with a clear process for and programme for resolution. The estimate for each item has been reviewed by tie's technical consultants and by BBS and the risk of understatement is considered to be low. The most significant item is a £6.3m allowance for civil works, including utilities, at Picardy Place as the design for the approved layout is not yet complete. The cost of the actual tramway, tram stop and associated works at Picardy Place are included in the firm element of the price.

The overall capital cost estimate for Infraco includes a further £3.4m comprising £1.4m for maintenance mobilisation (as for Tramco), £1m for major spare parts based upon a schedule of prices provided by Infraco and a £1m provision for known design changes at the Airport tram stop where the change are yet to be included in the design which formed the basis of the Infraco price.

Infraco price basis and exclusions

The Infraco price is based upon the Employers Requirements which have been in turn subject to thorough quality assurance including synchronisation with the current SDS design. Crucially the price includes for normal design development (through to the completion of the consents and approvals process – see below) meaning the evolution of design to construction stage and excluding changes if design principle shape form and outline specification as per the Employers Requirements. The responsibility for consents and approvals is further considered below.

Significant exclusions from the Infraco price are items not included in the Employers Requirements in respect of (responsibility for securing incremental sources of funding in brackets):

- Additional works at Picardy Place, London Road and York place (CEC)
- Additional works at Bernard Street (CEC)
- Full footway reconstruction in Leith Walk (CEC)
- Additional works in St Andrew Square outwith the tram alignment (CEC)
- Changes within the Forth Ports area (Forth Ports)
- Any other scope required by third parties not already included in the Employers Requirements by virtue of a commitment in an existing agreement

Responsibility for consents and approvals

As previously tie/CEC will retain the risk associated with the process of obtaining TROs and TTROs whilst Infraco (together with their novated designer SDS) will bear the cost and programme consequences of not delivering the information in sufficient quality and timeliness to process the applications. Full provision has been made in the Risk Allowance for the costs associated with a public hearing and other costs associated with obtaining the TROs.

For all other required consents and approvals (either design or construction related) the principles which apply are:

- Infraco (including SDS) bear the costs and programme consequences associated with not delivering the required information in a timely and sufficient manner to the consenting or approving authority
- tie/CEC bear the incremental cost and programme consequences associated with a delay in granting consent or approval having received the required information in a timely and sufficient manner and/or the cost and programme consequences of changes to design principle shape form and outline specification (as per the Employers Requirements) required to obtain the consent or approval.

To clearly delineate responsibility and therefore risk allocation the Infraco contract and associated schedules, including the SDS Novation Agreement,

clearly defines in detail and in a manner agreed by Infraco, SDS and tie/CEC:

- The necessary consents and approvals already obtained at Financial Close
- The remaining consents and approvals and whether the information to obtain such rests with Infraco or SDS
- The expectations with regard to quality of information including compliance with relevant law and regulation
- The programmed dates for delivering information and obtaining the necessary consents and approvals consistent with achieving the overall programme for the project

The role of tie in this complex process is to carefully manage the programme of delivery and take mitigating action as necessary to avoid any cost or programme implications from slippage on individual items. tie also retains responsibility for obtaining specific items including obtaining NR possessions which align with the construction programme agreed with Infraco.

The Risk Allowance does not provide for the cost or programme consequences associated with a wholesale failure of this process – see QRA alignment & Risk Allowance below.

3rd Party Agreements

All relevant agreements with 3rd parties form part of the Infraco contract (at schedule [13] and the Infraco price includes for the costs of any works and/or any construction constraints imposed by these agreements and as reflected in the Employers Requirements [Important issue still under debate with BBS].

A thorough risk assessment has been carried out with regard to all third party agreements which will not be concluded at Financial Close and attention is drawn to the following significant matters which are significant for the award of Infraco:

Network Rail Asset Protection Agreement (APA) – The APA, which provides Infraco with access to NR land for construction, cannot be formally concluded until the Station Change and Depot Change processes above have been concluded. However even if a side letter were to overcome this obstacle, the APA as currently drafted contains wide ranging Indemnity clauses in respect of all future events which CEC cannot regard as tenable. It is not possible to determine a quantified risk allowance in respect of these indemnities and no provision is made in the Risk Allowance for the project.

Station Change (actually between NR and First Scotrail/TOCs) - The risk here relates to the programme implications of not getting access to the car park at Haymarket for Infraco to commence demolition of the Caley Ale House at the end of March 2008 and the acquisition of car parking spaces for the permanent Tram works. A statutory consultation period is in process and we hope to have

confirmation of no objection in principle agreement by the date of financial close. The Infraco's also has responsibilities to obtain all necessary construction consents prior to commencing the works. tie is of the opinion that a delay of 3 to 4 weeks to the start of this activity could be absorbed with no impact on critical path or costs.

Depot Change (actually between NR and First Scotrail) - The risk again relates to the programme implications of Infraco not getting access to the depot site at Roseburn for Tram works programme to commence in July 2008. Again the statutory consultation process has begun and tie is seeking a comfort letter confirming no objection to the proposals before financial close. The risk of undue delay to the agreement (or prior pollution prevention works by Network Rail at the depot) is considered to be small.

Local Codes of Construction Practice – Existing agreements with Forth Ports, New Edinburgh Limited and Edinburgh Airport require that such local agreements be concluded with these parties. Any additional requirements by these parties which might have cost or programme consequences which tie and the Infraco cannot effectively mitigate would be an additional cost to tie/CEC. Tie considers that the likelihood of significant additional costs arising from these agreements is minimal.

QRA and Risk Allowance

tie's risk identification and management procedures as detailed in the FBC describe a process whereby risks associated with the project which have not been transferred to the private sector are logged in the project Risk Register. Where possible the cost of these risks is quantified by a QRA in terms of a range of possible outcomes, probability of occurrence and thereby the Risk Allowance which is included in the capital cost estimate for the project.

The project Risk Register also details the "treatment plans" being followed to mitigate individual risks and thereby avoid all or part of the cost allowance.

As the Infraco and Tramco procurements have progressed tie has maintained and reviewed contractual Risk Allocation Matrices, which reflect the risks retained by the public sector arising from the contracts, and has exercised prudence in ensuring the Risk Register, QRA and therefore Risk allowance provide adequately for risks retained for the public sector including the major areas or risk assessed above. There has been no material change in the Risk Allocation Matrices between Preferred Bidder stage and the position now.

The Final Business Case cost estimate of £498m includes a risk allowance of £49m which in turn includes

- £17.5m in respect of procurement stage risks on Infraco and Tramco including all the risks associated with achieving price certainty and risk transfer to the public sector as has been effectively achieved in the Infraco contract as summarised above. The negotiated Infraco and

Tramco prices, inclusive of provisional sums and other allowances as described, will result in an aggregate crystallisation of the Risk Allowance in the amount of £14.2m thus leaving a balance £3.3m to be held as a contingency against residual risk during the construction phase.

- £3.2m in respect of specifically identified risks held by and to be managed by tie during the construction phase including adverse ground conditions, unidentified utilities and the interface with non-tram works.
- £4.3m in respect of post Financial Close consents and approvals risks which provides for the cost or programme consequences of imperfections which may arise in elements of the consents and approval risk transfer as described above.
- £[3.3]m [To be confirmed] to provide for the cost of minor Infraco / Tramco programme slippage of up to [X] months (other than as a result of delays to MUDFA which is provided for elsewhere in the risk allowance.

tie has assessed these amounts as providing adequately for the residual risk retained by the public sector arising from the Infraco and Tramco works and the post Financial Close consents and approvals process. However the Risk Allowance does not provide for the costs of:

- Significant changes in scope from that defined in the Employers Requirements – whether such changes were to emerge from the consents and approvals process or otherwise
- Significant delays to the programme as a result of the consenting or approving authorities failing to adhere to the agreed programme (Infraco/SDS having met their own obligations) or any other tie/CEC initiated amendment to the construction programme which forms part of the Infraco contract.

All other things being equal any such changes falling into these categories would give rise to an increase in the cost estimate for Phase 1a of the project above £498m.

(11) Update on critical workstreams and readiness for construction

- Design due diligence
- Run-time due diligence
- TTRO / TRO process
- MUDFA including interface with Infraco programme
- Management team and handover
- Safety
- Commercial management
- Insurance
- Risk management

Appendix 1 - Governance & Delegations paper

tie Limited

Paper to : tie Board, Tram Project Board, TEL Board, CEC

Subject : Project Governance

Date : 18th January 2008

THIS PAPER SUMMARISES THE PROPOSED GOVERNANCE AND MANAGEMENT MODEL AS IT STANDS AT 18 JANUARY 2008. THE AREAS WHICH HAVE NOW BEEN UPDATED INCLUDE FINALISATION OF OPERATING AGREEMENTS AND THE DELEGATED AUTHORITY WHICH FLOWS FROM THOSE AGREEMENTS.

