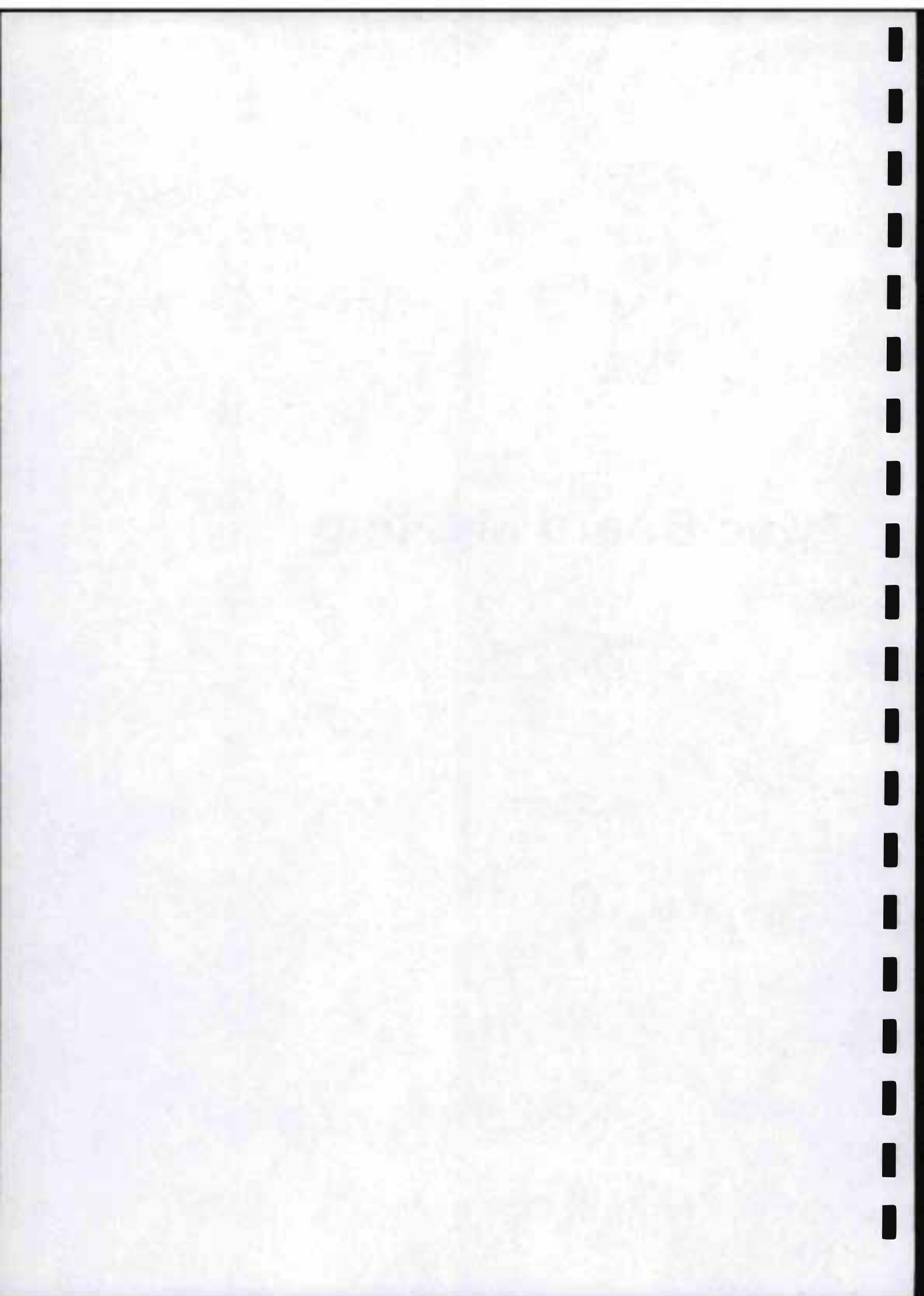




# **tie Board Meeting**

**24<sup>th</sup> October 2005**



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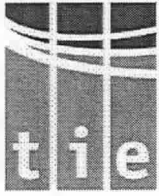
## Agenda for tie Board Meeting

@ tie offices, Verity House, Edinburgh

@ 11.00 hrs – 13.00 hrs on Monday 24<sup>th</sup> October 2005

Item No.	Agenda Item	Resp	Timing
1.	<b>Minutes of Meeting of 22<sup>nd</sup> August 2005 for approval and signing –</b> a) Approve and signing of full version of minutes	EB	11.00 hrs
2.	<b>Matters arising</b>	EB	
3.	<b>Chief Executive Report –</b> a) Chief Executive Board Report *	MH	
4.	<b>Risk -</b> a) Risk Report *	AM	
5.	<b>Finance and Governance–</b> a) Monthly Finance Review and Financial Performance Report * b) Review of Project Governance	GB	
6.	<b>Communications -</b> a) Communications Progress report *	MH	
7.	<b>Heavy Rail -</b> a) EARL - Progress Report * b) EARL - Earl Project Board feedback* c) EARL – SE/tie Operating Agreement* d) SAK - Project Progress Report *	SC SC SC RH	
8.	<b>Tram</b> a) Project Progress Report * b) TEL and service integration matters	IK	
9.	<b>Other Projects –</b> a) Other Projects Progress Report *	AM	
10.	<b>AOB –</b>	EB	
11.	<b>End</b>		13.00 hrs
12.	<b>Date of next meeting – Monday 19<sup>th</sup> December 2005</b> Venue: tie office, Verity House, Edinburgh		

\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)



Item 1

# **Minutes of the Meeting**

## **held on 22<sup>nd</sup> August 2005**

- a) Approve full version of minutes



tie limited

### Minutes of tie BOARD MEETING

In the tie Boardroom, Verity House, 19 Haymarket Yards  
@ 10.00 hrs – 12.00 hrs on Monday 22<sup>nd</sup> August 2005

Board Members: Ewan Brown  
Gavin Gemmell  
Maureen Child  
Jim Brown  
Andrew Burns  
John Richards

In attendance: Michael Howell, tie Chief Executive  
Alex Macaulay, tie Projects Director  
Susan Clark, tie Project Director - EARL  
Ian Kendall, tie Procurement Director  
Stewart McGarrity, tie Project Finance Manager  
Paul Prescott, tie Heavy Rail  
Kenneth Hogg, Scottish Executive  
Andrew Holmes, CEC, City Development Director  
Ewan Kennedy, CEC, City Development  
Neil Renilson, TEL, Chief Executive Designate  
James Papps, PUK

Apologies: Bill Cunningham  
Damian Sharp

Circulation: as above

**Note:** The Board papers were issued for the meeting only. Observers were required to return all the papers to tie at the end of the meeting. Those in receipt of papers and who did not attend the meeting were required to confirm their copies had been destroyed or returned to tie.

\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and The Act)  
(C) = minute exempt under Section 5b of tie's publication scheme and The Act.

G:\09 Business Admin\09 TIE\Board Meetings\Board Meetings 2005\Board Papers - 24th October 2005\Minutes - 22nd August 2005.doc

Action  
By

EB  
GG  
MC  
JB  
AB  
JR

MH  
AM  
SC  
IK  
SMcG  
PP  
KH  
AH  
EK  
NR  
JP

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ItemAction  
By**1. MINUTES OF THE MEETING OF 25<sup>th</sup> JULY FOR APPROVAL AND SIGNING**

The minutes were approved.

**2. MATTERS ARISING**

None

**3. CHIEF EXECUTIVE'S REPORT \***

a) The report was discussed.

EB and AB will progress arranging a meeting with Tavish Scott, the new Minister for Transport.

KH advised that SE were available to assist **tie** moving forward with any agreements required with Network Rail.

**tie Annual Salary Review**

MH reported that a cost of living increase of 3% had been approved by the Remuneration Committee for all **tie** staff to be effected from 1<sup>st</sup> September 2005.

An analysis of the 2005 Corporate Objectives is to be prepared for the Remuneration Committee, identifying targets and milestones for year-end performance reporting purposes.

**4. RISK**

a) Risk Report \*

The monthly Risk report was presented and discussed.

Future reports will be presented and reviewed at the relevant Project Board meetings and reported at **tie** Board meetings.

AB

MH

MH



## 5. FINANCE

### a) Board Financial Review \*

The review and financial performance reports were noted.

The directors noted their concerns that the funding to support the company's 2005/6 business plan through to March 2006 was not yet available. All the directors requested that every effort be made to ensure that adequate and timely funding would be made available for **tie** to complete its activities in a timely and efficient way through the remainder of the year.

KH

### b) Tram Project Board/Terms of Reference/Delegated Authorities (DAR's) \*

A remit for the Tram Project Board (TPB) and DAR's was discussed and approved by the board. It was noted that if the TPB did not fulfil its remit, **tie** would be able to take back the powers and responsibilities of the TPB

The agreement of Gavin Gemmell to be non-executive Chairman of the TPB through to completion of the tram bills was noted with appreciation.

### c) Audit Committee Meeting

JR confirmed that the 2005 **tie** Accounts had been approved. A letter of representation was signed by EB following the board meeting. A review of the DAR's is to be undertaken by the Finance Director.

GB

## 6. HEAVY RAIL

### a) EARL – Progress Report \*

The project progress report was noted.

