Mr Andrew Holmes
City of Edinburgh Council
City Development Department
Waverley Court
4 East Market Street
EDINBURGH
EH8 8BG

Our Ref: WG/JPT

5th July 2007

Dear Andrew

As agreed at the meeting on 5th July 2007 at Waverley Court between representatives of **tie**, City of Edinburgh Council Legal Services and yourself, we attach additional information regarding the Utilities Agreements for Scottish Power and Telewest.

As last explained to CEC officers on 30th May, **tie** has already negotiated and secured eight utility diversion agreements, six of which are now formally part of the MUDFA scope of works. These agreements were negotiated under a laborious process which commenced with securing confidentiality undertakings from each party in turn, some of whom were not prepared to engage in earnest until it was certain the Tram project would proceed. Three agreements were concluded between the initial utility, **tie** and CEC, since these statutory undertakers had lodged objection to the Tram bills. Five were executed between **tie** and the utility only, since these parties were not objectors. Two utility agreements still remain unexecuted: Scottish Power and Telewest. In case of the former, the only matter outstanding is the requirement for CEC to be a party to the agreement, on the basis of joint and several liability. In the case of the latter, the same issue is outstanding, as well as a negotiating stance by Telewest in relation to the exclusion of any insurance proceeds they obtain as a deduction from tie/CEC's liability under the contractual indemnity. The reason why these two utilities wish to have CEC as party to the agreement is because they wish to have **tie**'s financial covenant underwritten. This position (and its implications) was communicated to CEC officers in October last year.

DLA Piper, who have advised tie since late 2004 on the tram procurement and specifically in relation to the preparation of the utilities diversion agreements and the MUDFA approach confirm that:

The indemnity proposed to be provided under the Scottish Power agreement is in broadly similar terms to the indemnities provided by **tie** in the eight other signed utilities agreements, where CEC is already a direct party to three of these: Scottish Water, **NtL** and SGN. CEC may be familiar with this form of indemnity from its own dealing with Scottish Power.

tie limited
Verity House 19 Haymarket Yards Edinburgh EH12 5BH
tel +44(0)131 622 8300 fax +44(0)131 622 8301 web www.tie.ltd.uk
Registered in Scotland No: 230949 at City Chambers, High Street, Edinburgh EH1 1YJ

Direct dial: +44 (0)[redacted]
e-mail: willie.gallagher@tie.ltd.uk
web: www.tie.td.uk

The indemnity sought by Telewest is, for all intents and purposes, identical to the indemnity already accepted by CEC in the NTL-CEC-tie agreement, to which CEC is already a direct signatory. Again, this indemnity is not different in substance from any of the others. NTL owns Telewest.

CEC has provided indemnities under non-utility related third party agreements CEC concluded with objectors: Network Rail and RBS being two prime examples.

DLA Piper has also provided detailed input to the explanatory paper asked for and provided to Council officers immediately following the 30th May meeting. That paper also explains the nature of the MUDFA contractor's specific indemnity to tie and to CEC in respect of third party claims. We are advised by DLA Piper that the last contact with Scottish Power on the draft agreement was some time ago (the agreement has been in executable form since February 2005 awaiting CEC clearance as to the underwriting of tie's covenant by CEC) but the agreement could be signed quickly without further adjustment. The Telewest agreement may require limited close-out discussion, given the point on insurance mentioned above. In both cases, further delay after commencement of MUDFA works may (a) result in the parties electing not to participate in MUDFA (b) attempting to use time pressure on tie as leverage to resile on the draft terms already settled. Contact is being made by **tie** with the parties now.

In addition to the terms of the two agreements are discussed above, we would also like to confirm the existing levels of protection against liabilities and risk already built within the MUDFA Contract as approved by CEC on 21 September 2006, and as the allowances detailed within the Draft Final Business Case as approved by on 21 December 2006.

<u>Utility Companies</u>

tie has agreements with utility companies (UC) that exempt **tie** from indirect/consequential losses apart from Customer Charter payments. Damage to any UC assets will be insured under the AMIS policy. Financial Loss insurance is currently the responsibility of AMIS however this will transfer to **tie** in the coming weeks as we are in the process of purchasing our Owner Controlled Insurance Programme (OCIP).

Third Parties

Where a third party has suffered no damage to their own assets there would be no case for claiming for financial loss against tie under delict. Where a third party has suffered indirect loss as a result of **tie** damaging an asset of the third party then a claim could be made for financial loss. Currently the AMIS Public Liability (PL) policy would provide for such an occurrence. The limit on AMIS's PL policy is £100m. The current AMIS PL policy expires 31 August 2007 and under the OCIP **tie** will have a limit of £200m for public liability.

Risk Management

Within the Tram Risk Management programme there are a number of risks relating to MUDFA works. These risks are reviewed periodically with the MUDFA team and the Tram Project Risk Manager. The current risk allocation figure of the MUDFA risks is £10.5m. This figure fluctuates as the risk profile of the project changes. There is a Risk Drawdown Procedure which can be used to drawdown on this figure should the need arise. The MUDFA contract totals £57.6m and contains a contingency sum of £6m. Total contingency/risk sum is £16.5m (over 28%).

As you are aware, we are due to start work on Tuesday. It would be a huge, public embarrassment if this was postponed due to this issue. Never mind the additional costs which will be of the order of £100,000 per week of delay to the MUDFA contract.

Yours sincerely

[redacted]

Willie Gallagher
Executive Chairman