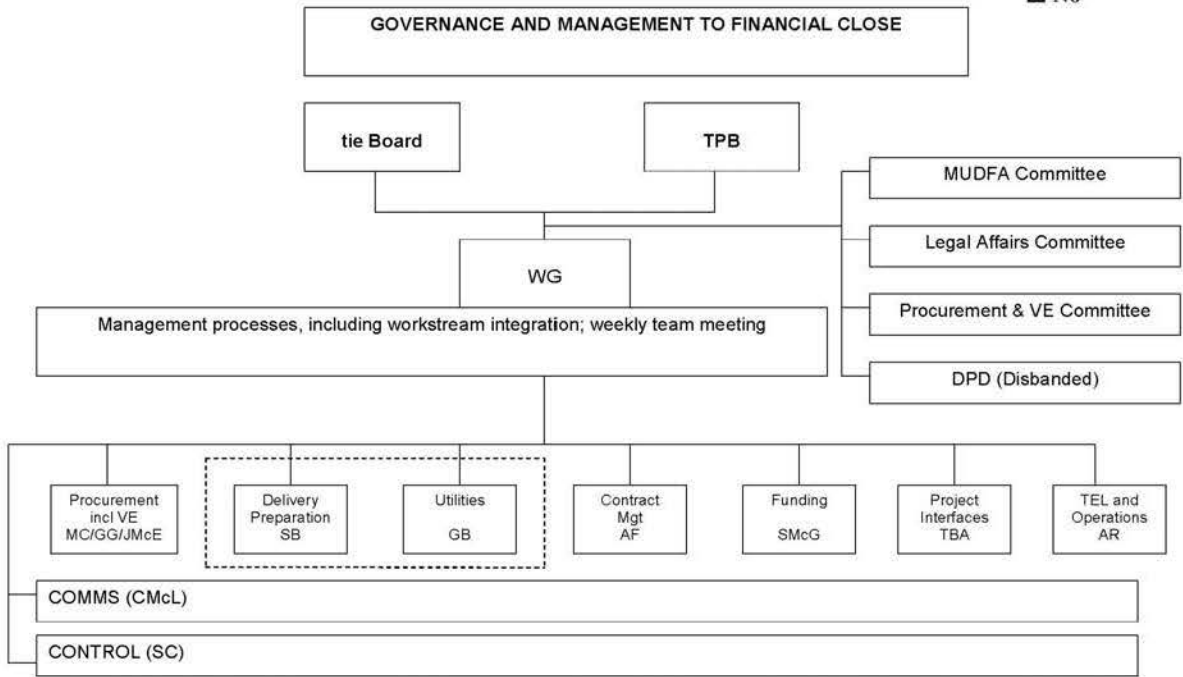
Edinburgh's integrated transport system Project governance for the construction period

(1) Governance and management model in period to financial close

The recipients of this paper approved a governance and project management model for the period to Financial Close prior to the Council's meeting on 25 October 2007. The purpose of this paper is to present the proposed model for the period from Financial Close to operational commencement, planned for Q1 2011. The proposed model is very similar to the outline presented in October but this paper is drafted to be independent of previous submissions.

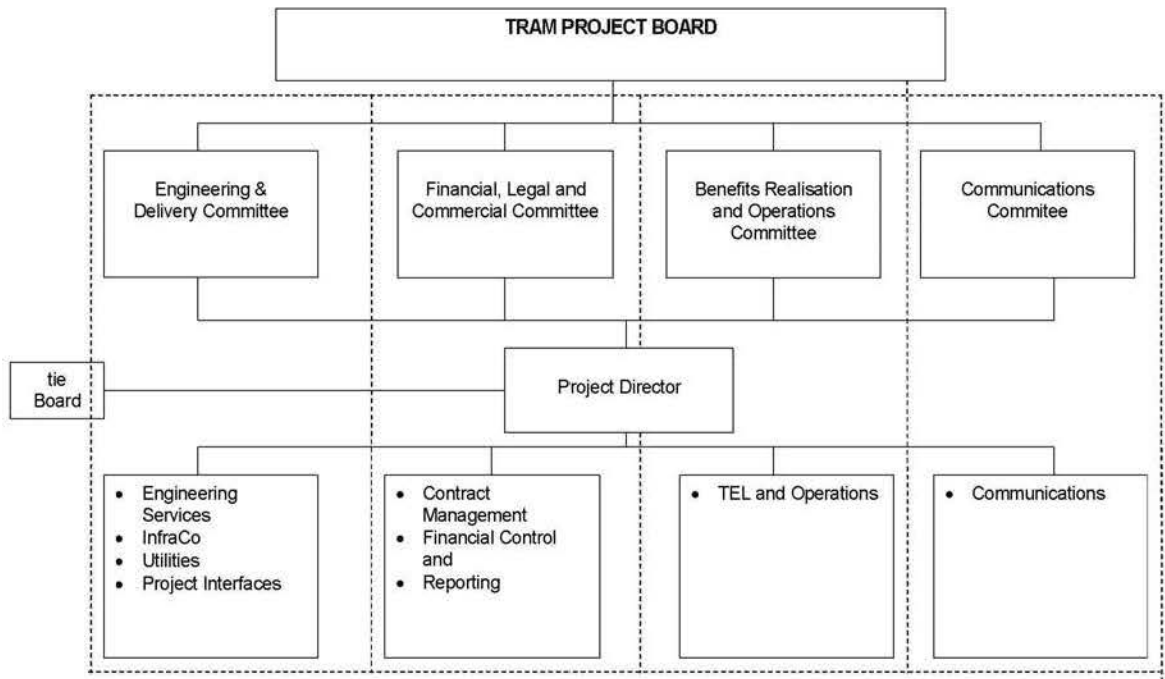
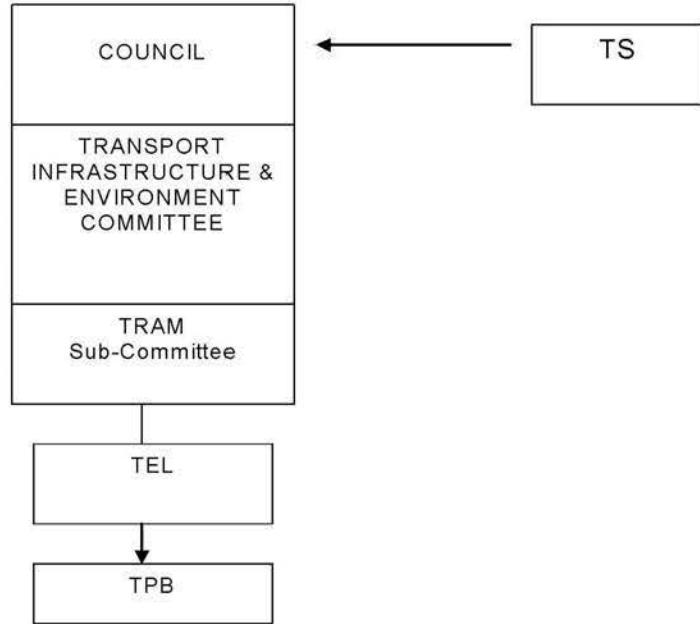
The current model is set out in the following diagram, including the project workstream structure under the TPD.

FOISA exempt
 Yes
 No



(2) Governance and management model in construction period

The diagram below sets out the proposed governance model for the construction period .



The roles & responsibilities of the entities within the new governance and management model are summarised below.

Transport Scotland (TS)

TS exercise their oversight of the project through 4-weekly reporting in prescribed format and a 4-weekly meeting with the City of Edinburgh Council (CEC).

The principal contractual relationship between TS and CEC is the Grant Award Letter which sets out the terms on which TS will provide the balance of the £500m grant. This contains detailed reporting and certification requirements appropriate to the conduct and scale of the project..

CEC

CEC have established a “Tram sub-Committee” of the existing Transport, Infrastructure and Environment Committee. The sub-Committee is chaired by the Executive Member for Transport with a 6-8 weekly meeting cycle. The purpose of the sub-Committee is to review and oversee decisions with respect to the project. This will include addressing matters directly affecting the Council and providing assurance that matters which cross Council departmental boundaries are managed cohesively (for example, responsibilities for roads & traffic management and budgets).

CEC have prepared Operating Agreements between the Council and respectively tie Limited and Transport Edinburgh Limited (TEL) to codify the arrangements between the entities and the responsibilities of the two subsidiaries. The signing of the Operating Agreements creates the authority for tie and TEL to execute their responsibilities.

The Council Report approved on 20 December 2007 indicated that some issues will require to be referred to Council including the approval of the annual business plans for tie and TEL. Significant changes to Council obligations, including material changes to scope and cost within the Tram Project, will also be reserved to Council. Full Council will also require to ratify settlement of any claims greater than £500k or £1million in a 12 month period. The precise definition of the delegated interface between the full Council and its committees is a matter for the Council.

The Operating Agreements also specify certain matters which require the approval of a council Monitoring Officer. The Monitoring Officer is intended to be the same individual with respect to both tie and TEL and will also be a member of the TPB and TEL Board, in order to ensure that the governance structure is clear and singular.

TEL

The TEL Board is focussed on its overall responsibility to plan an integrated tram and bus network for Edinburgh, on behalf of CEC. The Board is responsible for compliance with its Operating Agreement and it will also address any matters outwith the direct arena of Integrated Bus and Tram systems and any statutory TEL considerations.

The TEL Board comprises an independent non-executive Chairman, independent non-executive directors, Elected Members and Executive management. There is

appropriate common membership across the TEL, tie and LB Boards to ensure consistency of approach.

The following matters will be a matter for the TEL Board to determine :

All matters affecting the programme, cost and scope of the Project except

- (A) those which involve a significant change to the Council's obligations. In this context, significant is defined as a matter which will or could reasonably be expected to involve 1) a) delay to the programme of greater than 3 months ; or 1) b) increased cost of £10m ; relative respectively to the programme leading to commencement of revenue service by 31 March 2011 and capital cost of £498m (Phase 1a) or £87m (Phase 1b) set out in the Final Business Case ; or
- 2) substantial change to the design, scope or service pattern set out in the Final Business Case.; and
- (B) the settlement of any single claim in excess of £500,000, or series of claims in any 12 month period which would exceed in aggregate £1,000,000 ;

The TEL Board may delegate responsibility for all other matters to the TPB and the TPB may in turn delegate responsibility for all other matters to a competent third party (to include tie so long as within tie's own authority). .

The Council's majority shareholding in Lothian Buses (LB) is planned to be transferred to TEL and parallel changes to the composition of the Lothian Buses Board would then be addressed.

Tram Project Board (TPB) and its sub-Committees

The TPB maintains its role as the pivotal oversight body in the governance structure. The TPB is established as a formal sub-Committee of the TEL Board with full delegated authority to execute the project in line with the proposed remit set out in Appendix 1. In summary, the TPB has full delegated authority to take the actions needed to deliver the project to the agreed standards of cost, programme and quality within the authority delegated to the TEL Board.