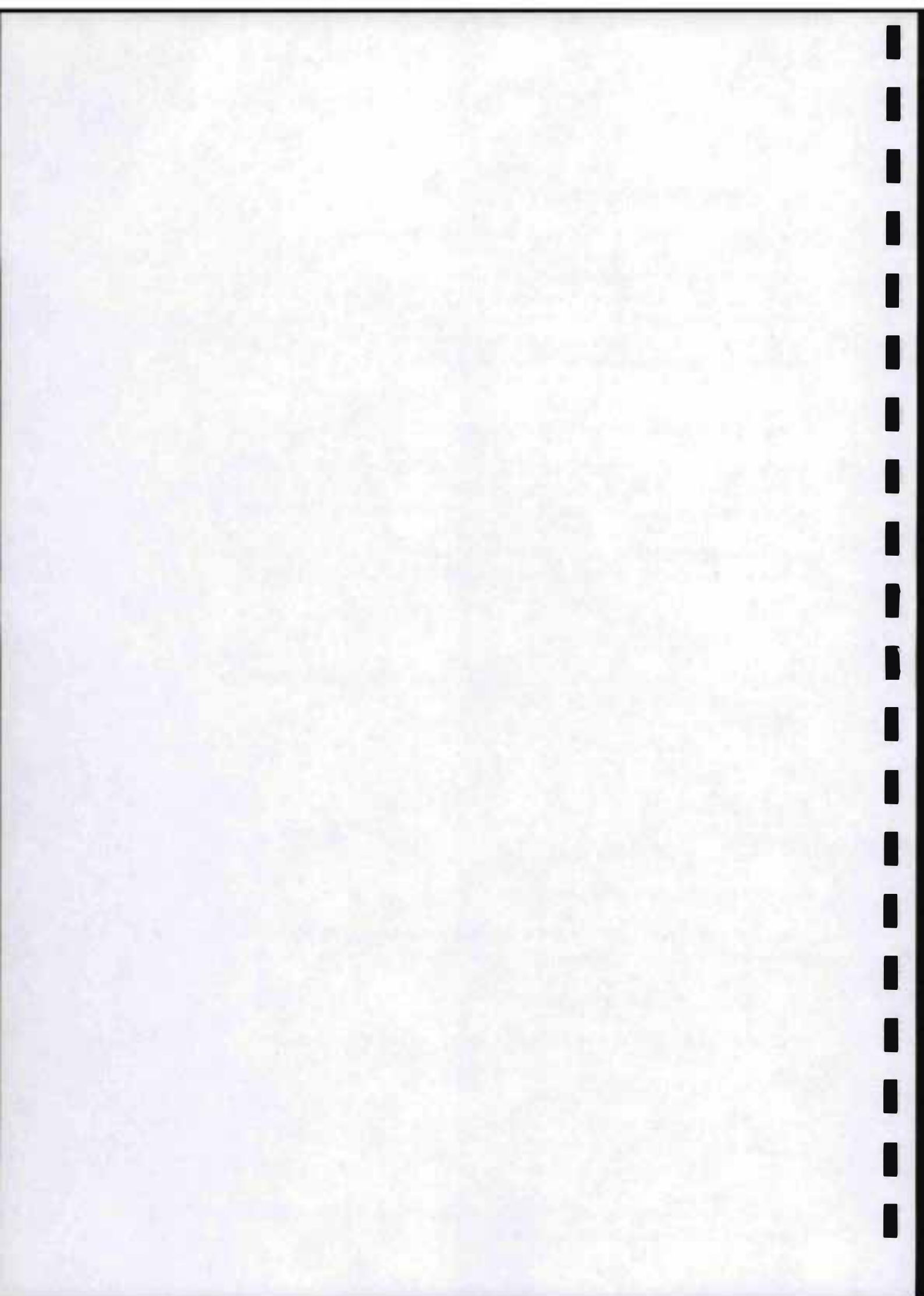
The agreement of Jim Brown to be non-executive Chairman of the EARL Project Board was noted with appreciation. The remit would be similar to the TPB

### b) EARL – Parliamentary Report\*

An update on the status of the EARL Bill was presented and noted

### d) EARL – GI Advisors\*

A paper advising of potential GI advisors was presented along with an update on the posting of the OJEU notice.



TRS00008535\_0008



e) SAK – Project Progress & Financial Report \*

The project progress report was noted.

## 7. TRAM

a) Progress Report\*

The report was presented and noted.

b) Procurement – SDS/JRC Appointments \*

A report outlining the results of the evaluation process for the SDS and JRC contracts was presented and discussed.

The Board approved the recommendation that the SDS contract be awarded to Parsons Brinckerhoff (subject to resolution of remaining guarantee issue) and the JRC contract to Steer Davis Gleave.

## 8. OTHER PROJECTS

a) Progress Report

The report was noted.

Ingliston Park + Ride

It was noted that the revised launch date is 8<sup>th</sup> September and services will commence on the 11<sup>th</sup> September.

b) Business Development \*

The position was noted.

tie's proposal to Stirling Council for the management of a programme of waste management works has been accepted. The board requested that the agreement with Stirling Council be finalised before the next board meeting.

AM

## 9. COMMUNICATIONS

a) Communications Progress Report \*

The report was noted.

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**10.AOB**

None

**11. Date of Next Meeting**

It is proposed that since the TPB and the Earl Project Board will assume much of what the tie Board has been addressing the tie Board meetings be held bi-monthly and the next scheduled meeting will be held on Monday 24<sup>th</sup> October 2005 in tie offices from 1100 hrs – 1300 hrs,(note change of time)

Signed and approved on behalf of the Board of tie limited by:

Ewan Brown (Chairman).....

Date.....

**Declaration:**

*Agenda Items marked \* indicate that a report or relevant paper on this subject was attached and will be made available under FOI(S)A but will be subject to review under Section 5b of tie's publication scheme and The FOI (Scotland) Act 2002. The contents of these minutes will be reviewed by tie prior to release and items marked with a (C) may be deemed exempt according to the provisions of The FOI (Scotland) Act 2002.*



Agenda Item 2

## Matters Arising



Agenda Item 3

## **Chief Executive Report**

### **a) Chief Executive Board Report \***

**\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)**



**tie BOARD MEETING – 24<sup>TH</sup> OCTOBER 2005**

This report is written in the context of the provisions of FOI (Scotland) Act.

**Chief Executive's Report**

**A. General**

- Bill Reeve, recently appointed as Head of Rail within the new agency, Transport Scotland, is to attend the Board meeting. Damian Sharp, head of major infrastructure projects now reports to Bill. The agency formally assumes its new responsibilities on 1<sup>st</sup> January 2006.
- Conversations continue with the Executive and Scottish Borders Council on tie's involvement in the construction of the Borders Rail Link, and with Forth Estuary Transport Authority regarding planning work on the multi-modal crossing.
- Both Project Boards have now met and the final terms of reference are to be approved at the meeting.
- A useful project management process review session, led by Ian Kendall, was conducted for Bill Reeve and others from the Scottish Executive.
- The tie Executive Board members attended a health and safety seminar which highlighted the critical nature of tie's future accountabilities during the construction phase of its projects. Awaydays are to be held on 27<sup>th</sup>/28<sup>th</sup> October for the Executive Board, and on 1<sup>st</sup>/2<sup>nd</sup> December for tie staff, to plan for the 2006/7 business plan.
- tie co-sponsored a conference on Regional Transport Partnerships which was addressed by Tavish Scott, the new Minister for Transport. We have yet to meet him face to face, except informally.
- The BAA executive board met in Edinburgh. It was announced by Mike Clasper, Chief Executive, at a private dinner that Stephen Baxter, MD of Glasgow airport, will assume responsibility for BAA Scotland. Donal Dowds is now taking on the Stansted Airport 2<sup>nd</sup> runway enquiry.

**B. Tram**

- The tram team is now in place and the full organisation will be announced by Ian Kendall during the week beginning 24<sup>th</sup> October.
- CEC received a funding letter prior to formal conclusion of the tender awards for the Joint Revenue Committee (Steer Davies Gleave), and the System Design Services (Parsons Brinckerhoff) in September.





- An exhibition beside the Scott Monument, featuring a full size replica tram, was held during September. Intense public interest brought 26,000 visitors to the exhibit with near universal approval and there was sound press coverage.
- Subsequently, we were forced by informed leaks to the Edinburgh Evening News to prepare an interim report of progress on tram costs and funding for the parliamentary committees. The headlines were that inflation will require an additional £150m through to the date of construction; a further £80m contingency / "optimism bias" brings the total for both lines to £714m.
- No further word is available concerning progress on a revised funding package for tram.
- The above leaks created a short term crisis of confidence with the Parliamentary Committees and we have taken steps to protect future sensitive information.
- Given no further bad surprises, we remain hopeful that the bills will emerge with Royal Assent early in 2006.
- Very good progress has been made in concluding agreements with numerous corporate objectors on the tram. These include Scotrail, Hanover Trust, RBS and ICAS, (in the last case for the revised Haymarket alignment).
- Agreement has also been reached for the purchase of the Caley Ale House beside Haymarket station.
- MH visited Athens as a guest of the Transdev team and was able to inspect the city's new tram scheme created in just 2.5 years for the Olympics. There are lessons to be learned, particularly in the quality of the street furniture and the choice of tram vehicle.
- Following a visit to Nottingham, CEC has appointed Duncan Fraser to be the lead co-ordinator for tram, reporting to Keith Rimmer, Head of Transport.

#### **D. EARL**

- There are continuing delays on the introduction of the EARL bill caused by proposed revisions to parliamentary procedure. The new official date is end-November, but indications are now that January is more probable.
- The first EARL Project Board was well attended with the heads of all three major external stakeholders, Network Rail, Scotrail and BAA Edinburgh all present. Indications of future high level support are good. BAA reserves its position at least until the business case is prepared and will retain observer status.

#### **E. SAK**

- Work on site has commenced.





**F. Ingliston Park & Ride and FastLink**

- The new park & ride sites at Hermiston and Ingliston commenced operation on 14<sup>th</sup> September. Early demand has been well up to expectations. A new Lothian bus route X48 in a distinctive livery serves the Ingliston site.
- A technical appraisal of the concrete used in the busway has been concluded, and the results are awaited.

**G. Finance and Risk**

- The Finance and Risk reports are attached.

**H. Business Development**

- Formal agreements with the three client authorities (Stirling, Fife and FETA) are being aggressively pursued by Alex Macaulay and will all be concluded before the end of October.

**I. Communications**

- The report is attached. With recent press stories, the pace of activity is very high and efforts are now being made to provide comprehensive and timely information to major stakeholders.
- The Chamber of Commerce in particular is questioning the cost/benefit equation for tram and we are answering their questions in detail.

