
From: Colin MacKenzie
Sent: 18 April 2007 11:52
To: Rebecca Andrew
Cc: Alan Squair; Nick Smith
Subject: FW: Tram Funding Agreement

Rebecca,

Message contained below.

Kind regards,

Colin MacKenzie
for Council Solicitor

From: Colin MacKenzie
Sent: 17 April 2007 15:49
To: Rebecca Andrew; Alan Squair; Nick Smith
Subject: RE: Tram Funding Agreement

Rebecca,

Thanks for the draft.

We will give early consideration to this document and get back to you with comments.

It is interesting to note that tie has proposed amendments. However, our preference is to work with yourself and City Development with a view to securing the Council's interests in this relationship with Transport Scotland. There does not appear to be any sound basis for a direct involvement in this agreement by tie, although of course there would be consultation with them where appropriate. My reason for setting out this stance is that the statutory grant agreement involves only Scottish Ministers and the Council.

Kind regards,

Colin MacKenzie
for Council Solicitor

From: Rebecca Andrew
Sent: 17 April 2007 13:32
To: Alan Squair; Colin MacKenzie; Nick Smith
Subject: FW: Tram Funding Agreement

Draft funding agreement, as promised. This has been prepared by transport Scotland and then amended by tie. I would welcome any comments you may have.

Regards,

Rebecca

From: Graeme Bissett [mailto:graeme.bissett@██████████]
Sent: 12 April 2007 11:49
To: 'Stewart McGarrity'; Damian.Sharp@transportscotland.gsi.gov.uk; Donald McGougan; Andrew Holmes; 'Matthew

Crosse'; john.ramsay@transportscotland.gsi.gov.uk; Rebecca Andrew
Cc: 'Bill Reeve'; david_mackay@[REDACTED] 'Neil Renilson (TEL)'; 'Willie Gallagher'; 'Andrew Fitchie'; 'Miriam Thorne'
Subject: RE: Tram Funding Agreement

Colleagues, here is a draft Heads of Terms. It is based on the AWPR draft received from TS but has had to be substantially amended. In particular, it needs to be clear that this is a non-binding document setting out the intentions of the Parties in commercial terms. The legally binding Tram Funding Agreement (TFA) will be drafted in due course based on these terms. I have accordingly toned down some of the legalese in the AWPR draft and tried to ensure the distinction is clear.

There are a number of issues for discussion and these, together with some specific details are highlighted in yellow on the face of the draft. There are a number of sections in the back half of the document where the draft AWPR received seems to contain material that does not fit the purposes of the Tram HoT. I have highlighted these sections which will need to be discussed to understand the intention.

I suggest the draft is regarded as a script for the meeting scheduled for 30th April and that we worry about the finer points of drafting after that meeting. Some additional points to consider are as follows :

- To make the drawdown parity meaningful we should have an outline cash flow schedule drawn up which needs to incorporate the effect of CEC contributing land which is specifically identifiable to elements of the capital budget
- We should accommodate :
 - The possibility of cost saving against the agreed budget and funding
 - Incremental costs incurred to meet developer aspirations, offset by developer contributions
 - VAT assessment
 - Other tax implications relevant to CEC or TS

Please direct any questions or feedback to Stewart or Miriam next week as I will be away, returning on Monday 23rd.

Regards
Graeme

Graeme Bissett
m : 07831 099749

From: Graeme Bissett [mailto:graeme.bissett@[REDACTED]]
Sent: 04 April 2007 15:52
To: 'Stewart McGarrity'; 'Damian.Sharp@transportscotland.gsi.gov.uk'; 'Donald McGougan'; 'Andrew Holmes'; 'Matthew Crosse'; 'john.ramsay@transportscotland.gsi.gov.uk'; 'rebecca.andrew@edinburgh.gov.uk'
Cc: 'Bill Reeve'; 'david_mackay@[REDACTED]'; 'Neil Renilson (TEL)'; 'Willie Gallagher'; 'Andrew Fitchie'; 'Miriam Thorne'
Subject: RE: Tram Funding Agreement

Apologies all, I won't get this out tomorrow but it will be with you by the middle of next week, Wednesday at the latest.

Regards
Graeme

Graeme Bissett

m : [REDACTED]

From: Graeme Bissett [mailto:graeme.bissett@[REDACTED]]
Sent: 02 April 2007 11:00
To: 'Stewart McGarrity'; 'Damian.Sharp@transportscotland.gsi.gov.uk'; 'Donald McGougan'; 'Andrew Holmes'; 'Matthew Crosse'; 'john.ramsay@transportscotland.gsi.gov.uk'; 'rebecca.andrew@edinburgh.gov.uk'
Cc: 'Bill Reeve'; 'david_mackay@[REDACTED]'; 'Neil Renilson (TEL)'; 'Willie Gallagher'; 'Andrew Fitchie'; 'Miriam Thorne'
Subject: RE: Tram Funding Agreement

Colleagues, to help move things along tie will take the AWPR document and redraft to accommodate the tram project and the issues discussed below. There will be a number of square bracket sections to debate further and I would suggest that the revised draft forms the basis for the next meeting.