The suggested membership of the TPB is 7 people (Office of Government Commerce constituency definitions "highlighted"):

- Chair (David Mackay)
- Senior CEC Representatives - "Senior User Representatives" (Donald McGougan and Andrew Holmes)
- TEL CEO and Project "Senior Responsible Owner" (Neil Renilson)
- "Senior Supplier" representatives (tie Executive Chairman and TEL Operations Director) (Willie Gallagher and Bill Campbell)
- Executive Member for Transport (Phil Wheeler)

The Chair will continue to be the TEL Non-executive Chairman, rather than the Project SRO. Other parties, principally senior project management and advisers, will be called to attend as required, though it is anticipated that a common group of senior project directors will attend

The remit and delegated authority given by TEL to the TPB, and by the TPB to the SRO and Tram Project Director (TPD) are set out in Appendix 1. The TPD will formalise delegated authority downwards to senior members of the delivery team.

tie Limited

tie's role is to deliver the tram network fit for operational purpose, on time and budget. For the foreseeable future, tie will have only one major project, the tram. It will maintain roles with certain smaller projects and will require to comply with normal statutory responsibilities as a limited company, including formal compliance with its Operating Agreement.

The tie Board presently comprises a group of independent non-executive directors and Elected Members under the Executive Chairman. The Elected Members will be the same on each of the TEL and tie Boards to ensure consistency of view across delivery of the system and operations. The independent non-executive members will also provide experienced participation in the TPB's sub-committee deliberations, as explained below.

In overall terms, the composition of the tie Board will be maintained in its present form. The Board will maintain its Audit and Remuneration committees, membership of which are restricted to the NXDs. In addition, a new tie Board sub-Committee will be established to address Health & Safety, chaired by an experienced NXD.

In its role on the tram project, tie provides services to the TPB. The tie Operating Agreement provides tie with the legal authority to enter into all competent contracts to deliver the tram system. The tie Board will delegate authority to its Executive Chairman to execute its contractual responsibilities for the tram project. The Tram Project Director (a tie employee) is given delegated authority by the tie Executive Chairman to manage and deliver the project. The authority given to the TPD in his role as a tie employee is synchronised with the authority delegated to him by the TPB. This ensures that the TPD leads the project delivery under delegated authority from his employer (tie) and from the project client (TEL through the TPB) which is consistently defined.

Further changes to the composition of the TEL, tie and LB Boards will be effected as is deemed necessary over the period ahead. In particular, in the event that tie assumes responsibility for additional major projects in the future, the Board composition may need to be addressed. All such changes will require the formal approval of the Council.

In summary, the roles of the parties are :

CEC

- To be responsible for the creation of a financially viable integrated bus and tram system in line with the approved Business Case ;
- Compliance with the terms of the Grant Award Letter

TEL

- Under authority delegated by its parent CEC, to prepare for the operation of the integrated tram and bus network, including oversight of the delivery of the tram infrastructure executed through its sub-Committee, the TPB ;
- Compliance with the CEC / TEL Operating Agreement ;
- Statutory responsibilities including Board membership, statutory reporting, maintenance of books of account and statutory records ;

- Matters relating to TEL employees including Health & Safety

TPB

- Prepare for the operation of the integrated tram and bus network, including oversight of the delivery of the tram infrastructure, conducted directly or through scrutiny by sub-committees of the TPB

tie

- Management of the delivery of the tram infrastructure including management of the contracts written with third parties to achieve delivery of the tram network fit for operational purpose, on time and budget
- Compliance with the CEC / tie Operating Agreement ;
- Statutory responsibilities including Board membership, statutory reporting, maintenance of books of account and statutory records ;
- Matters relating to tie employees including Health & Safety

TS

- To provide grant funding in line with the terms of the Grant Award Letter

(3) Practical operation of the governance model

It is recognised that there is inevitable duplication between the scrutiny by the tie Board of its Executive activities and the oversight role performed by TEL and the TPB. However, this situation is normal, if tie's role of providing a service to its client, in this case TEL, is borne in mind.

It is suggested that the tie and TEL Boards will meet every second period on a period-about basis. The frequency of TEL Board meetings is expected to increase as operational commencement approaches. The TPB and its sub-committees will operate on a 4-weekly cycle, linked to the 4-weekly report to TS. The means by which the Project Director arranges day to day management of the project is not reflected in this paper but will also follow the 4-weekly cycle and will respond to the reporting requirements of the tie and TEL Boards.

The current TPB sub-Committee structure will be dissolved and the new sub-Committee structure will comprise :

Engineering & Delivery Committee (E&D)

- Delivery under contracts - Infraco, Tramco, Utilities / MUDFA, design,
- Health & Safety, Quality & Environment
- Improvement initiatives – VE, Innovation, ICT
- Project interfaces & approvals – Land & Property, Traffic, third parties

Financial, Commercial & Legal Committee (FCL)

- Financial management – reporting, control, audit, risk management, insurance
- Contract management – reporting, compliance, interface with delivery, claims & variations

Benefits Realisation & Operations Committee (BRO)

- Operational & integration planning
- O&M contract planning
- Transdev
- Marketing

Communications Committee

- Comms management – utilities / MUDFA, Construction, Media, stakeholders

It is anticipated that the BRO and Communications committees will not meet for the early period of construction in the absence of any material issues arising which require separate scrutiny. The TPB will deal directly with any relevant matters under these headings for the foreseeable future.

In order to create close cohesiveness between the TPB / sub-Committee governance model and the project management structure, the sub-Committees will be directly interfaced with the Project workstreams and the individual directors responsible. Appendix 2 sets out the interfaces which effectively constitute the remits for these committees.

To further reinforce cohesion, the Executive Chairman will Chair each of the sub-Committees. The attendance of senior project and client officers, and the clear responsibilities allocated to individual Project Directors, will ensure that appropriate independence and challenge is achieved. As currently, the sub-Committees will have clear remits and will focus on detailed interrogation of key issues, leading to recommendations to the TPB which retains decision-making authority over all key areas.

(4) Health & Safety

A detailed analysis of the means by which H&S responsibilities are discharged is set out in Appendix 3. In summary, H&S is clearly of paramount importance both currently and in the construction phase of the Project. CDM 2007 will be a key focus and will be given appropriate prioritisation by all parties at all levels. The application of legal H&S responsibilities in the context of the governance and management of a large, complex project requires very careful analysis.

Appendix 1 - Tram Project Board (“TPB”) Remit

TPB has delegated authority for the delivery of an integrated Edinburgh Tram and Bus Network on behalf of TEL and CEC, in particular :

1. To oversee the execution of all matters relevant to the delivery of an integrated Edinburgh Tram and Bus Network, with the following delegations :
 - a. Changes above the following thresholds
 - i. Delays to key milestones of > 1 month
 - ii. Increases in capital cost of > £1m
 - iii. Adversely affects annual operational surplus by >£100k
 - iv. is (or is likely to) materially affect economic viability, measured by BCR impact of > 0.1
 - b. Changes to project design which significantly and adversely affect prospective service quality, physical presentation or have material impact on other aspects of activity in the city
 - c. Delegate authority for execution of changes to TEL CEO (the Project SRO) with a cumulative impact as follows:
 - i. Delays to key milestones of up to 1 month
 - ii. Increases in capital cost of up to £1m
 - iii. Adversely affects annual operational surplus by <£100k pa
 - iv. is (or is likely to) materially affect economic viability, measured by BCR impact of <0.1

The TEL CEO will delegate similar authority to the Tram Project Director.

These levels of authority apply to all matters affecting the programme, cost and scope of the Project except :

- (A) (1) those which involve a significant change to the Council's obligations, where significant is defined as a matter which will or could reasonably be expected to involve a) delay to the programme of greater than 3 months ; or b) increased cost of £10m ; relative respectively to the programme leading to commencement of revenue service by 31 March 2011 and capital cost of £498m (Phase 1a) or £87m (Phase 1b) set out in the Final Business Case ; or
2) substantial change to the design, scope or service pattern set out in the Final Business Case ; and
- (B) the settlement of any single claim in excess of £500,000, or series of claims in any 12 month period which would exceed in aggregate £1,000,000 ;

All matters which fall to the determination of the TPB will be reported to the TEL Board on a comprehensive and timely basis. Matters which do not fall within the TPB and TEL Board's delegated authority levels described above will require determination by the Tram Sub-Committee of the Council.

2. To appoint the Senior Responsible Owner (SRO) and Tram Project Director (TPD) for the project and to receive reports from the SRO and TPD on project progress
3. To receive reports from TPB sub-committees established to oversee specific areas

4. To ensure project workstreams are executed according to robust programmes under the leadership of Project Director.
5. To approve the submission of funding requests and to recommend approval of funding terms to the TEL Board ; and to confirm compliance with all relevant aspects of the grant award letter.
6. To ensure proper reporting through the TPB Chairman to the TEL Board and to CEC (as appropriate) of decisions made.

Appendix 2

Interface between new governance bodies and project management structure in the construction period – people identified are included for discussion only at this stage

TPB Governance body	Chair	Management responsibility	Director
Engineering & Delivery Committee	Gallagher	Engineering & Delivery -	Bell
		Infracore	
		Tramco	
		Utilities / MUDFA	
		Engineering design	McEwan
		Health & Safety planning & management	
		Improvement -	
		VE	
		Quality & Environment	
		ICT	
Financial, Commercial & Legal Committee	Gallagher	Innovation	Sim
		Project Interfaces & Approvals -	
		Land & Property	
		Traffic management / regulatory	
		Other CEC, third party	
		Financial management -	McGarrity/ Thorne
Financial reporting			
Financial control, internal audit	Fitchie		
Risk management			
Insurance			
Contract management -			
Benefits Realisation & Operations Committee	Gallagher	Contractual reporting & compliance	Richards
		Claims & Variations management	
		Operational Planning -	
		Integration & service planning	
		O & M planning	
Communications Committee	Gallagher	Transdev	McLauchlan
		Commissioning	
		Marketing	
		Communications management -	
		Utilities / MUDFA	
Construction			
Media			
Stakeholder			

Appendix 3 Health & Safety

General

H&S obligations are well-understood and entrenched in the project governance and management structure. The increased level of physical activity which may give rise to H&S risks once construction commences reinforces the need to ensure H&S responsibilities are clear and that the highest standards of H&S management are applied. These considerations must be addressed on a daily basis in all actions and at all levels by parties involved in Project.