Michael Howell

19<sup>th</sup> October 2005



Agenda Item 4

## **Risk**

### **a) Risk Report \***

\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)

**tie Limited Board Meeting  
Risk Report**

**Confidential  
24 October 2005**

Ref	Risk – FETA Road User Charging Order	RAG	Mitigation	Due Date	%age Complete	Owner
	to introduce an Order then the scheme will stall.		to ensure commitment to process. Engage with civil servants and meet with Transport Minister. Identify and assess the political risks to the Project.			

Ref	Risk - Edinburgh Airport Rail Link	RAG	Mitigation	Due Date	%age Complete	Owner
5.	If we fail to prepare a robust Operating Agreement for our role as Promoter then there may be an ambiguous approvals process or delays could be incurred prior to lodging Bill in Parliament.		Awaiting SE. Finalise Operating Agreement and develop internal governance arrangements. Liaise with SE regarding funding application, milestone reviews, endorsement of procurement strategy, incentivising service provider performance and agree robust Governance Arrangements. Resolve VAT position in conjunction with SE with regard to current and future structuring.	Oct 2005	90%	SE / tie (PD)
6.	If we do not adequately appraise the interface with TL2 then we may fail to demonstrate the case for Earl		Undertake detailed modelling for various scenarios to confirm patronage estimates for both Earl and Tram and verify that patronage movements are consistently being modelled prior to introduction of Earl Bill. Undertake further downstream analysis with JRC.	Oct 2005	75%	tie (PDs)
7.	If the Private Bills Unit is unclear on the date for introduction of the Bill then there additional costs incurred awaiting confirmation of timing of introduction and delays in implementation.		Discuss timetable concerns with Private Bills Unit. Liaise with Tram schemes regarding potential interaction between Bills. Resolve timing of Bill relative to GARL e.g. October or November or later. Publish 'draft' Bill for consultation. Seek funding for development activities including technical advisor services, 'Form A' design and ground and archaeological surveys. Utilise time for objection avoidance including utilities agreements.	Oct 2005	70%	PBU / tie (PD)
8.	If we don't enter into Heads of Terms		Assurance protocol and way forward agreed. Meet	Oct 2005	45%	DLA /

Status	Colour
The risk management action cannot begin until a future specified date, therefore, it is not possible to measure progress	
No progress has been made	
Moderate progress being made on risk management action with little/no evidence of the deliverable	
Progress is being made, commensurate with the stage of the Project, with appropriate evidence of the deliverable	
Risk management action has been successfully completed and any associated deliverable has been provided	



**tie Limited Board Meeting  
Risk Report**

**Confidential  
24 October 2005**

Ref	Risk - Edinburgh Airport Rail Link	RAG	Mitigation	Due Date	%age Complete	Owner
	of agreements with NR before lodging the bill then they may formally object to it.		regularly with NR and develop Heads of Terms agreements in conjunction with advisors. Seek verification that there will be no objection from NR. Agree protective provisions with NR and carry out 'Form A' design. Adopt a united approach with SE and GARL. Use period for delay in introduction to advance 'potential' objector management. Review procurement strategy in conjunction with SE and NR.			tie (PD)
9.	If we don't enter into Heads of Terms of agreements with BAA before lodging the bill then they may formally object to it and withhold funding contributions.		As for NR above. Develop clarity of funding contribution from BAA through PwC. Conduct advance design and construction for SE Pier and Transport Hub.	Oct 2005	45%	DLA / PwC / tie (PD)
10	If there is amendment to Parliamentary Bill process that then there may be negative PR and media perceptions that the process provides less scrutiny.		Discuss lessons learnt from previous and existing Bills with civil servants. Gain understanding of amendments to process, timetable and information requirements. Agree management arrangements to proactively deal with publicity.	Nov 2005	40%	SE / tie (PD)
11	If key stakeholders are not supportive of our proposed procurement strategy then there could be delays to implementation of early stages of scheme.		Develop procurement strategy with proactive consultation with SE, BAA and NR in structuring, packaging, governance and forms of contract. Review lessons learnt from previous procurements and consult with market.	Dec 2005	35%	tie (PD) / SE
12	If the existing rail franchise and rolling stock procurement is unable to accommodate the introduction of Earl then the scheme will not be able to be commissioned and transferred into NR operational asset base.		Develop procurement approach to account for existing agreements including in rail franchise with First Scotrail, and engage with SE Working Group on, separate rolling stock procurement. Re-iterate procurement programme with SE and support SE in the development of their business case.	Jan 2007	5%	SE

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**tie Limited Board Meeting  
Risk Report**

**Confidential  
24 October 2005**

Ref	Risk - Tram Network	RAG	Mitigation	Due Date	%age Complete	Owner
13	If we do not adequately appraise the interface with Earl then we may fail to demonstrate the case for Tram		Undertake detailed modelling for various scenarios to confirm patronage estimates for both Tram and Earl and verify that patronage movements are consistently being modelled prior to introduction of Earl Bill. Undertake further downstream analysis with JRC.	Oct 2005	75%	tie (PDs)
14	If the long term funding is not resolved between CEC and SE then there may be significant difficulties in convincing Parliament that the scheme is viable.		CEC/SE to meet to agree strategy and outcome be reported by CEC. Develop supporting information on financial case for range of performance scenarios to allow CEC/SE dialogue on funding including construction inflation. Maintain flexibility for scaling the scheme within procurement strategy to suit funding. Closely monitor the outcome of SE Portfolio Review regarding potential delay or private finance requirements. Prepare robust documentation for Parliamentary Committees.	Nov 2005	70%	CEC/SE
15	If the project governance structure is ambiguous then timely decisions and abortive costs		Develop project governance to include Project Board and flow down of responsibilities within team within tie that includes CEC in approval chain. Seek clarification of delegated authorities of CEC liaison team. Ensure that empowered individuals are responsible for review.	Nov 2005	95%	CEC / tie (PM)
16	If we do not satisfy the Committees regarding alternative routing plans then Royal Assent may be delayed beyond December 2005, delaying implementation of the scheme.		Develop alternative routing plans with clear understanding of capital, operating and revenue implications. Report on outcome of current objection period being managed through land referencing companies. Hold regular meetings to seek routes to withdraw objections. Review progress and availability of funding for this workstream.	Dec 2005	45%	CEC/SE/ tie (Tram FD)
17	If there is inadequate progress on operational system including bus/tram integration, development of network service		Seek clarity on the role and deliverables of TEL to bring about integration including development of ticketing strategies. Produce alternative service integration plans	April 2006	10%	JRC/ tie (Tram FD)

Status	Colour
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**tie Limited Board Meeting  
Risk Report**

**Confidential  
24 October 2005**

Ref	Risk - Tram Network	RAG	Mitigation	Due Date	%age Complete	Owner
	pattern and TEL Business Plan then the revenue may not be sufficient.		to reduce bus opex in £1.5m p.a. increments to identify optimal tram/bus position. Provide TEL with the necessary information to progress design of integration. Seek clarity on TEL's primary objectives. Model through JRC.			
18	If the impact of service integration on Lothian Buses is unknown then there could be significant operational issues to overcome.		Predict and forecast the impact of tram on Lothian Buses patronage and chart total revenue through JRC commission. Work closely with Lothian Buses to develop Fares Policy. Seek Transdev review on reliability of analyses.	Dec 2006	5%	JRC/ tie (Tram FD)

Ref	Risk - Stirling-Alloa-Kincardine Railway	RAG	Mitigation	Due Date	%age Complete	Owner
19	If the governance arrangements are unclear then the decision making and approvals process may not keep pace with scheme implementation or may be ambiguous between parties.		Finalise proposed Project Governance to clarify the split of Project Management responsibilities between tie and Jacobs Babbie. Verify Site Supervision, Compensation Costs, Contingency Spend, Quality Control, Specification Compliance, NR interface, Safety, Risk Management, Change Management Protocols and Delegated Authorities for the Project Team members and committees. Prepare a RACI (Responsibility, Account, Consult and Inform) Matrix for Safety for the scheme.	Oct 2005	90%	tie (PM) / Jacobs
20	If there are inappropriate controls on Project Spend or Programme then the scheme may be delayed or suffer cost creep.		Maintain close monitoring on contractual risk allocation, contingency fund, project spend and in particular scrutiny of public sector risks including mineworkings. Review appropriateness of contractor's and employer's risk registers and fund through scheme development including Network Rail approvals. Seek clarity on the	Nov 2005	90%	SE

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**tie Limited Board Meeting  
Risk Report**

**Confidential  
24 October 2005**

Ref	Risk - Stirling-Alloa-Kincardine Railway	RAG	Mitigation	Due Date	%age Complete	Owner
			project baseline programme and impact of the contractor's risks to confirm that suitable allowances have been made against current planned commissioning end of May 2007 and formal completion June 2007. Monthly Risk Management Team meeting planned.			
21	If 3 <sup>rd</sup> Party compensation and access arrangements have yet to be resolved then there may be delays to implementation of the scheme or inflated compensation arrangements.		Access is not an issue. General Vesting Declaration notices issued on 19 <sup>th</sup> August and land ownership transferred on 26 <sup>th</sup> September. Compensation claims have been received and agents for the team are negotiating with affected parties.	Dec 2005	75%	Jacobs

Ref	Risk - Ingliston Park & Ride	RAG	Mitigation	Due Date	%age Complete	Owner
22	If the advance warnings for additional costs and programme are all validated then there will be a project overspend.		Assess each of the potential 'compensation events' in conjunction with our Legal and Technical advisors. Discount inappropriate claims. Establish appropriate value for substantiated claims. Revise project forecast including appropriate allocation of liquidated damages. Meet with contractor to state case. Prepare for potential adjudication.	July 2006	75%	HGL / tie (PM)

Ref	Risk - Edinburgh Fastlink	RAG	Mitigation	Due Date	%age Complete	Owner
23	Operational Systems and Agreements Outstanding could result in tie being unable to fulfil operational phase obligations		Develop programme for the conclusion of all agreements (including 3 <sup>rd</sup> party audit, gritting, cleaning, CCTV and shelter repairs). Prioritise and resource to ensure completion.	Nov 2005	82%	tie (GBM) / CEC

Status	Colour
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**tie Limited Board Meeting  
Risk Report**