In that connection, do we have an agreed date – I believe the secretaries of Damian and Andrew were trying to set this up.

Could views under point 4 below be directed back to me by close of business Wednesday this week please.

I will circulate a revised draft HoT by close of business Thursday 5th.

Regards
Graeme

Graeme Bissett

m : [REDACTED]

From: Stewart McGarrity [mailto:Stewart.McGarrity@tie.ltd.uk]
Sent: 20 March 2007 06:45
To: Graeme Bissett; Damian.Sharp@transportscotland.gsi.gov.uk; Donald McGougan; Andrew Holmes; Matthew Crosse; john.ramsay@transportscotland.gsi.gov.uk; rebecca.andrew@edinburgh.gov.uk
Cc: Bill Reeve; david_mackay@[REDACTED]; Neil Renilson (TEL); Willie Gallagher; Andrew Fitchie; Miriam Thorne
Subject: RE: Tram Funding Agreement

Dear All,

These are my notes and actions from yesterday's meeting. Corrections, clarifications or additions are welcome.

Present: Damian Sharp, John Ramsay (both TS) , Andrew Holmes, Donald McGougan, Rebecca Andrew (all CEC), Neil Renilson (TEL), Matthew Crosse, Stewart McGarrity (both tie)

(1) We agreed the principle that we should have two 'client side' agreements - one between TS and CEC and another between CEC and tie as envisaged in the discussion paper. However there was a very strong preference on the part of TS and CEC not to split the funding into 3 separate funding streams (Infraco / Tramco, land costs and tie direct costs) i.e. the desire is to consider the total cash flow requirements of the project as one and for the relative TS/CEC contributions to be determined with reference to that single funding stream.

Action:

- S McGarrity / G Bissett to consider what problems or complexities this might introduce in practice.

(2) We recognised the need to agree the value of the CEC / s75 land contribution element of CEC's £45m and therefore the balancing cash element to be provided by CEC. Further details of the proposed approach to delivering the £45m are provided in a paper to the TPB on 20/3.

(3) There was an acknowledgement by D Sharp that there needed to be risk sharing mechanisms in the agreement between TS and CEC to deal with eg cost overruns. There was an emerging consensus that effecting this risk sharing by allocating individual risks retained by the public sector to either either TS or CEC should be avoided wherever possible in the interests of clarity/simplicity in the agreement, to avoid disputes as to which party is responsible for any given risk/event and to recognise the relative financial capacity of TS or CEC to bear risks. The basis of sharing would be in proportion to the overall capital contributions and the the sharing percentages being discussed round the table were TS 91% - CEC 9%. (Post meeting note: These figures presuppose that we are talking about Phase 1a only, that it will cost £500m in total, that CEC's contribution will be £45m and TS would provide the balance of £455m. This requires further discussion).

(4) The simple proportional risk sharing principle above also recognises the role of the inclusive governance structure through the TPB in monitoring and controlling changes to agreed scope and programme and therefore changes to costs. However D Sharp highlighted that TS would need to approach Ministers with a view to understanding whether or not this proposed principle would be acceptable to them. All parties agreed to consider the list of 'contingent factors' in the discussion paper plus any other risks or uncertainties and identify those they feel could merit separate treatment/allocation. Possibility of TS taking on responsibility for delivering the Network Rail immunisation works needs separate consideration.

Actions:

- D Sharp to procure consultation with A. Cauldwell to determine if this overall principle would be acceptable to Ministers - prior to end March.

- All parties to identify risks which may merit specific treatment / allocation and circulate details.

(5) We noted that the drafting of the agreement should include provisions specifying the decision making process and criteria by which the decision to proceed with Phase 1b will be made. This may be important from the point of view of the Infraco bidders and price negotiation. We also recognised that the ratio of funding contributions and risk sharing will probably be different for Phase 1b and are in any case dependant upon the outcome of price negotiations for Phase 1a.

(6) D Sharp asked that CEC consider whether they think the TS grant should be fixed in nominal terms at the outset (inflated at actual plus projected inflation indices) or continually indexed throughout the project in light of the actual outturn inflation indices as prescribed by TS. Damian noted it works both ways on different TS projects. He also noted that the maximum indexed grant as calculated now based on cost profile data supplied by tie is less than the £500m included in the DFBC. This is a complex and to an extent (in selection of indices) subjective subject requiring further careful discussion.

(7) On documentation - TS already have an agreement in place for the Aberdeen Western Peripheral Road which has many elements similar to the one we are trying to create here between TS and CEC and this will be distributed for review together with the TS/CEC funding agreement in its draft form insofar as it was developed in the summer / autumn of 2006. It was agreed that it was important to get agreement to the high level principles before drafting proper / legal input commences.

Action:

- TS to distribute AWPR agreement and previous draft of a TS/ CEC funding agreement in relation to the Tram to all parties.

(8) On programme - We did not achieve the development of a detailed programme but there was consensus that the meat of the agreements would need to be drafted and in place around June to match with a programme of having

the Infraco negotiations completed during the summer. We agreed all actions identified above to be completed by the date of our next meeting.

Next meeting: 17th or 18th or April. D Sharps secretary to liaise with A Holmes secretary and others to arrange an acceptable time.

Stewart

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