In overall terms, the key H&S considerations for CEC, TEL, the TPB and tie are:

- the health & safety of their people - the corporate H&S Management Systems address this responsibility
- ensuring that CEC, TEL, the TPB and tie deliver against clearly stated H&S responsibilities in the framework of the project including working alongside third party H&S management systems
- monitoring and reporting regularly that these responsibilities are being properly discharged
- ensuring that all persons employed by CEC, TEL and tie are competent
- ensuring that contracts entered into address H&S issues adequately
- ensuring that H&S ramifications are considered when key business decisions are made

The H&S responsibilities are currently defined clearly to meet the demands of the current project activity including the utility works now underway. These responsibilities are being revised to integrate with the revised governance structure described in this paper and to enable effective management of the full-scale construction activity which will follow Financial Close. The narrative below provides a description of the responsibilities of the bodies involved in the project and has been drafted with the full involvement of DLA.

Relationship of revised governance model to H&S responsibilities

The TPB creates an "inclusive" decision making process which is important for the effective operation of the project. The TPB will be a formal sub-Committee of the TEL Board so that members of the TEL Board on the sub-Committee retain the formal responsibility for decisions taken at the TPB, with all other parties to TPB deliberations being participants or observers only. The TPB itself is not a shelter from health and safety liabilities or a clearing house for liabilities. Legally CEC, TEL and tie cannot delegate H&S responsibility to the TPB in the governance structure and thereby declare that they have discharged their health and safety liabilities and have no further duty regarding input into or consideration of health and safety issues.

The ultimate responsibilities for the TPB decisions flow up to the TEL Board and CEC, subject to the intended election under the Construction Design and Management Regulations 2007 ("CDM 2007") of tie as "Client" under those regulations. A Procurator Fiscal may consider that all parties (CEC, TEL and tie), together constitute the entity for the discharge of H&S obligations. As a result H&S

implications must be considered by all these parties when making significant decisions affecting design and implementation through the construction phase of the Project. The HSC guidance *Director's Responsibilities for Health & Safety* must be followed by CEC, TEL, the TPB and tie. Appropriate leadership should be demonstrated in this area by the boards and senior management.

Where changes are submitted for TPB approval, or are requested by the TPB, tie/TEL/CEC (and the appointed CDM 2007 parties) will be legally responsible for identifying and managing any impact that these changes will have on safety. The TPB will be responsible for ensuring that they understand and have responsibility for any decisions made in this respect. It is intended that tie will be mainly responsible for implementing the decisions made throughout the construction period.

It is considered that TEL/CEC would remain the "client" in terms of CDM 2007 as the TPB is not a separate legal entity although it will make decisions on behalf of TEL/CEC. tie is responsible as the elected second client under CDM 2007 and the client/employer (for general health & safety regulations) for the overall project safety management for the development and implementation of the Project. Such an election is, however, not a full delegation of all rights and responsibilities. tie and the TPB must ensure that its activities or its stakeholders or advisors do not undertake actions that encroach upon the role of the designer under CDM 2007, because this would mean that they would require to demonstrate competency in this role and fulfil added responsibilities.

The revised project governance structure described in this paper will distance Transport Scotland from the H&S responsibilities as their responsibilities are related to those of the principal funder of the project, in the absence of any material involvement in design or construction matters.

Health & Safety, Quality & Environment will form an element of one of the new TPB governance sub-Committees. H&S matters within tie will be the responsibility of the Engineering and Delivery Director. In addition to the E&D Director's leadership on this issue, a senior NXD will be the nominated chair of the H&SQE sub-committee of the tie Board to add a further H&S check in the operation of tie and the TPB.

A regular safety report is produced and presented to the tie Board and to the TPB each month. The TPB will ensure that safety is a core agenda item for each meeting and will ensure that the safety report tabled at each meeting is actioned where appropriate. Copies of these reports, or summary documents as appropriate, will be disseminated to TEL and CEC. This will ensure that H&S issues are considered at senior level on a regular and disciplined basis.

Legal backdrop

There may be occasions where a decision which is made by the TPB under its delegated authority from TEL is driven by one of the stakeholder directors to the exclusion of the other members of the board. In the event of an incident, this may result in the contractual relationships or duties between the stakeholders being considered. Notwithstanding that financial indemnities could be put in place to cover losses suffered, if a particular party declares that it will be held accountable for a decision impacting safety, it is important to highlight that it is not possible to ensure that fines imposed as a result of prosecution can be the subject of an enforceable indemnity. It is not possible to contract out of criminal liability nor is it possible to insure against a fine. Although it may be competent to include a clause

FOISA exempt
 Yes
 No

in a contract, it is possible that such a clause would be construed by the courts as unenforceable and contrary to public policy. In this context, the representative of each stakeholder would need to look to their employer, with regard to personal accountability.

The creation of appropriate safety responsibility structures, safety management systems and culture will form a key defence to any prosecution assuming all procedures have been followed. Clearly there could also be a number of other parties involved in a safety incident, for example contractors, sub-contractors, agency staff, designers, CDM-Coordiators and third parties.

The Corporate Manslaughter and Corporate Homicide Act 2007 will come into force on 6 April 2008. Corporate homicide will be committed where a death is caused by an unlawful or grossly negligent act of the senior management of an organisation. The management and organisation of activities by senior management must constitute a "substantial element" of the breach, in other words, partial delegation of the duty will not prevent liability attaching to senior management. Breach is punishable by a fine. Although directors do not face personal liability under the Act, the offence will make directors more vulnerable to disciplinary action and further crystallise their accountability for health and safety compliance to their stakeholders. It remains possible for directors and senior management to face personal liability if there is sufficient evidence to bring a prosecution under the existing common law or under the Health & Safety at Work etc Act 1974.

AGREEMENT

between

THE CITY OF EDINBURGH COUNCIL, the local authority for the City of Edinburgh in terms of the Local Government etc. (Scotland) Act 1994, having its principal office at Council Headquarters, Waverley Court, East Market Street, Edinburgh, EH8 8BG, or its statutory successors (“**the Council**”)

and

tie Limited, a company incorporated under the Companies Acts (registered number SC230949) and having its Registered Office at City Chambers, High Street, Edinburgh, EH1 1YJ (“**tie**”)

Whereas:-

2. The Council set up tie in May 2002 to assist the Council with implementing its local transport strategy;
3. Powers were conferred upon the Council in relation to the design, construction, commissioning and operation of the Edinburgh Tram Network in terms of the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006 and the Council wishes to delegate certain of these powers to tie;
4. The Council is the designated planning and roads authority for the City of Edinburgh;
5. A general operating agreement between tie and the Council was previously entered into whereby tie agreed to provide services to the Council in developing, procuring and implementing integrated transport projects within Edinburgh, including the delivery of the proposed tram system for Edinburgh;
6. The terms of the tram Final Business Case and the fact that tie was to enter into various agreements in relation to the Project were approved by the Council on 20 December 2007; and
7. The parties now wish to enter into this agreement to more particularly regulate the relationship between the parties specifically with regard to the procurement and delivery of the trams Project and to define the services tie will provide to the Council.

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE AS FOLLOWS:

1 **Definitions**

1.1 In this Agreement the following terms and expressions shall have the following meanings:

“Agreement”	means this agreement (including the schedules to it), as it may be amended from time to time;
”Employer’s Requirements”	means the employer’s requirements

	as more particularly defined in the Infraco Contract;
“Final Business Case”	means the business case relating to the Project which was approved by the Council on 20 December 2007, as it may be amended from time to time in agreement with the Council;
“Funding Agreement”	means the Council-accepted grant offer letter from Transport Scotland to the Council relating to the Project, as it may be amended from time to time;
“Infraco Contract”	means the contract between tie and Bilfinger Berger UK Limited and Siemens plc (contracting on a joint and several liability basis)(“the Infraco”), as it may be amended from time to time;
“Legislation”	means all rules, regulations, by-laws, directives, statutes and other binding provisions in force from time to time;
“Lothian Buses plc”	means the company incorporated under the Companies Acts and having its registered office at 55 Annandale Street, Edinburgh EH7 4AZ (Registered Number SC096849);
“Phase 1A”	means phase 1A as more particularly described in the Final Business Case;
“Phase 1B”	means phase 1B as more particularly described in the Final Business Case;
“Project”	means the procurement and delivery of a tram system for Edinburgh (Phase 1A and Phase 1B and any approved extension), as more particularly described in the Final Business Case and approved by the Council in terms of scope;
“Services”	means all the services to be provided by tie as specified in this Agreement, including, without limitation, those specified in Schedule 1;
“Tram Acts”	means Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006;
Tramco Contract or “Tram Supply Contract” and “Tram Maintenance Contract”	mean the contracts between tie and Construcciones y Auxiliar de Ferrocarriles S.A., as they may be amended from time to time;
“Tram Monitoring Officer”	means the Council officer nominated

	by the Council to monitor tie in relation to the Project;
“Transport Edinburgh Limited” or “TEL”	means the company incorporated under the Companies Acts and having its registered office at 55 Annandale Street, Edinburgh EH7 4AZ (Registered Number SC269639); and
“Tram Project Board” or “TPB”	means the committee of the board of TEL established to oversee delivery of the Project.

- 1.2. Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of it.
- 1.3. In this Agreement, references to clauses are, unless otherwise provided, references to clauses of this Agreement and references to schedules are references to the appropriate schedules to it.
- 1.4. In this Agreement, the masculine includes the feminine and the neuter and the singular includes the plural and vice-versa.
- 1.5. Where this Agreement refers to approval being required from the Council or the Tram Monitoring Officer, the Council shall use best endeavours to procure that such approval is not unreasonably withheld or delayed.