**Confidential  
24 October 2005**

Ref	Risk - Edinburgh Fastlink	RAG	Mitigation	Due Date	%age Complete	Owner
24	If there is a need to close the facility to make good on repairs defects or damage then there may be a need to suspend operational access to Lothian Buses		Monitor for defects assess effect on operation. If required localised speed restrictions to be applied at damaged locations. Develop programme with contractor to remedy defects or damage and ensure possessions minimise disruption to operations. Ensure adequate supervision of activities and monitor quality of repairs.	Nov 2005	80%	BB / HGL
25	If our advisors or contractors do not remedy any out-of tolerance defects or fail to demonstrate reasonable endeavours in their performance then we may have to commence a legal dispute.		<p>Include loop system to improve the performance and reliability of scheme traffic lights.</p> <p>Initial Balfour Beatty survey information not of sufficient quality. Seek further detailed alignment and crack surveys. Allow access for survey works. Take strong stance that facility will be closed with consequent PR fall-out to BB unless remedial activity complete. Obtain clear report of site checks by main and sub-contractors, checks by auditors and our advisors and reasons for defect and responsibility for rectification. Agree programme for remedying defects. Consider options to recover any losses suffered by tie, the Council or Lothian Buses through Balfour Beatty.</p> <p>Seek litigation advice regarding our case and review need for independent technical expert review (witnesses) regarding cracking, vertical and horizontal tolerances.</p>	Oct 2005	75%	BB / HGL / tie (GBM)
26	If Further Defects are found during rectification then there could be further out-of service events		Ensure Contractor notified. Follow contract process to agree form and programme for rectification (if necessary).	Oct 2005	80%	BB / HGL / tie (GBM)

Status	Colour
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**tie Limited Board Meeting  
Risk Report**

**Confidential  
24 October 2005**

**Key**

External Risk Owner	Internal Risk Owner
<b>BB</b> – Balfour Beatty Construction Limited <b>CEC</b> – City of Edinburgh Council <b>DLA</b> – DLA (Legal Advisors) <b>FC</b> – Fife Council <b>FETA</b> – Forth Estuary Transport Authority <b>FM</b> – Faber Maunsell (Technical Advisors) <b>HGL</b> – Halcrow Group Limited (Project Managers & Technical Advisors) <b>Jacobs</b> – Jacobs Babbie (Project Managers & Technical Advisors) <b>JRC</b> – Joint Revenue Committee (Modelling Advisors) <b>MM</b> – Mott MacDonald (Technical Advisors) <b>PBU</b> – Private Bills Unit <b>SDS</b> – System Design Services (Tram Designer) <b>SE</b> – Scottish Executive <b>SWH</b> – Scott Wilson & Halcrow (Technical Advisors)	<b>tie (DD)</b> – tie Development Director <b>tie (GBM)</b> – tie Guided Busway Manager <b>tie (PD)</b> – tie Project Director <b>tie (PM)</b> – tie Project Manager <b>tie (Tram FD)</b> – tie Tram Finance Director

Status	Colour
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Progress is being made, commensurate with the stage of the Project, with appropriate evidence of the deliverable	
Risk management action has been successfully completed and any associated deliverable has been provided	



Agenda Item 5

## **Finance and Governance**

- a) Board Finance Review and Financial Report \***
- b) Review of Project Governance**

**\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)**

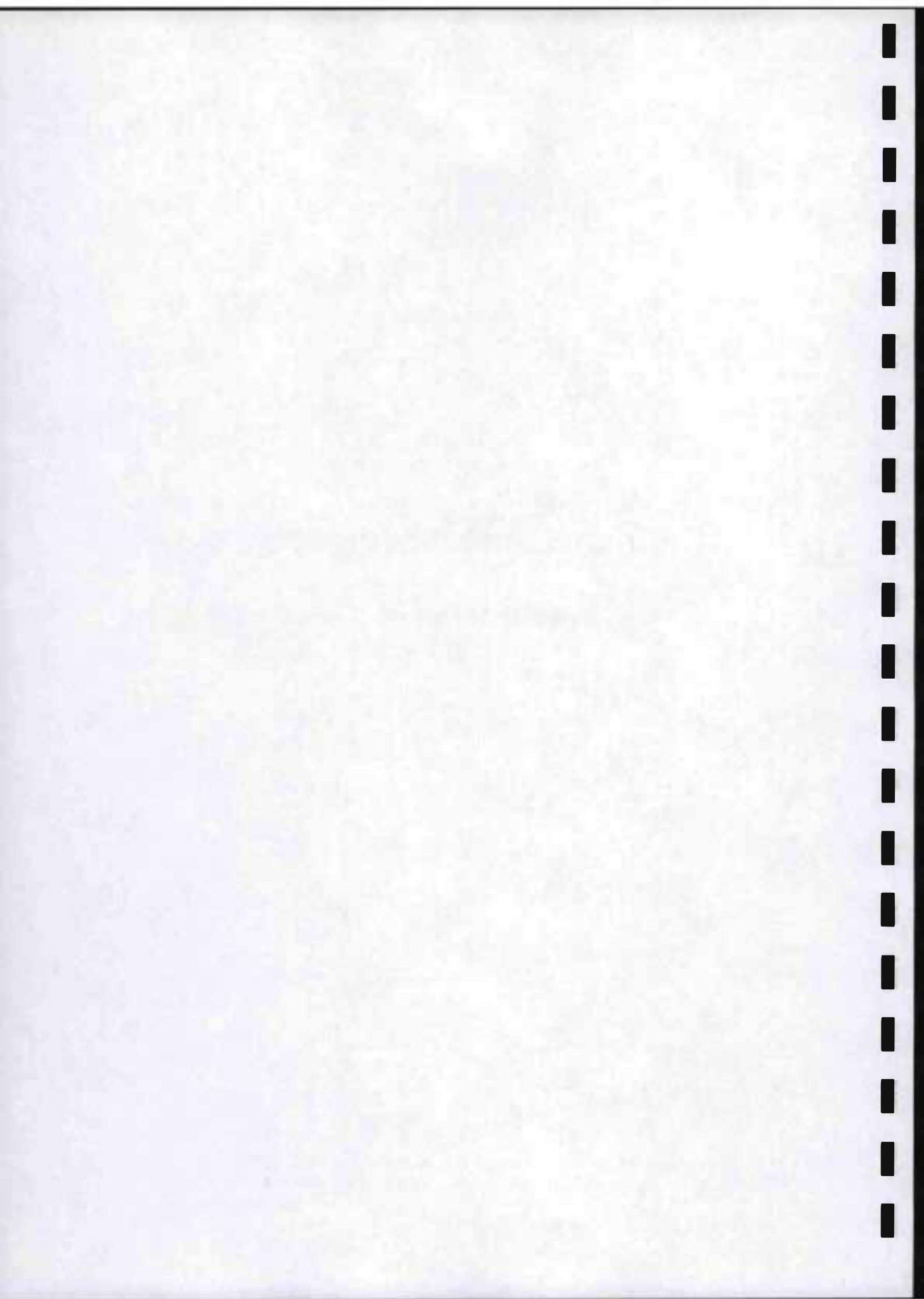


Agenda Item 5

## **Finance and Governance**

### **a) Board Finance Review and Financial Report \***

**\* = paper enclosed (available under FOISA but subject to review under  
Section 5b of tie's publication scheme and exceptions in The Act)**







**tie Limited**

## **Board Meeting – 24 October 2005 Finance Review**

### **Financial Performance Report**

The monthly *Financial Performance Report* is attached as Appendix 1 and provides an up to date view of the financial position of all projects and for the company as a whole.

The following points are worth highlighting, more details in Appendix 1:

- The approval for the main tram funding for 2005-6 has now been received. We continue to await approval for the EARL funding from the Executive.
- Tram implementation FY06 spending will be below plan for the year due to the delay in commencing detailed design work. A similar scenario, though for a smaller sum of money, applies to EARL.
- The funding required for the Tram Supplementary Bills is estimated at c£0.5m and will be handled through the Tram Project Board
- Risks remain on the outturn of Fastlink (exposure to rectification work and contractor claims) and Ingliston (contractor claims). Currently there is no change to the expected outturn position, although this remains uncertain.

### **Business Cases – Tram and EARL**

The up to date position is reflected in the reports on these two projects.

Of particular financial significance is the submission to the Parliamentary Private Bills Unit of the Progress Report on Scope and funding of the Tram project which provides an updated view of capital costs and funding sources.

### **Governance**

*Tram* – the final form of the remit is before the TPB meeting to be held prior to the tie Board meeting. The form is substantially the same as that previously approved by the tie Board.

*EARL* – a separate paper from Susan Clark, EARL Project Director, describes the EPB remit and delegations.

The principal outstanding governance exercise for Tram and EARL is to finalise the Project Team level DARs. These are currently operating under the direct control of the individual Project Directors, who will define further delegation levels to key members of their teams. The approval of these levels is expected to be handled by the respective Project Boards in November.

With both Board's remits now in near final and agreed form, DLA (legal advisors to both projects) have been asked to review the proposed structure in the context of tie's own governance documents including the Operating Agreements. A verbal update on the results of this review will be made at the Board.

A detailed paper describing the governance model and procedures for all other tie projects is attached as Appendix 2. The summary on the first two pages provides an overview of the issues arising and how they are being handled.

As a result of the restructuring of DARs onto a project basis, we are revising the DARs for tie's indirect overhead expenditure. A summary will be presented to the November tie Board for approval.

#### Other matters

*Internal audit* - Reports were prepared by Scott Moncrieff on two areas : 1) Procurement Process quality and regulatory compliance ; and 2) Control over indirect overhead expenditure including payroll. Both reports reflected no material weaknesses.

*FY07 Business Plan* - the process commences in November. The budget for the Tram for FY07 will be reviewed by the TPB and will require detailed iteration with CEC and the Executive into early 2006. The funding for EARL in 2006-7 is contained in the request currently before the Executive ; once approved this will be reflected in tie's FY07 Plan.

The position on SAK is likely to be straight-forward since tie does not account for the construction funding in its own books. Both Fastlink and Ingliston Park & Ride should be resolved in advance of the new financial year. We will monitor progress on other projects and liaise with CEC on their impact on 2006-7.

We will prepare a draft Plan for review at the tie Board in December in time for submission to CEC by the calendar year-end, in line with the requirements of the Operating Agreement. This is likely to be subject to some change prior to finalisation in the New Year and we will set out the process to control those changes in the December submission.

Graeme Bissett  
14 October 2005



Agenda Item 5

## **Finance and Governance**

### **b)Review of Project Governance**

\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)





## tie Board and tie Executive Board – October 2005

### Project Governance review

#### Background

The governance structure for the Tram Project was addressed at the tie Board in August 2005 and that for EARL will be addressed in separate papers in October 2005.

The essence of these structures is that the tie Board retains overall responsibility for the quality of tie's service delivery and for fundamental matters affecting the project but has delegated its authority for managing the projects to a Project Board which is intended to be the primary decision-making forum. In turn, the Project Board delegates specified levels of its authority to the Project Director who is responsible for delivery.

Since the Project Board has no legal standing or responsibility, this method of delegation is a practical means of project execution, which ultimately does not affect the tie Board's responsibilities under the Operating Agreement with CEC.

This note and the attached papers address the governance of the other tie projects :

1. SAK
2. FETA road-user charging
3. Stirling Environmental
4. Cross-Forth ferry
5. One-ticket
6. Fastlink
7. Ingliston P&R

The primary general questions are :

- What is the contractual status at present and what is the timetable to complete the legal documentation ?
- Who are the key players and how do they fit operationally and contractually ?
- Is the client clearly defined and engaged in the decision-making process ?
- Who are the funders and what role do they play in the decision-making process ?
- Are tie's legal and operating relationships with the other parties clear and documented ?
- What governance model is established – Project Board, delegations, Project Director / Manager authority, role of tie Board etc ?

Tie's role in the tram and EARL projects is different from that in other projects in a critical respect. For Tram, the Operating Agreement with CEC (the tram Project Promoter) imposes a requirement on tie to be accountable for the project delivery in all respects. For EARL, tie's role as Promoter makes tie accountable for the project delivery in all respects. The tie Board therefore must retain the ultimate responsibility for the projects, even if it chooses to delegate responsibility to the Project Boards.

On the other projects (except Fastlink and Ingliston P&R, see below) tie's role is confined to that set out in the governing contract in each case. The tie Board's

responsibility is therefore confined to ensuring tie delivers its contractual obligations. This leads to differences in the role and interest of the tie Board in the governance structures across the projects.

A detailed review of tie's new projects - SAK, FETA, Stirling and Ferry – is attached. A summary of the One-ticket model is also provided for completeness. Fastlink and Ingliston P&R are physically complete but have contractual and remediation issues under discussion. This process is being executed by the Project Director and Manager and is being monitored directly by the tie Executive Board. Accordingly the governance model is not an issue for these projects.

The summary position is as follows :

- The governance models for SAK, FETA, Stirling, Ferry and One-ticket seem appropriate for the circumstances of each project. In the case of SAK, the structure is reasonable given the slightly convoluted start to tie's involvement. In the cases of FETA, Stirling and the Ferry, there is a need to finalise the legal underpinning and this should be done as a priority. In all 4 cases there is work to do to finalise important areas, such as delegated authorities. These actions are being monitored by tie's Executive Board.
- One-Ticket has been operational for a number of years and is generally of a low-risk nature.
- The extent of tie's liability and its relationship to tie's PI cover is an important open issue on all projects except One-Ticket and requires careful consideration. The contracts will require to be approved by the tie Board and a risk assessment should be provided in support.
- Reporting on these projects will be through the tie Executive Board and summaries will be provided to the tie Board at each meeting.

Graeme Bissett  
September 2005

### SAK project governance

#### *Background*

Unlike the Tram and EARL projects, tie was brought into SAK after project management arrangements had been implemented. Consequently, tie's role is one of advisor (with specific responsibilities and teeth), in effect an agent of the Council, rather than primary project manager. The governance and contractual structures reflect this.

The first part of this note summarises the governance model and there follows a summary of the contracts in place (highlighted in the text).

#### *Principal players and contractual responsibilities*

The Promoter is Clackmannanshire Council ("Clacks"). The Council is also a major land-owner and is the planning authority. They will contribute £2.5m. Clacks is the Client for the project. The principal contact for tie at the Council is the Head of Legal Services, Jackie Macguire, supported by Mac West, Head of Roads and Transportation. Ms McGuire reports internally to the Council Chief Executive.



The principal funder is SE, who also underwrite a wide range of contractual and other risks. The funding and risk underwriting terms are documented in the grant award letter from SE to Clacks. With Royal Assent achieved, the Executive officials will now keep the Minister informed of progress, augmented by informal communication with tie management. There is no formal linkage between SE and tie.

Tie is responsible for :

a) Overall project management, including overall responsibility for the delivery of the project to scope, on time and budget. This is enshrined in the **Project Management contract between tie and Clacks**. However, tie has no liability under this contract other than in the unlikely event of demonstrable gross negligence

b) Designing and implementing the rail operations, enshrined in the **Operations and Rail Services contract between tie and Clacks**. Tie has similarly restricted liability exposure. In this role, tie covers the signalling operational interface (not design), timetable, Network Rail contracts and transport modelling. Tie will utilise the services of other advisers in this role, although presently the only specialist adviser is AEA Technology to conduct transport modelling and timetabling. AEA are engaged through a contract with Clacks and tie had no input into the form of contract under which they are engaged. It is anticipated that any additional advisers used by tie will be contracted by Clacks under tie's guidance, although some may be contracted direct by tie (eg PR advisers).

Jacobs Babtie (JB) were contracted by Clacks as project manager and to manage the process of preparation and submission of the Bill into Parliament prior to tie's involvement. The contract for **Project Management Services between JB and Clacks** still governs that relationship. JB also have responsibility for managing the utility diversion works, which will be contracted between the utility companies and Clacks.

First Nuttall (FN), joint venture of First Engineering Limited and Edmund Nuttall Limited, is the Principal Contractor under a Design and Construction contract between FN and Clacks, who are the legal employer. FN is a JV between First Engineering and Edmund Nuttall. JB are nominated formally in that contract as the Project Manager to instruct FN on behalf of Clacks.

At present, a range of other advisory relationships exist between Clacks and third parties, mostly to do with the work supporting the parliamentary process. These will now fall away. Brodies have been retained as legal advisers to deal with land acquisition and compensation issues and will be retained throughout the duration of the project. The land acquisition is managed by Jacobs Babtie who instruct Brodies. Tie does however, instruct Jacobs Babtie. Separate legal advice on contracts with Network Rail is provided by Biggart Baillie who are engaged by Clacks but managed by tie. Additional sub-contract arrangements are in place or being put in place by FN supporting construction.

Tie has no legal leverage over JB, FN or any of the existing advisory relationships.

Tie has no financial responsibility for making payments for any services to the players described above. Cash flow from the Executive and to the players is handled by Clacks. However, tie is responsible under the Project Management contract for forecasting the cash flows and for controlling the costs and approving commitment and payment. The latter is governed by Delegated Authority Rules described below.



### *Project governance and Delegated authorities*

Tie's ability to direct parties is contractually limited to advising Clacks and inviting Clacks to take action. In practice the relationship is between tie and the players, with the contractual route through Clacks to be used only by exception.

In order to codify the relationships in a manner which complements the contractual relationships, a Joint Participation Agreement (JPA) has been concluded. The parties to this are Clacks, tie and JB. The JPA does not create any additional obligations or liabilities for tie.

The JPA confirms tie as overall project manager, and JB as project manager whose obligations and responsibilities are formally defined in their contract with Clacks.

The three parties to the JPA have established an Operating Group (OG), whose role is set out in the JPA :

*"The Operating Group, which will constitute the main source of direction for the project, defining and controlling inter alia levels of delegated expenditure, the approval of contractual terms, communication with stakeholders and the development of the project in a manner consistent with the highest standards of safety. The Operating Group will meet monthly, or as required. It will be chaired by the Heavy Rail Director of tie and membership will consist of two representatives each from the Scottish Executive, Clackmannanshire Council and TIE. Jacobs Babbie will also attend by invitation."*

Accordingly, the OG is a body with contractual authority, rather than an "alliance" body with no legal substance (similar to the Project Boards for Tram and EARL). The OG is a pivotal entity within the governance model. The OG meets monthly and is chaired by Paul Prescott. Richard Hudson attends all meetings and reports to it as tie's Project Manager. Clacks are represented by Jackie MacGuire and Mac West and JB is represented by their designated project manager.

In addition, both SE and the SRA are members of the OG. Since these bodies are not parties to the JPA, they do not have contractual responsibility but their involvement is clearly important to the smooth operation of the project. They are also encouraged to take sustainable (if not binding) positions on issues discussed (in this case, similar to the EARL / Tram Project Board model). A decision has been taken not to include Network Rail, Scotrail or EWS. The engagement with these parties is at operational level, similar to that for EARL, although the EARL PB does include NR and Scotrail. It is felt that the additional involvement on the OG would not be beneficial in the case of SAK. The matter is being kept under consideration.

The OG's authority is effected through documented delegated authorities and change control procedures. These are currently under debate in the context of a remit document being developed by tie. Delegated authority limits are being discussed in relation to change control and contractual and expenditure commitment as follows :

- From Clacks to tie, giving tie ability to determine matters below specified thresholds and within authorised budgets
- Between tie and JB and between Clacks and JB

In dispute, the representatives of each organisation will revert to their own positions and additional dialogue would be required for resolution. Failure to achieve resolution would require parties to fall back on their contractual positions.

There are no explicit conditions for terminating the OG in the JPA. It would be for the members to determine in the circumstances what to do if the mechanism is not working.

Budgets are established (though being finalised) for construction target cost (primary responsibility FN, overall responsibility JB) and separately for mine-works remediation

(ditto). In addition, JB has a budget for their own costs. Contingencies are quantified and incorporated in the overall budget, for which tie is overall responsible.