2. tie’s Obligations

- 2.1 tie hereby agree to provide the Services to the Council throughout the duration of this Agreement in order to assist in, carry out, promote, manage and administer the Project.
- 2.2 tie shall ensure that all third party advisers and contractors engaged by it shall provide a direct duty of care to the Council in terms acceptable to the Council prior to carrying out any work in relation to the Project, failing which the appointment of any such third party will require the written approval of the Tram Monitoring Officer.
- 2.3 tie shall use best endeavours to ensure that it delivers a tram system for Edinburgh as specified in the Final Business Case and the Infraco Contract (including the Employer’s Requirements). tie shall use best endeavours to comply with all timescales and financial projections detailed in the Final Business Case.
- 2.4 tie shall use best endeavours to ensure that it is at all times suitably resourced to carry out all the Services in relation to the Project.
- 2.5 tie shall use best endeavours to ensure that it does not cause the Council to breach the terms of the Funding Agreement. In particular tie shall use best endeavours to ensure that the Council complies with the conditions relating to publicity in the Funding Agreement. tie will provide all reasonable assistance to the Council in relation to the Council’s compliance with the terms of the Funding Agreement.
- 2.6 tie shall use best endeavours to ensure that it complies with and, where it acts on the Council’s behalf, shall use best endeavours to ensure that the Council complies with, all Legislation (including all health and safety legislation) relevant to the Project at all times.
- 2.7 tie shall use best endeavours to ensure that all work sites related to the Project are appropriately managed and supervised at all times to ensure compliance with all health and safety Legislation.
- 2.8 tie shall use best endeavours to ensure that it does not infringe the intellectual property rights of any third party at any time.

- 2.9 tie shall use, and shall use best endeavours to procure that all contractors, employees and other third parties which it engages shall use, all reasonable skill, care and diligence in the provision of the Services. All work undertaken by tie shall be progressed with due expedition and without delay to achieve timeous completion of the Project.
- 2.10 tie shall discharge all its obligations in terms of this Agreement in a proper, honest, faithful and diligent manner and shall at all times act in the best interests of the Council (to the fullest extent permitted by law).
- 2.11 Insofar as permitted by law, tie shall at all times promptly comply with all reasonable requests made of it by the Council.
- 2.12 tie shall at all times maintain in place appropriate policies of insurance in relation to all elements of its business and in particular the Project, provided that each insurance is available in the United Kingdom insurance market at commercially reasonable rates and on commercially reasonable terms to businesses of the same status and discipline as tie. tie shall promptly inform the Tram Monitoring Officer in writing if any insurance ceases to be maintained and/or ceases to be available in the United Kingdom market at commercially reasonable rates and or commercially reasonable terms. In this event, the parties shall meet to discuss the means by which any risks previously covered by insurance should be managed, mitigated or controlled. tie shall provide evidence of all such insurances upon request by the Council. tie shall ensure that the Council is covered as an insured party under the Edinburgh Tram Network Owner Controlled Insurance Programme covering the material damage and third party liability sections and under all other policies of insurance which tie has arranged, where it is possible to do so at reasonable commercial cost.
- 2.13 tie shall ensure that all contractors and consultants engaged or employed by it in any capacity shall have in place a policy of insurance providing tie with appropriate indemnity for all risks relevant to their engagement provided that each insurance is available in the United Kingdom insurance market at commercially reasonable rates and on commercially reasonable terms to businesses of the same status and discipline as the contractor or consultant. tie shall promptly inform the Tram Monitoring Officer in writing if any insurance ceases to be maintained and/or ceases to be available in the United Kingdom market at commercially reasonable rates and or commercially reasonable terms. In this event, the parties shall meet to discuss the means by which any risks previously covered by insurance should be managed, mitigated or controlled.
- 2.14 tie will ensure that the Corporate Public & Products Liability and Professional Indemnity policies are to include an indemnity to principals clause protecting the interest of the Council as principal.
- 2.15 tie shall provide to the Tram Monitoring Officer upon request, and in any event not less than annually, a report providing full details of all its insurances, including *inter alia* details of (i) the contractors or consultants providing insurance cover to tie and the Council and level of cover provided; and (ii) contractors or consultants not providing insurance cover and details of the authorisation obtained from the Tram Monitoring Officer in this regard.
- 2.16 tie shall use best endeavours to ensure best value when providing the Services and in the discharge of all of tie's responsibilities. tie shall use best endeavours to ensure best value in the use of funds or resources provided through or by the Council.
- 2.17 tie shall continue to apply principles of good corporate governance and to adopt and adhere to the Council's Code on Corporate Governance (approved by the Council on 29 June 2006) as it may be amended from time to time.

- 2.18 tie shall allow the Council, its auditors or the Council's other delegated appointees to examine the books, accounts and other records kept by tie (and any subsidiary undertakings of tie) and shall supply the Council with such financial and other information as it may reasonably request from time to time to keep the Council fully informed about the business of tie (and any subsidiary undertakings) and to protect the Council's interests in relation to the terms of this Agreement. tie will supply to the Tram Monitoring Officer copies of all relevant tie and other board papers in connection with the governance arrangements set out in Schedule 2.
- 2.19 tie shall use best endeavours to ensure that it and all third parties it engages and/or contracts with to carry out any works shall at all times comply with all equalities legislation and shall act in a non-discriminatory manner.
- 2.20 The parties acknowledge the terms of the governance arrangements set out in Schedule 2 and tie shall use best endeavours to comply with this governance diagram. The parties agree that where this Agreement refers to tie reporting to, or obtaining approval from, the Council or as the case may be the Tram Monitoring Officer, all such activity shall be made in accordance with this governance diagram.
- 2.21 tie shall liaise with the Tram Monitoring Officer, the Council, and any other bodies which the Council may specify, regularly and shall report to the Council on a four-weekly and annual basis with regard to financial matters and progress generally on the Project in a format acceptable to the Council.
- 2.22 Immediately that tie becomes aware of the likelihood of delay to, or overspend in, the Project it shall notify the Tram Monitoring Officer at the earliest opportunity, informing them of the reasons for the potential delay or overspend and detailing any measures (together with costs) which may mitigate such potential delay or overspend.
- 2.23 Immediately tie becomes aware that it requires a decision or information essential to the continuity of the Project from the Council to achieve key dates in the Project, tie shall give notice of such requirement to the Tram Monitoring Officer with full supporting information to mitigate any delay to the Project to the fullest extent possible.
- 2.24 tie shall not settle any single claim in excess of £500,000, or series of claims in any 12 month period which would exceed in aggregate £1,000,000, without prior written approval from the Tram Monitoring Officer. In accordance with the terms of Clause 2.20, all such claims approval will be subject to the governance arrangements set out in Schedule 2.
- 2.25 tie shall procure that it develops and has approved by the tie board a remuneration policy setting out *inter alia* the benchmarks and procedures for proposed bonus achievement and the project milestone outcomes to which any such bonuses are linked. Such policy to be approved by the tie board, through its Remuneration Committee, in advance of annual reporting periods as it will apply in the succeeding annual reporting period. tie's board shall confirm annually to the Tram Monitoring Officer that tie's incentivisation arrangements are aligned to appropriate Project milestones. The remuneration package, including incentivisation arrangements, of the Executive Chairman of tie will on appointment require approval by the Chief Executive of the Council and thereafter be determined annually by the tie board through its Remuneration Committee.
- 2.26 tie will provide a business plan for approval by the Council on an annual basis.
- 2.27 tie shall use best endeavours to ensure that it and all contractors engaged by it protect the Council's reputation all at times in matters relating to the Project.

- 2.28 tie shall not novate or otherwise transfer any rights or obligations under any contractual arrangement which the Council has approved and to which tie is a party without the prior written consent of the Tram Monitoring Officer.
- 2.29 tie shall comply with the terms of all agreements to which it is a party unless authorised in writing by the Tram Monitoring Officer to do otherwise.
- 2.30 tie shall produce a communications protocol and have this approved quarterly in writing by the Tram Monitoring Officer. The communications protocol will inter alia reflect the publicity arrangements referred to in Clause 2.5 of this Agreement.
- 2.31 tie will be subject to an independent peer review panel concerning the management of the Project (including all the contract documentation) and will implement all reasonable recommendations of the panel once approved under the governance arrangements set out in Schedule 2.
- 2.32 Tie shall act as the agent of the Council in the capacity of transport authority for the purposes of the New Roads and Street Works Act 1991 and application of the Road Works (Sharing of Costs) (Scotland) Regulations 2003.

3. Council's Obligations and Delegation

- 3.1 The Council hereby delegates to tie, such delegations confirmed for the purposes of sections 68 and 69 of the respective Tram Acts, full legal authority to (i) enter into and manage the Infraco Contract pursuant to the Council resolution dated 20 December 2007; (ii) to enter into and novate to the Infraco the Tram Supply Contract and Tram Maintenance Contract pursuant to the Council resolution dated 20 December 2007; (iii) novate to the Infraco the agreement between tie and Parsons Brinkerhoff Limited dated 19 September 2005; (iv) make such use of the agreement between tie and Transdev Edinburgh Tram Limited dated 14 May 2004 as is deemed expedient by tie in relation to the Project; (v) act as agent for the Council under the New Roads and Street Works Act 1991 for the purposes of enabling contributions to be collected from the relevant utility companies and remitted to the Council; and (vi) notify the Scottish Ministers as appropriate under the Tram Acts.
- 3.2 The Council agrees to guarantee tie's financial obligations in relation to certain aspects of the Project on terms acceptable to the Council.
- 3.3 On the basis that tie has, in the reasonable opinion of the Council, provided adequate evidence that expenditure has been properly and appropriately incurred in relation to the provision of the Services and the Project, the Council will release the funding which it has secured for such expenditure and shall pass funding to tie to allow tie to discharge its obligations in terms of this Agreement
- 3.4 The Council will nominate a Council officer to act as a liaison point for day-to-day communication between the Company and the Council.
- 3.5 The Council will appoint a Tram Monitoring Officer. The first Tram Monitoring Officer will be the Director of City Development or their appointed nominee. The Council will use all reasonable endeavours to procure that the Tram Monitoring Officer will be a member of the TPB and a director of TEL.
- 3.6 The Tram Monitoring Officer will be responsible for determining what approval is required from within the Council to allow them to give any consent or recommendation required in terms of this Agreement. The parties acknowledge that the Tram Monitoring Officer may require to obtain approval of their proposed actions from the full Council or from a relevant committee or sub-committee as appropriate.

3.7 The Council will ensure that, in the Council's opinion, adequate personnel are made available to the Project to fulfill the Council's role in relation to the Project and that all such personnel shall use reasonable skill and care in executing their responsibilities.

3.8 The Council acknowledges that tie continues to work on other projects in addition to the Project, but tie will use best endeavours to manage such projects in order that they do not conflict with the terms of this Agreement. Any work to be executed by tie on projects other than the Project must be approved by the Tram Monitoring Officer in advance of commitment by tie.