#### *Additional bodies*

Two additional groups have been established :

##### **Strategic Board**

This comprises senior representatives of the main players – Clacks, tie, JB, First Engineering, Edmund Nuttall. Its purpose is to provide a communication platform and it has no formal role within the governance structure, nor any delegation of authority for any action.

##### **Risk management group**

This comprises operational level people from Clacks, tie JB, FN and SE. The intention is that risk management and reporting will be performed by this group, reporting to tie as Project Manager and to the OG. Formal responsibility for risk management remains with tie as Project Manager, supported by the various parties' contractual responsibilities. The group has no formal role within the governance structure, nor any delegation of authority for any action. Any actions recommended by the Risk Management Group will be dealt with through the Change Management Process and sanctioned within the Delegated Authority Rules

##### *Role of the tie Board*

The tie Board's responsibilities are to ensure that tie through Paul (Project Director) and Richard (Project Manager) deliver the contractual obligations under the two contracts with Clacks. Unlike Tram and EARL the tie Board has no additional central role – in Tram we have an Operating Agreement with CEC which carries responsibilities and which links to the project management role ; for EARL, tie has a relationship with SE which is in the process of being contractually documented and tie is also about to confirm legally the Promoter role.

##### *Recommendations and actions required :*

1. We (tie) are not aware of the terms of the JV between First Engineering and Edmund Nuttall. Procurement of the contractor was concluded prior to tie's involvement in the project. We would expect, as a public body governed by their own Standing Orders and EU Procurement Legislation, that Clacks would have satisfied themselves of the structure of the JV prior to award of the contract. We will take steps to understand the operating relationship to assess whether there are any concerns about how the JV may operate in the future.
2. Finalise delegated authorities.
3. Finalisation of budgets and allocation of responsibility
4. The final form of the liability clause should incorporate explicit cover for the period from commencement of delivery and should be married to tie's PI cover.
5. Address the standard contractual terms required in the event that tie sub-contracts direct with any third parties such as PR advisers, including alignment of liability clauses.
6. Reporting within tie should comprise : 1) monthly report on actual costs incurred by tie compared to budget (not total project cost performance) ; 2) brief narrative report ("Performance Report") on project progress, highlighting any current major issues likely to affect project programme, cost or scope and also tie costs. Any significant changes to the governance or contractual arrangements should also be approved by the tie Executive Board and possibly



the tie Board. This reporting should be effected through the Monthly Financial Performance Report (Stuart Lockhart), prepared by the Project Manager and approved by the Projects Director. The same document can be used as necessary for tie Executive Board and tie Board reporting. Note that this reporting is separate from that to the client, Clacks, which is governed by the Project Management Agreement. In addition to the Performance Report, the standard monthly confirmation should be signed off by the Project Director and Manager.

**Contracts in place:**

1. Professional Services contract between Clacks and Jacobs Babbie.
2. NEC Design & Build Contract between Clacks and First Nuttall. (Phase 2 – the “Notice to Proceed to Construction” has not yet been executed. This is anticipated for the 19<sup>th</sup> September)
3. Joint Participation Agreement between Clacks, Jacobs Babbie and tie.
4. Project Management Agreement between Clacks and tie.
5. Services Agreement (for Operations and Rail Services) between Clacks and tie.
6. Asset Protection Agreement between Clacks and Network Rail. (Yet to be signed – anticipated on or around the 19<sup>th</sup> September)
7. Subcontract Agreements between First Nuttall and specialist subcontractors and suppliers (To be executed after the issue of the Notice to Proceed to Construction).
8. Grant Funding letter and indemnity from the Scottish Executive to Clackmannanshire Council.
9. Other sundry services agreements between Clackmannanshire Council and advisers.

## FETA Road User Charging project

### *Background and project objectives*

Tie's involvement in this project commenced in December 2004. The project objective is to prepare a Charging Order for road user charging on the Forth Road Bridge, as a successor model to the tolls.

### *Contractual framework and delivery of services*

A contract ("the Project Agreement") has been developed between tie and FETA, the body responsible for bridge operations. This is unsigned pending agreement on tie's liability exposure – see below. Under the contract, tie owes a duty of care only to FETA and to no other party. Equally, tie has no direct authority over any other party. The legal advisers are D&W (contracted), communications advice is under tender and technical consultants will be tendered shortly. These contracts are or will be between FETA and the parties. In the event of dispute, authority over the third parties is that of FETA, under advice from tie.

The contract with tie contains a Scope of Services schedule, at present focussed on the charging order. More specifically this includes design of the project, procurement of advisers, assessing and advising on bids for services by third parties, monitoring and approving expenditure against project budget. Tie has no responsibility for making payment to third parties although tie will evaluate submitted invoices and advise FETA on payment.

For tie, Alex Macaulay is Project Director, Ken McLeod is Project Manager. The latter is the main tie contributor, estimated at 2.5 days pw. Charge rates have been agreed with FETA and are enshrined in the contract. These also allow use of other tie people on a call-off basis – eg finance, communications and risk. The whole project has an estimated cost of £1.5m including 40% contingency. Tie's cost estimate within this total is £150k for the period to April 06 when the order was expected to be made. However, this has now been delayed for c 12 months for various reasons involving Scottish Executive issues. tie has reforecast tie costs at £250k to accommodate the delay. The funding source is FETA, which presently has a budget for the project and is responsible for ensuring it remains adequate.

The principal client contact is Alistair Andrew, the Bridgemaster and General Manager, who reports to the FETA Board. It appears that this aspect of the governance model is operating effectively.

There is no "Project Board" or equivalent in operation. The Project Director and / or Manager handles relationships with the third party advisors directly, has regular engagement with Alistair Andrew and attends (as necessary) the FETA Board meetings. The Board meetings are effectively the decision-making mechanism and accordingly there is no delegated authority to tie or any other party for change control, contractual / expenditure commitment or cash payment.

The Project Agreement is also being used as the umbrella arrangement for additional services on 1) preliminary assessment of back office business systems relating to the new toll plaza ; and 2) communication strategy.

### *Liability exposure*

The original draft of the FETA Road User Charging project agreement contained a blanket liability exemption for tie, on the grounds of tie's non-profit-making character.



This has been subsequently resisted by FETA in favour of liability exposure, whereby tie would require to rely on its PI cover. Limitations on tie's exposure are being negotiated with Mark Bourke's involvement, both in terms of quantum and in terms of the definitions within our PI policy. The change in position is being driven by CEC Solicitor, who are acting as FETA's legal advisors.

#### Recommendations and actions :

1. Seek swift finalisation of the contract.
2. The final form of the liability clause and the contract generally should be approved by tie's Executive Board and the tie Board. The final form of the contract should incorporate explicit cover for the period from commencement of delivery (December 2004).
3. Review of the adequacy of the existing draft contract as an umbrella to support the additional services.
4. Reporting within tie should comprise : 1) monthly report on actual costs incurred by tie compared to budget (not total project cost performance) ; 2) brief narrative report ("Performance Report") on project progress, highlighting any current major issues likely to affect project programme, cost or scope and also tie costs. Any significant changes to the governance or contractual arrangements should also be approved by the tie Executive Board and possibly the tie Board. This reporting should be effected through the Monthly Financial Performance Report (Stuart Lockhart), prepared by the Project Manager and approved by the Projects Director. The same document can be used as necessary for tie Executive Board and tie Board reporting. Note that this reporting is separate from that to the client, FETA, which is governed by the Project Agreement. In addition to the Performance Report, the standard monthly confirmation should be signed off by the Project Director and Manager.

#### Stirling waste management project

##### *Background and project objectives*

Tie's involvement in this project commenced in August 2005. The project objective is to provide project management support to Stirling Council (SC) in relation to a range of waste and environmental management projects.

##### *Contractual framework and delivery of services*

A contract ("the Project Agreement") between tie and SC is under negotiation. This is based on the FETA contract and is likely to encounter the same liability issue. Under the draft contract, tie owes a duty of care only to SC and to no other party. Equally, tie has no direct authority over any other party. The other principal advisor is WS Atkins, who have a framework agreement with SC to advise on projects and to project manage their execution. In the event of dispute, authority over the third parties is that of SC, possibly under advice from tie. tie's role is that of Client Representative advising SC on the operations of WS Atkins and potentially other parties in relation to the specified projects. All contracts other than tie's own contract are directly between third parties and SC.

The contract with tie contains a Scope of Services schedule. More specifically this provides that tie shall contribute to the development, construction and implementation of the package of waste management projects in respect of project management, business planning and case preparation, risk management and communication management ; tie shall also manage on behalf of SC the provision of works or services

performed by third party service providers in relation to the project. tie will assist SC staff by preparing briefs, assisting with procurement and contract development as appropriate for external services and advice from 3rd parties. Tie has no responsibility for making payment to third parties although tie will evaluate submitted invoices and advise SC on payment.

For tie, Alex Macaulay is Project Director, David Burns is Project Manager. The latter is the main tie contributor, estimated at 4 days pw. Charge rates have been agreed with SC and are enshrined in the contract. These also allow use of other tie people on a call-off basis – eg finance, communications and risk. The various individual projects have budgets within SC's system. Tie's cost estimate is 91k for the period to end-March 06. The funding source is that of the Council which is also responsible for ensuring it remains adequate.

The principal client contact is Kevin Robertson, SC's Roads Manager, who in turn reports to Arthur Nicholls, Director of Environment Services. It appears that this aspect of the governance model is operating effectively.

There is no "Project Board" or equivalent in operation. The Project Director and / or Manager handles relationships with the third party advisors directly and has regular engagement with the SC officials, who are the decision-making level. One area here requires clarification. The tie Project Manager has been given informal authority to sign letters on behalf of SC on SC paper, provided they are not of a contractual nature. The role is to collect info, cajole others and facilitate the completion of the work. There is no formal delegated authority to tie, or to any other party, for change control, contractual / expenditure commitment or cash payment. However, the authority to act for SC requires clarification.

#### Recommendations and actions :

1. Seek swift finalisation of the contract and to consider the nature of the contract – is it the provision of services with supervision and responsibility by tie or is it a secondment ? In making the assessment, the provision of services by other tie people other than the Project manager may point to a service contract, rather than secondment. In addition, the informal letter-signing authority requires clarification.
2. The final form of the liability clause and the contract generally should be approved by tie's Executive Board and the tie Board. The final form of the contract should incorporate explicit cover for the period from commencement of delivery (August 2005).
3. Reporting within tie should comprise : 1) monthly report on actual costs incurred by tie compared to budget (not total project cost performance) ; 2) brief narrative report ("Performance Report") on project progress, highlighting any current major issues likely to affect project programme, cost or scope and also tie costs. Any significant changes to the governance or contractual arrangements should also be approved by the tie Executive Board and possibly the tie Board. This reporting should be effected through the Monthly Financial Performance Report (Stuart Lockhart), prepared by the Project Manager and approved by the Projects Director. The same document can be used as necessary for tie Executive Board and tie Board reporting. Note that this reporting is separate from that to the client, SC, which is governed by the Project Agreement. In addition to the Performance Report, the standard monthly confirmation document should be signed off by the Project Director and Manager.



## Cross Forth Ferry project

### *Background and project objectives*

Tie's involvement in this project commenced in August 2004 and is at an early stage. The project objective is to project manage the feasibility work and procurement of the ferry.

### *Contractual framework and delivery of services*

A contract ("the Project Agreement") between tie and Fife Council (FC) is under negotiation. This is also based on the FETA contract and may encounter the same liability issue although this has not yet surfaced. Under the contract, tie owes a duty of care only to FC and to no other party. Equally, tie has no direct authority over any other party. The other service providers have yet to be contracted and these contracts will be between FC and the parties. In the event of dispute, authority over the third parties is that of FC, possibly under advice from tie.

The contract with tie contains a Scope of Services schedule. This provides that tie shall provide Fife Council project management and procurement services relating to the project. In practice this will include design of the project, procurement of advisers, assessing and advising on bids for services by third parties, monitoring and approving expenditure against project budget. Tie has no responsibility for making payment to third parties although tie will evaluate submitted invoices and advise FC on payment.

For tie, Alex Macaulay is Project Director, Ken McLeod is Project Manager. The latter is the main tie contributor, estimated at 2.5 days pw. Charge rates have been agreed with FC and are enshrined in the contract. These also allow use of other tie people on a call-off basis – eg finance, communications and risk. Project budgets are under development under tie's direction, as is tie's own cost estimate. The funding source is FC, although application is being made for funds from SESTRANS and the Cities Growth Fund. Although tie has no direct responsibility for funding we may provide advice on this matter.

The principal client contact is Ian Napier, FC's Technical Director. There is a Project Steering Group comprising FC, CEC, Forth Ports and FETA, chaired by Ian Napier. The tie Project Director and / or Manager will handle relationships with the third party advisors directly and will have regular engagement with Ian Napier. However, formal reporting will be to the Steering Group which is effectively the decision-making mechanism, with the members having the right to reserve positions when further debate is needed with their own organisations. This is similar to the Tram and EARL model. Delegated authorities may be developed in due course, but at present there are none.

### Recommendations and actions :

1. Seek swift finalisation of the contract before substantive work commences.
2. The final form of the liability clause and the contract generally should be approved by tie's Executive Board and the tie Board. The final form of the contract should incorporate explicit cover for the period from commencement of delivery (August 2004).
3. Formal agreement by the parties to the governance structure, including the remit of the Steering Group and delegated authorities. This should be approved by the tie Executive Board and tie Board so far as it affects tie.

4. Reporting within tie should comprise : 1) monthly report on actual costs incurred by tie compared to budget (not total project cost performance) ; 2) brief narrative report ("Performance Report") on project progress, highlighting any current major issues likely to affect project programme, cost or scope and also tie costs. Any significant changes to the governance or contractual arrangements should also be approved by the tie Executive Board and possibly the tie Board. This reporting should be effected through the Monthly Financial Performance Report (Stuart Lockhart), prepared by the Project Manager and approved by the Projects Director. The same document can be used as necessary for tie Executive Board and tie Board reporting. Note that this reporting is separate from that to the client and to the Steering Group, which is governed by the Project Agreement. In addition to the Performance Report, the standard monthly confirmation should be signed off by the Project Director and Manager.

### One-ticket

#### *Background and project objectives*

The SESTRAN partnership of nine local authorities in South East Scotland (population 1.5m) agreed with the major public transport operators in its area in 1998 to attempt to establish a Travelticket scheme as a major step towards public transport integration. It was agreed that the Travelticket scheme be managed as a partnership between the public and private sectors under the aegis of a company structure.

In 1999/2000 there was a basic fact-finding process and initial scheme definition. However unforeseen problems related to the Competition Act 1998 caused the initial implementation of the scheme to be postponed from 2000 to May 2001.

ONE-TICKET was established as the multi-modal multi-operator travelticket for South East Scotland. The scheme was developed with financial support from the Scottish Executive. It is intended to be commercially self-sufficient on a stand-alone basis during the current financial year, 2005-2006.

The main objective of ONE-TICKET is to increase the use of public transport and achieve modal transfer from car use to public transport within the SESTRAN area. The Memorandum of Association clearly states "*The Company's objects are to promote, develop and implement a multi-modal, multi-operator scheme or schemes of fares and tickets on public transport operations in partnership with those transport undertakings and transport procurers which are members of the Company*". It is NOT the intention of the scheme to transfer current public transport users to ONE-TICKET but rather to use the customer benefits of the integrated ticket (value for money and convenience) to encourage new public transport use, unless users are already using more than one operator's services for their journey. Marketing initiatives since tie became involved in April 2003 have focused heavily on reaching car drivers, for example through advertising on bus backs and on the reverse of parking vouchers issued from parking ticket machines, and the use of road facing posters to promote ONE-TICKET.

Sales of ONE-TICKET are growing and are currently running at around £14k per week, equivalent to £730k per annum on an annualised basis (the years ended 31<sup>st</sup> March 2003, 2004 and 2005 are reporting sales of £152k, £508k and £676k respectively). The current bus market for the SESTRAN area is estimated at around £120 million (Lothian Buses recently reported annual turnover of £60m). Given the strong single operator products available and the price premium of 20-30% for One-Ticket, it is not anticipated that One-Ticket will capture a huge share of this market. One-Ticket will attract those customers who value convenience, choice and ease of use. These benefits should appeal not only to current bus users but to a whole new set of customers. A market penetration for One-Ticket of between 2% and 5% ought to be achievable based on experience elsewhere in the UK.



ONE-TICKET is currently heavily focused on Bus travel, with only limited involvement of Rail. It is intended that Rail should become an integral part of the offering during the first quarter of 2006-2007, now that the new Scotrail franchise agreement is in place. It is anticipated that Scotrail will become a key stakeholder in the One-Ticket scheme. It is also envisaged that trams will be included in the longer term (2009 onwards).

#### *Contractual framework and delivery of services*

The Company's share capital is divided into Ordinary shares, "A" Ordinary shares and Deferred shares. Only the Ordinary shares have a right to participate in any profits of the company available for distribution. The Ordinary shares are owned by Don Prentice Coaches, E&M Horsburgh, Stagecoach, First Group, EVE Cars & Coaches, Alexander Wait & Sons, Lothian Buses, Munro's of Jedburgh, Perryman Coaches and Swan's Coaches. The "A" Ordinary shares are owned by City of Edinburgh, Clackmannanshire, East Lothian, Falkirk, Fife, Midlothian, Scottish Borders and West Lothian Councils. Stirling have yet to subscribe.

In addition to those owning shares, Bryans of Denny, Bulldog, BusKers, Davidson Buses, GNER, HAD Coaches, Henderson Travel, Houston Travel, MacEwans, MacTours, Myles Mini Bus Hire, Royal Mail Post Bus, ScotRail, SD Travel, Telford's Coaches and Waverley Travel participate in the scheme. An invitation to participate has still to be accepted by Scottish CityLink. It is anticipated that First Scotrail, GNER and Virgin Cross Country will become full participants in the scheme in due course.

The eight man Board comprises two representatives from each of Lothian Buses and First Group, and one representative each from Stagecoach, East Lothian Council and tie. The Chairman is independent.

For tie, Stuart Lockhart is Project Manager and is tie's representative on the One-Ticket Board of Directors.

An operating agreement was entered into between tie and One-Ticket to enable tie to provide *administrative services* from 1<sup>st</sup> April 2003. This service includes dealing with ticket agents, acting as a travel ticket agent, dealing with participating operators, dealing with overall functional matters and dealing with all company matters.

tie's approved Business Plan for 2005-2006 has allowed for the appointment of a full-time commercial manager. This appointment however is subject to One-Ticket Board approval and approval will, most likely, not be given until ScotRail are fully involved.

tie's cost estimate within this financial year relates only to salaries and are fully recoverable.

There is no "Project Board" or equivalent in operation. The Project Manager handles relationships with the "client" directly, has regular engagement with the Board of Directors and attends the quarterly One-Ticket Board meetings. The Board meetings are effectively the decision-making mechanism albeit there is some limited delegated authority to tie.

The Administrative Services Agreement is also being used as the umbrella arrangement for all support services. Tie's liability in any circumstances is limited to the annual fee of £15,000.

*Recommendations and actions*

- 1 Facilitate rail participation and agree zone structure, pricing, retail network and product mix.
- 2 Finalise share subscription of remaining local authorities and transport operators.
- 3 Agree new Board structure, update company's legal documentation and participating operator/local authority joint venture agreement. Seek clarification on status of scheme from OFT.
- 4 Continue to implement existing marketing strategy and produce a revised strategy for April 2006 onwards.
- 5 Recruit commercial manager.
- 6 Re-launch product on absorption of rail operators.