3.9 The Council agrees to waive its rights to claim against any any director, officer or employee of tie, save in respect of any criminal, fraudulent, or willfully negligent action of any such person. This waiver shall not apply to any contractor or consultant engaged by tie operating in any such role as director or officer.

3.10 The parties acknowledge that one of the main purposes of establishing tie and its sister company Transport Edinburgh Limited is to facilitate the integration of the operation of trams and buses in the City of Edinburgh and to assist the Council, tie, Lothian Buses plc and TEL to function as a single coordinated entity in the delivery, management, operation and ownership of an integrated transport system.

4. Term

4.1 This Agreement shall commence on _____ 2008 and shall continue until termination is agreed between the parties, unless otherwise terminated earlier in accordance with its terms.

5. Responsibility

5.1 Subject to the terms of any guarantee(s) given by the Council, tie shall use best endeavours to ensure that it is in a position at all times to apply the financial and other resources necessary to discharge timeously all obligations, liabilities or claims of whatsoever nature arising from the performance of the Services.

6. Termination

6.1 Either party may terminate this Agreement immediately by giving notice to that effect to the other if the other party is in material breach of its obligations and has failed to remedy that breach (assuming it is capable of remedy) within 14 days of receiving such notice.

7. Dispute Procedure

7.1 Any dispute or difference between the parties as to the meaning or intent of this Agreement or the implementation thereof or as to any other matter in any way arising out of or in connection with this Agreement shall be referred to the decision of an Arbiter to be mutually agreed between the parties or, failing agreement, to be appointed by the President for the time being of the Law Society of Scotland. The decision of such Arbiter shall be final and binding on both parties. The application of Section 3 of the Administration of Justice (Scotland) Act 1972 is hereby expressly excluded.

8. Transfer and Sub-contracting

- 8.1 This Agreement is personal to tie and tie shall not assign, novate, sub-contract or otherwise transfer by any means whatsoever any right or interest or obligation which it may have in or under this Agreement without the prior written consent of the Tram Monitoring Officer.
- 8.2 For the avoidance of doubt, the Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement.

9. Notices

9.1 Any notice given under this Agreement by either party to the other must be in writing and may be delivered personally, by fax or first class post or by email. In the case of posting, such notice will be deemed to have been given three working days after the date of posting; in the case of fax or email, the next working day; and in the case of personal delivery, at the time of delivery. Notices will be delivered or sent to the addresses of the parties on the first page of this Agreement or at any other address or fax number notified in writing by either party to the other for the purpose of receiving notices after the date of this Agreement. All email notices shall be sent to either the Executive Chairman of tie or the Tram Monitoring Officer at the Council or such email notified in writing by either party to the other for the purpose of receiving emails after the date of this Agreement .

10. Freedom of Information

10.1 The parties acknowledge that they will fully comply with, and will assist each other in complying with, the terms of the Freedom of Information (Scotland) Act 2002.

11. Nature of Relationship

11.1 tie and CEC both agree that tie is acting as agent of the Council in respect of the Infraco Contract and other related contracts in accordance with s47 VATA 1994. tie will enter into the Infraco Contract and other related contracts in its own name, but will be acting on behalf of the Council. tie will not own or use any of the goods or services bought on behalf of the Council. tie will not alter the nature or value of any of the supplies made between the Council and the relevant contracting parties.

11.2 Nothing in this Agreement shall create a relationship of agency (save where the Council expressly authorises tie to act as its agent, including the terms of Clause 11.1) or partnership between the parties with regard to its subject matter.

11.3 Save as otherwise provided, nothing in the Agreement shall prejudice or affect the Council's rights, powers, duties and obligations in the exercise of its functions as a local authority or in terms of any Legislation or relieve tie from obtaining any approvals or consents required from the Council in any capacity in terms of any Legislation.

12. Entire Agreement and Variations

12.1 This Agreement and the attached schedules constitute the entire agreement between the parties in relation to their subject matter. Each party confirms that it has not relied upon any representation, undertaking or warranty not recorded in this document in

entering into this Agreement. No variation of this Agreement shall be effective unless confirmed in writing and signed by authorised signatories of both parties to this Agreement. The terms of this agreement supersede the terms of any prior agreement between the parties in relation to its subject matter, including for the avoidance of doubt the agreement referred to in preamble 4 to this Agreement.

12.2 If any ambiguity or conflict arises between the terms of this Agreement and those of tie's articles of association then, to the fullest extent permitted by law, the terms of this Agreement shall prevail.

13. Severability

13.1 If any term of this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such term or part shall to that extent be deemed not to form part of this Agreement but the legality, validity or enforceability of the remainder of this Agreement shall not be affected.

14. Waiver

14.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided for in this Agreement) are not exclusive of any rights or remedies provided by law.

15. Governing Law and Jurisdiction

15.1 This Agreement is governed by the Laws of Scotland and, subject to the terms of clause 7, the parties submit to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding thirteen pages and the attached Schedules are executed as follows:

Subscribed for and on behalf of The City of Edinburgh Council at on day of 2008

Witness.....

Full Name.....

Proper Officer

Address.....

.....

Subscribed for and on behalf of tie Limited at on day of 2008

Director.....

Director/Secretary.....

SCHEDULE 1

Scope of Services

	Procurement and contract award of all contracts required to deliver the tram project, including the Council's obligations.
	Provide accurate and current information to Tram Project Board, Transport Edinburgh Limited and the Council for appropriate decision making and approvals
	Provide efficient and effective project management services for the Project including cost, financial programme, risk, contract and change management.
	Provide traffic management expertise to effectively implement and manage both temporary and permanent traffic management alterations, including the Traffic Regulation Order process
	Comply with Health and Safety requirements and act as the Construction Design Management Regulations co-ordinator, provide Health, Safety, Quality and Environmental management and expertise to ensure effective approvals through the The Railways and Other Guided Transport Systems (Safety) Regulations process. This should include protecting the Council's interests
	Ensure the design is assured, and provide the necessary quality of design for technical and prior approvals in a timeous manner
	Develop and agree a communication strategy with the Council and provide effective communications, consistent with this strategy
	Provide and demonstrate to the Council that appropriate site management services are in place to ensure quality is delivered
	Ensure a continued focus on value engineering and deliver any agreed initiatives
	Manage the interface with TEL in order to deliver a smooth handover for operations
	Manage project land in accordance with the tie/CEC licence
	Ensure and demonstrate to the Council that all contracting parties meet their obligations (including protocols, traffic management, contract conditions, employers requirements, site supervision and testing etc)
	Manage all third-party agreements in an effective manner and demonstrate that they are in the Council's interest
	Carry out other duties as instructed by the Council in relation to the Project
	Act on efficiently and effectively all formal instructions issued by the Council in relation to the tram project

FOISA exempt
 Yes
 No

Schedule 2

Governance Diagram

between

THE CITY OF EDINBURGH COUNCIL, the local authority for the City of Edinburgh in terms of the Local Government etc. (Scotland) Act 1994, having its principal office at Council Headquarters, Waverley Court, East Market Street, Edinburgh, EH8 8BG, or its statutory successors (“**the Council**”)

and

Transport Edinburgh Limited, a company incorporated under the Companies Acts (registered number SC269639) and having its Registered Office at 55 Annandale Street, Edinburgh EH7 4AZ (“**TEL**”)

Whereas:-

8. The Council set up TEL in June 2004 to assist the Council with implementing its local transport strategy;
9. Powers were conferred upon the Council in relation to the design, construction, commissioning and operation of the Edinburgh Tram Network in terms of the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006 ;
10. The Council is the designated planning and roads authority for the City of Edinburgh;
11. The terms of the tram Final Business Case, setting out *inter alia* the anticipated operational and financial parameters of an integrated tram and bus system in Edinburgh, were approved by the Council on 20 December 2007;
12. The parties now wish to enter into this agreement to more particularly regulate the relationship between the parties specifically with regard to the delivery of the Tram System and the planning of an integrated tram and bus system in Edinburgh and to define the services TEL will provide to the Council ; and
13. The Parties acknowledge that this Agreement will require to be adapted in future to accommodate the evolving role of TEL and in particular in advance of operational commencement of the Tram System.

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE AS FOLLOWS:

2 Definitions

1.1 In this Agreement the following terms and expressions shall have the following meanings:

“Agreement”	means this agreement (including the schedules to it), as it may be amended from time to time;
“Final Business Case”	means the business case relating to the Project which was approved by the Council on 20 December 2007, as it may be amended from time to time in agreement with the Council;
“Funding Agreement”	means the Council-accepted grant offer letter from Transport Scotland to the Council relating to the Project, as it may be amended from time to time;
“Infraco Contract”	means the contract between tie and Bilfinger Berger UK Limited and Siemens plc (contracting on a joint and several liability basis) (“the Infraco”), as it may be amended from time to time;
“Legislation”	means all rules, regulations, by-laws, directives, statutes and other binding provisions in force from time to time;
“Phase 1A”	means phase 1A as more particularly

	described in the Final Business Case;
“Phase 1B”	means phase 1B as more particularly described in the Final Business Case;
“Project”	means the delivery of the Tram System and the planning of an integrated tram and bus system in Edinburgh (incorporating Phase 1A and Phase 1B and any approved extension of the Tram System), as more particularly described in the Final Business Case and approved by the Council in terms of scope;
“Services”	means all the services to be provided by TEL as specified in this Agreement, including, without limitation, those specified in Schedule 1;
“Tram Acts”	means Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006;
“Tramco Contract”	means the contract between tie and CAF, as it may be amended from time to time;
“Tram Project Board” or “TPB”	means the committee of the board of TEL established to oversee delivery of the Project
“Tram System”	means the tram system comprising Phase 1a and / or Phase 1b, as the context requires, as set out in the Final Business Case
“Company Monitoring Officer”	means the Council officer nominated by the Council to monitor TEL in

	relation to the Project;
“tie Limited” or “tie”	means the company incorporated under the Companies Acts and having its registered office at City Chambers, High Street, Edinburgh (Registered Number SC230949) ; and
“Lothian Buses plc” or “Lothian Buses”	means the company incorporated under the Companies Acts and having its registered office at 55 Annandale Street, Edinburgh EH7 4AZ (Registered Number SC096849).

- 2.2. Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of it.
- 2.3. In this Agreement, references to clauses are, unless otherwise provided, references to clauses of this Agreement and references to schedules are references to the appropriate schedules to it.
- 2.4. In this Agreement, the masculine includes the feminine and the neuter and the singular includes the plural and vice-versa.
- 2.5. Where this Agreement refers to approval being required from the Council or the Company Monitoring Officer, the Council shall use best endeavours to procure that such approval is not unreasonably withheld or delayed.

3. TEL’s Obligations

- 2.33 TEL hereby agree to provide the Services to the Council throughout the duration of this Agreement in order to assist in, carry out, promote, manage and administer the Project.
- 2.34 TEL shall ensure that all third party advisers and contractors engaged by it shall provide a direct duty of care to the Council in terms acceptable to the Council prior to carrying out any work in relation to the Project, failing which the appointment of any such third party will require the written approval of the Company Monitoring Officer.

- 2.35 TEL shall use best endeavours to ensure that it delivers the Project as set out in the Final Business Case. TEL shall use best endeavours to comply with all timescales and financial projections detailed in the Final Business Case. It is acknowledged by the Council and TEL that the primary responsibility for delivery of the Tram System rests with tie Limited, in which role tie provides those services to TEL. TEL will use best endeavours to support delivery of the Tram System so far as it can do within its powers and resources.
- 2.36 TEL shall use best endeavours to ensure that it is at all times suitably resourced to carry out all the Services in relation to the Project.
- 2.37 TEL shall use best endeavours to ensure that it does not cause the Council to breach the terms of the Funding Agreement. In particular TEL shall use best endeavours to ensure that the Council complies with the conditions relating to publicity in the Funding Agreement. TEL will provide all reasonable assistance to the Council in relation to the Council's compliance with the terms of the Funding Agreement.
- 2.38 TEL shall use best endeavours to ensure that it complies with and, where it acts on the Council's behalf, shall use best endeavours to ensure that the Council complies with, all Legislation (including all health and safety legislation) relevant to the Project at all times.
- 2.39 In the event that TEL has formal responsibility for work sites, TEL shall use best endeavours to ensure that all work sites related to the Project are appropriately managed and supervised at all times to ensure compliance with all health and safety Legislation.
- 2.40 TEL shall use best endeavours to ensure that it does not infringe the intellectual property rights of any third party at any time.
- 2.41 TEL shall use, and shall use best endeavours to procure that all contractors, employees and other third parties which it engages shall use, all reasonable skill, care and diligence in the provision of the Services. All work undertaken by TEL shall be progressed with due expedition and without delay to achieve timeous completion of the Project.
- 2.42 TEL shall discharge all its obligations in terms of this Agreement in a proper, honest, faithful and diligent manner and shall at all times act in the best interests of the Council (to the fullest extent permitted by law).

- 2.43 Insofar as permitted by law, TEL shall at all times promptly comply with all reasonable requests made of it by the Council.
- 2.44 TEL shall at all times maintain in place appropriate policies of insurance in relation to all elements of its business and in particular the Project, provided that each insurance is available in the United Kingdom insurance market at commercially reasonable rates and on commercially reasonable terms to businesses of the same status and discipline as TEL. TEL shall promptly inform the Company Monitoring Officer in writing if any insurance ceases to be maintained and/or ceases to be available in the United Kingdom market at commercially reasonable rates and or commercially reasonable terms. In this event, the parties shall meet to discuss the means by which any risks previously covered by insurance should be managed, mitigated or controlled. TEL shall provide evidence of all such insurances upon request by the Council. In the event that TEL becomes formally responsible for these matters, TEL shall ensure that the Council is covered as an insured party under the Edinburgh Tram Network Owner Controlled Insurance Programme covering the material damage and third party liability sections and under all other policies of insurance which TEL has arranged, where it is possible to do so at reasonable commercial cost.
- 2.45 TEL shall ensure that all contractors and consultants engaged or employed by it in any capacity shall have in place a policy of insurance providing TEL with appropriate indemnity for all risks relevant to their engagement provided that each insurance is available in the United Kingdom insurance market at commercially reasonable rates and on commercially reasonable terms to businesses of the same status and discipline as the contractor or consultant. TEL shall promptly inform the Company Monitoring Officer in writing if any insurance ceases to be maintained and/or ceases to be available in the United Kingdom market at commercially reasonable rates and or commercially reasonable terms. In this event, the parties shall meet to discuss the means by which any risks previously covered by insurance should be managed, mitigated or controlled.
- 2.46 TEL will ensure that the Corporate Public & Products Liability and Professional Indemnity policies are to include an indemnity to principals clause protecting the interest of the Council as principal.

- 2.47 TEL shall provide to the Company Monitoring Officer upon request, and in any event not less than annually, a report providing full details of all the insurances relating to the Project, including *inter alia* details of (i) the contractors or consultants providing insurance cover to TEL and the Council and level of cover provided; and (ii) contractors or consultants not providing insurance cover and details of the authorisation obtained from the Council Monitoring Officer in this regard.
- 2.48 TEL shall use best endeavours to ensure best value when providing the Services and in the discharge of all of TEL's responsibilities. TEL shall use best endeavours to ensure best value in the use of funds or resources provided through or by the Council.
- 2.49 TEL shall continue to apply principles of good corporate governance and to adopt and adhere to the Council's Code on Corporate Governance (approved by the Council on 29 June 2006) as it may be amended from time to time.
- 2.50 TEL shall allow the Council, its auditors or the Council's other delegated appointees to examine the books, accounts and other records kept by TEL and each of its subsidiaries (if any) and shall supply the Council with such financial and other information as it may reasonably request from time to time to keep the Council fully informed about the business of TEL and each of its subsidiaries (if any) and to protect the Council's interests in relation to the terms of this Agreement. TEL will supply to the Company Monitoring Officer copies of all relevant TEL and other board papers in connection with the governance arrangements set out in Schedule 2.
- 2.51 TEL shall use best endeavours to ensure that it and all third parties it engages and/or contracts with to carry out any works shall at all times comply with all equalities legislation and shall act in a non-discriminatory manner.
- 2.52 The parties acknowledge the terms of the governance arrangements set out in Schedule 2 and TEL shall use best endeavours to comply with the governance diagram. The parties agree that where this Agreement refers to TEL reporting to, or obtaining approval from, the Council or as the case may be the Company Monitoring Officer, all such activity shall be made in accordance with this governance diagram. TEL shall establish the Tram Project Board as a Committee of the TEL Board and shall define the responsibilities of the TPB and shall delegate

appropriate authority to the TPB to enable the TPB to carry out its responsibilities.

The following matters will be for the TEL Board to determine :

All matters affecting the programme, cost and scope of the Project except

- (A) those which involve a significant change to the Council's obligations. In this context, significant is defined as a matter which will or could reasonably be expected to involve i) delay to the programme of greater than 3 months ; or ii) increased cost of £10m ; relative respectively to the programme leading to commencement of revenue service by 31 March 2011 and capital cost of £498m (Phase 1a) or £87m (Phase 1b) as set out in the Final Business Case ; or iii) substantial change to the design, scope or service pattern set out in the Final Business Case.; and
- (B) the settlement of any single claim in excess of £500,000, or series of claims in any 12 month period which would exceed in aggregate £1,000,000 ;

The TEL Board may delegate responsibility for all matters other than those specified at A and B above to the TPB and the TPB may in turn delegate responsibility for all other matters to a competent third party, (to include tie but only to the extent that such delegation is within the remit of tie in the context of the tie Operating Agreement). TEL agrees that it shall retain ultimate responsibility for all matters it so delegates.

- 2.53 TEL shall liaise with the Company Monitoring Officer, the Council, and any other bodies which the Council may specify, regularly and shall report to the Council on a four-weekly and annual basis with regard to financial matters and progress generally on the Project in a format acceptable to the Council. TEL will liaise with the Council and tie to ensure that duplication in reporting procedures is minimized.
- 2.54 Immediately that TEL becomes aware of the likelihood of delay to, or overspend in, the Project it will ensure that notification is given to the Company Monitoring Officer at the earliest opportunity, informing them of the reasons for the potential delay or overspend and detailing any measures (together with costs) which may mitigate such potential delay or overspend.
- 2.55 Immediately TEL becomes aware that it requires a decision or information essential to the continuity of the Project from the Council to achieve key dates in the Project, TEL shall give notice of such requirement to the Company Monitoring Officer with

- full supporting information to mitigate any delay to the Project to the fullest extent possible.
- 2.56 The approval of settlement of claims referred to in clause 2.20 sub-clause (B) will be subject to the governance arrangements set out in Schedule 2.
- 2.57 TEL shall procure that it develops and has approved by the TEL board a remuneration policy setting out inter alia the benchmarks and procedures for proposed bonus achievement and the project milestone outcomes to which any such bonuses are linked. Such policy to be approved by the TEL board, through its Remuneration Committee, in advance of annual reporting periods as it will apply in the succeeding annual reporting period. TEL's board shall confirm annually to the Council Monitoring Officer that TEL's incentivisation arrangements are aligned to appropriate Project milestones. The remuneration package, including incentivisation arrangements, of the Chairman of TEL will on appointment require approval by the Chief Executive Officer of the Council and thereafter be determined annually by the Remuneration Committee.
- 2.58 TEL will provide a business plan for approval by the Council on an annual basis.
- 2.59 TEL shall use best endeavours to ensure that it and all contractors engaged by it protect the Council's reputation all at times in matters relating to the Project.
- 2.60 TEL shall not novate or otherwise transfer any rights or obligations under any contractual arrangement which the Council has approved and to which TEL is a party without the prior written consent of the Company Monitoring Officer.
- 2.61 TEL shall comply with the terms of all agreements to which it is a party unless authorised in writing by the Company Monitoring Officer to do otherwise.
- 2.62 TEL shall produce a communications protocol in liaison with tie and have this approved quarterly in writing by the Company Monitoring Officer. The communications protocol will inter alia reflect the publicity arrangements referred to in Clause 2.5 of this Agreement.
- 2.63 TEL will be subject to an independent peer review panel concerning the management of the Project (including all the contract documentation) and TEL will implement all reasonable recommendations of the panel once approved under the governance arrangements set out in Schedule 2.
- 2.64 The Parties acknowledge that the Infraco Contract contains Council obligations relating to the maintenance of roads and structures (which either form part of or are

integral to the safe and continuous operation of the Tram System) which require performance by the Council. TEL undertakes to assist the Council in its discharge of these responsibilities which are identified at Section 40 of the Employer's Requirements in the Infraco Contract. The Council undertakes to carry out the required works and services timeously and to the requisite standard.

3. Council's Obligations and Delegation

- 3.1 [TO CONSIDER DELEGATION REQUIRED ; to include consideration of future inheritance including the DPOFA, Infraco and maintenance rights and responsibilities]..
- 3.2 The Council agrees to guarantee TEL's financial obligations in relation to certain aspects of the Project on terms acceptable to the Council.
- 3.3 On the basis that TEL has, in the reasonable opinion of the Council, provided adequate evidence that expenditure has been properly and appropriately incurred in relation to the provision of the Services and the Project, the Council will release the funding, or procure that tie releases the funding, which it has secured for such expenditure and shall pass funding to TEL or to tie as appropriate to allow TEL to discharge its obligations in terms of this Agreement.
- 3.4 The Council will nominate a Council officer to act as a liaison point for day-to-day communication between TEL and the Council.
- 3.5 The Council will appoint a Company Monitoring Officer. The first Company Monitoring Officer will be the Director of City Development or the Director of Finance. The Council will procure, with the approval of the TEL Board, that the Council Monitoring Officer will be a Director of TEL and a member of the Tram Project Board.
- 3.6 The Company Monitoring Officer will be responsible for determining what approval is required from within the Council to allow them to give any consent or recommendation required in terms of this Agreement. The parties acknowledge that the Company Monitoring Officer may require to obtain approval of their proposed actions from the full Council or from a relevant committee or sub-committee as appropriate.

- 3.7 The Council will ensure that, in the Council's opinion, adequate personnel are made available to the Project to fulfill the Council's role in relation to the Project and that all such personnel shall use reasonable skill and care in executing their responsibilities.
- 3.8 The Council acknowledges that TEL may work on other projects in addition to the Project, but TEL will use best endeavours to manage such projects in order that they do not conflict with the terms of this Agreement. Any work to be executed by TEL on projects other than the Project must be approved by the Company Monitoring Officer in advance of commitment by TEL.
- 3.9 The Council agrees to waive its rights to claim against any director, officer or employee of TEL, save in respect of any criminal, fraudulent or willfully negligent action of any such director, officer or employee.
- 3.10 The parties acknowledge that one of the main purposes of establishing TEL and its sister company tie is to facilitate the integration of the operation of trams and buses in the City of Edinburgh and to assist the Council, tie, Lothian Buses plc and TEL to function as a single coordinated entity in the delivery, management, operation and ownership of an integrated transport system. The Parties acknowledge that pursuit of these objectives is subject at all times to the Council's statutory responsibilities.

4. Term

- 4.1 This Agreement shall commence on 2008 and shall continue until termination is agreed between the parties, unless otherwise terminated earlier in accordance with its terms.

5. Responsibility

- 5.1 Subject to the terms of any guarantee(s) given by the Council, TEL shall use best endeavours to ensure that it is in a position at all times to apply the financial and other resources necessary to discharge timeously all obligations, liabilities or claims of whatsoever nature arising from the performance of the Services.

7. Termination

- 7.1 Either party may terminate this Agreement immediately by giving notice to that effect to the other if the other party is in material breach of its obligations and has failed to remedy that breach (assuming it is capable of remedy) within 14 days of receiving such notice.

8. Dispute Procedure

- 7.1 Any dispute or difference between the parties as to the meaning or intent of this Agreement or the implementation thereof or as to any other matter in any way arising out of or in connection with this Agreement shall be referred to the decision of an Arbiter to be mutually agreed between the parties or, failing agreement, to be appointed by the President for the time being of the Law Society of Scotland. The decision of such Arbiter shall be final and binding on both parties. The application of Section 3 of the Administration of Justice (Scotland) Act 1972 is hereby expressly excluded.

9. Transfer and Sub-contracting

- 9.1 This Agreement is personal to TEL and TEL shall not assign, novate, sub-contract or otherwise transfer by any means whatsoever any right or interest or obligation which it may have in or under this Agreement without the prior written consent of the Company Monitoring Officer.
- 9.2 For the avoidance of doubt, the Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement.

9. Notices

- 9.1 Any notice given under this Agreement by either party to the other must be in writing and may be delivered personally, by fax or first class post or by email. In the case of posting, such notice will be deemed to have been given three working days after the date of posting; in the case of fax or email, the next working day; and

in the case of personal delivery, at the time of delivery. Notices will be delivered or sent to the addresses of the parties on the first page of this Agreement or at any other address or fax number notified in writing by either party to the other for the purpose of receiving notices after the date of this Agreement. All email notices shall be sent to either the Chairman of TEL or the Company Monitoring Officer at the Council or such email notified in writing by either party to the other for the purpose of receiving emails after the date of this Agreement .

10. Freedom of Information

- 10.1 The parties acknowledge that they will fully comply with, and will assist each other in complying with, the terms of the Freedom of Information (Scotland) Act 2002 (“FOISA”). Insofar as compliant with FOISA, the parties agree to keep confidential all appropriate matters relating to the business and operations of TEL.

11. Nature of Relationship

- 11.1 Nothing in this Agreement shall create a relationship of agency (save where the Council expressly authorises TEL to act as its agent) or partnership between the parties with regard to its subject matter.
- 11.2 Nothing in the Agreement shall prejudice or affect the Council’s rights, powers, duties and obligations in the exercise of its functions as a local authority or in terms of any Legislation.

12. Entire Agreement and Variations

- 12.1 This Agreement and the attached schedules constitute the entire agreement between the parties in relation to their subject matter. Each party confirms that it has not relied upon any representation, undertaking or warranty not recorded in this document in entering into this Agreement. No variation of this Agreement shall be

effective unless confirmed in writing and signed by authorised signatories of both parties to this Agreement. The terms of this agreement supersede the terms of any prior agreement between the parties.

- 12.2 If any ambiguity or conflict arises between the terms of this Agreement and those of TEL's articles of association then, to the fullest extent permitted by law, the terms of this Agreement shall prevail.

13. **Severability**

- 13.1 If any term of this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such term or part shall to that extent be deemed not to form part of this Agreement but the legality, validity or enforceability of the remainder of this Agreement shall not be affected.

14. **Waiver**

- 14.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided for in this Agreement) are not exclusive of any rights or remedies provided by law.

15. **Governing Law and Jurisdiction**

15.1 This Agreement is governed by the Laws of Scotland and, subject to the terms of clause 7, the parties submit to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF this Agreement consisting of this and the preceding twelve pages and the attached Schedules are executed as follows:

Subscribed for and on behalf of The City of Edinburgh Council at _____ on
day of _____ 2008

Witness.....

Full Name..... Proper Officer

Address.....

.....

Subscribed for and on behalf of Transport Edinburgh Limited at _____ on _____ day of
2008

Director.....

Director/Secretary.....

SCHEDULE 1

REVISED FROM VERSION ATTACHED TO DRAFT V3 DATED 7.01.08

1.	Development of a fully integrated bus and tram service plan in advance of tram commissioning.
2.	Provide or procure the provision of accurate and current information to the Council for appropriate decision making and approvals
3.	Address with the Council the funding and related implications of Phase 1b
4.	Develop and agree a communication strategy with tie and the Council and provide effective communications, consistent with this strategy
5.	Plan and manage the interface with tie in order to deliver a smooth handover for operations
6.	Carry out other duties as instructed by the Council in relation to the Project
7.	Act on efficiently and effectively all formal instructions issued by the Council in relation to the Project

Schedule 2

Governance Diagram

Paper to : **Tram Project Board**
Subject : **Public Realm Works - St Andrew Square**
Date : **23rd January 2008**

1.0 St Andrew Square – Public Realm Background

A programme of public realm works, which are funded on an equal basis between SEEL and the City of Edinburgh Council, is currently being implemented within the city centre.

The final phase of the current public realm works programme involves the improvements to footpaths and carriageway around St Andrew Square. This work has an estimated value of £4.5m. This work was programmed to be completed prior to the tram works, however due to a variety of issues; including the tram detailed design; it has not been possible to co-ordinate and construct the public realm works prior to the Infraco works as planned. There are time limits on the funding for public realm work, which requires all the funding to be spent by March 2010.

Consideration has been given to constructing the public realm works within the same timescales for tram works for both Mudfa and Infraco, however introducing a third contractor within the same timescales into St Andrew Square is not practicable, and increases the risks for delay and disruption to tram project.

Given the funding constraints for the public realm works, and that the tram related works has already commenced in St Andrew Square with the Mudfa works on South St Andrew Street, consideration should be given to adding the public realm works into the BBS contract to allow the construction work to be completed within the required timescales. To maximise the value for money and reduce the potential claims from BBS, this work would need to be instructed prior to contract close with BBS.

The detailed design work for the public realm work is currently being undertaken by PB (Newcastle) under contract to the Council. There are options on concluding the detailed design, which could include novating PB (Newcastle) to BBS to ensure that the design details and programme integrates with the overall tram project programme.

2.0 Recommendations

The Board is asked approve this paper and recommend the following:

- That *tie* investigates with BBS the opportunities to increase the scope of their works to include the public realm works in St Andrew Square prior to concluding the major tram contracts; and subject to these not adversely impacting the overall tram programme, that the board grant approval to instruct BBS to incorporate these additionally funded public realm works into the BBS programme.

FOISA exempt
 Yes
 No

- That authority is granted to conclude the integrated detailed design process, in associated with the Council. This could include the potential novation of PB (Newcastle) into the BBS contract.

Prepared by: Andy Conway

Recommended by: Andrew Holmes

Date: 23 January 2008

Approved Date:-
David Mackay on behalf of the Tram Project Board