**tie Board – 24 October 2005**  
**Legal review of Project Board Remits**

At tie's request DLA have conducted a review of the Governance structures generally and the Project Board Remits in particular from a legal perspective. Their comments below warrant discussion by the members of the tie Board and Tram Project Board

1. It is recognised that members of the Project Boards will require to balance the interests of their own organisations with the interests of the project. It is also recognised that the non-tie members' fiduciary duties are to their organisations and that their role on the Project Boards cannot change that responsibility. As an additional point of clarification, DLA suggest that members be requested to highlight potential conflicts of interest between their organisations and the project. In most cases, the issue will be self-evident. Highlighting the conflict would not in most cases prevent the member taking part in the debate, which is of course the main purpose of the Project Board.
2. To clarify the legal responsibilities of tie and Project Board members, DLA recommend firstly that there should be formal acknowledgement that the tie Board retains full fiduciary responsibility for all decisions taken, either directly by it or by its delegates. The next issue is perhaps the most important. The tie Board has reserved full authority for certain fundamental decisions as set out in the Delegated Authority Rules. The Project Board is asked to address all important matters below these thresholds but above the operational level which is the preserve of the Project Director. The proposal is that the Project Board should debate and conclude on these matters within its delegated level, but that all such decisions should be reported for ratification by the tie Board. The reporting should provide the tie Board with sufficient information to understand the issue and the conclusion but will only exceptionally open up the need for further debate. In circumstances where immediate ratification is needed to progress project matters, this can be arranged on a practical basis. Otherwise, the following tie Board meeting would provide the forum. On one reading this removes the authority from the Project Board; however it should be read as clarifying the legal responsibilities without diluting the value of the dialogue and conclusions reached among key parties at the Project Board. It will be the responsibility of the tie Executive management to ensure that the reporting and ratification process works effectively.
3. tie's Articles of Association permit delegation of authority by the Board to Board Committees so long as at least one tie Board member is a member of the Committee. For this purpose, the Project Boards can be regarded as tie Board Committees and the membership criteria is fulfilled by the role of the Chairman in each case. The ratification process described in the previous paragraph further reinforces retention of responsibility by the tie Board.

The Project Boards are designed to achieve involvement by key parties in decision-making while leaving ultimate legal responsibility for the decisions with the tie Board. The approval by the tie Board and the two Project Boards of the recommendations in this note should clarify the legal position of the Project Boards without impeding the dialogue and decision-making process. A simple reference in the existing draft of the remit to the content of this note should suffice to finalise the documentation.

Graeme Bissett



Agenda Item 5b

## **Finance and Governance**

### **b) Forth Estuary Authority Agreement**

**\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)**





## **AGREEMENT**

**between**

**FORTH ESTUARY TRANSPORT AUTHORITY**

**and**

**TIE LIMITED**

**in respect of the provision of development, procurement, management and implementation services in relation to the development of a road user charge for the Forth Road Bridge**

AGREEMENT

Clauses

1	DEFINTIONS AND INTERPRETATION.....	1
2	THE TERM.....	6
3	THE SERVICES .....	6
4	CHARGES .....	8
5	CONTRACT REPRESENTATIVES .....	9
6	LIABILITY .....	12
7	INTELLECTUAL PROPERTY RIGHTS.....	13
8	CONFIDENTIALITY .....	14
9	TERMINATION.....	18
10	CONSEQUENCES OF TERMINATION .....	19
11	NO PARTNERSHIP .....	20
12	PUBLICITY .....	21
13	CORRUPT GIFTS.....	21
14	DISCRIMINATION.....	22
15	FORCE MAJEURE.....	22
16	TRANSFER AND SUB-CONTRACTING .....	23
17	AMENDMENTS TO THIS AGREEMENT.....	24
18	COMMUNICATIONS.....	24
19	SEVERABILITY .....	26
20	WAIVER .....	26
21	ACCESS TO PREMISES .....	26
22	RIGHTS OF THIRD PARTIES .....	26
23	DISPUTE RESOLUTION.....	27
24	CONFLICTS OF INTEREST .....	28
25	LAW AND JURISDICTION.....	29
26	SUCCESSORS .....	29
27	ENTIRE AGREEMENT .....	29

Schedule (Parts)

- 1. The Services
- 2. Charges
- 3. Invoicing
- 4. Change Control Procedures
- 5. Commercially Sensitive Information

Appendix

Outline Process Guidance

**Applicable Laws** means all applicable laws of the United Kingdom as amended and in force from time to time, including ordinances orders or like actions of any Competent Authority and the rules, regulations, orders, licences and permits of any Competent Authority;

**Business Day** means each of Monday to Friday in any week, excluding any day that is a public holiday in Edinburgh;

**Calendar Month** has the meaning given to the term in Schedule 3 (Invoicing);

**Change Control Procedures** means the procedures set out in Schedule 4 (Change Control Procedures);

**Charges** means the fees for the performance of the Services as calculated in accordance with Schedule 2 (Charges), as varied in accordance with this Agreement and payable by FETA to TIE in accordance with Clause 4 (Charges);

**Competent Authority** means any supranational, national, federal, state, county, local or municipal government body (other than FETA) having legally enforceable jurisdiction in the United Kingdom (including Audit Scotland);

**Default** means: (i) any breach by a Party of its obligations as set out in this Agreement (including a material breach or breach of a material term); or (ii) any negligent act, negligent omission, negligent statement of a Party, its employees, agents or Sub-Contractors in connection with or in relation to the subject matter of this Agreement;

**Defaulting Party** has the meaning given to the term at Clause 13.2;

**EISRs** has the meaning given to the term in Clause 8.5;

**Emergent Costs** means the costs incurred by TIE in respect of the performance of its obligations in respect of this Agreement, as calculated in accordance with the terms of Schedule 2 (Charges).

**FOISA** has the meaning given to the term in Clause 8.5;

**Hourly Rate** means the amount which TIE is to receive for each hour that a TIE Consultant is engaged in the provision of the Services or other matters relating to this Agreement, as more specifically detailed at Section Two (Hourly Rates) of Schedule 2 (Charges);



## AGREEMENT BETWEEN:

- (1) **FORTH ESTUARY TRANSPORT AUTHORITY**, a transport authority constituted pursuant to the Forth Estuary Transport Authority Order 2002 and having its principal offices at Forth Road Bridge Administration Office, South Queensferry, West Lothian, EH30 9SF (**FETA**); and
- (2) **TIE LIMITED**, a company registered under the Companies Acts in Scotland (Company Number SC230949), and having its registered office at City Chambers, High Street, Edinburgh, Midlothian, EH1 1YJ (**TIE**),

(together the **Parties**, and each a **Party**).

## WHEREAS:

- (A) Pursuant to the Act, FETA, is a joint board constituted by order under section 69 of the Act and is accordingly deemed to be a local traffic authority in relation to any road carried by the Forth Road Bridge.
- (B) FETA wishes to source external services relating to the project management of FETA's involvement in the Project and TIE has agreed to provide, or secure the provision of, such services to FETA.
- (C) This Agreement sets out the terms on which TIE will provide, or procure the provisions of, these services to the FETA.

IT IS AGREED as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

As used in this Agreement and the recitals the following terms and expressions shall, unless the context requires otherwise, have the meanings set out in this Clause 1.1:

**the Act** means the Transport (Scotland) Act 2001;

**Agreement** means this agreement, comprised of the Clauses and the Schedule hereto;

**Agreement Date** means the last date of execution of this Agreement;

**Intellectual Property Rights or IPRs** means the following types of property and/or rights granted in any jurisdiction (where references to any Scottish legal term for such property/ rights shall, in respect of any jurisdiction other than Scotland, be deemed to include what most nearly approximates in that jurisdiction to the property/right under Scots law): (i) patents; (ii) registered trade marks; (iii) registered design rights; (iv) applications for, and rights to apply for, the property/rights listed on items (i) to (iii) above); (v) copyrights; (vi) database rights; (vii) unregistered design rights; (viii) any rights of action in relation to confidential information; and (ix) any rights of action in relation to trade names, trading styles, product packaging and/or domain names;

**Late Payment Act** means Late Payment of Commercial Debts (Interest) Act 1998;

**Liabe Party** has the meaning given to it in Clause 6.1;

**Project** means the project to promote, manage and arrange for the provision of services in respect of the delivery of the proposed road user charge for the Forth Road Bridge;

**Project Budget** means the Budget relating to FETA's expenditure on the Project created and updated in accordance with the description of the Services contained in Schedule 1;

**Project Objectives** means the objectives of FETA and TIE as set out in Schedule 1;

**Project Plan** means the plan showing the key stages of the Project and related deliverables created and updated in accordance with the description of the Services contained in Schedule 1;

**Publication Scheme** means the scheme which relates to the publication of information by either TIE or FETA (as the case may be) and approved by the Scottish Information Commissioner pursuant to the FOISA;

**Schedule** means the Schedule in 5 parts attached hereto, and references to "Schedule" followed by a number shall be deemed to mean that numbered part of the Schedule;

**Service Commencement Date** means the date on which the Services are agreed to have commenced, namely 17 December 2004, notwithstanding the date or dates of this Agreement;

**Services** means the development, procurement, management and implementation services to be provided by TIE to FETA as more particularly described in Schedule 1 (the Services);

**Service Standard** means in relation to the performance of any of the Services, carrying out those Services:

- (a) in a good, safe and professional manner free from dishonesty and corruption;
- (b) using that degree of skill, care and diligence prudence and foresight that would reasonably be expected from a reputable, professionally qualified, competent and skilled organisation with experience in carrying out activities of a similar nature, scope and complexity to those comprised in the Services; and
- (c) in accordance with all relevant provisions of this Agreement and all Applicable Laws;

**Sub-Contract** means any contract or proposed contract between TIE or any sub-contractor (of any tier) and any Third Party in relation to the provision of the Services or the Project and the terms **Sub-Contractor** and **Sub-Contracting** shall be similarly construed;

**Term** means the term of this Agreement as set out in Clause 2;

**TIE Consultant** means an individual engaged in the performance of the services relating to the Project who is employed or engaged by TIE or any Sub-Contractor;

**Third Party** means any Party other than FETA or TIE; and

**Third Party Service Provider** means a Third Party engaged to provide services to, or for the benefit of FETA, in relation to the Project other than any Third Party engaged as a Sub-Contractor.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- 1.2.1 words denoting the singular shall include the plural and vice versa;
- 1.2.2 words denoting a gender shall include all genders;



- 1.2.3 words denoting persons shall include corporations and all other legal entities;
- 1.2.4 a reference to a **Clause** shall be deemed to be a reference to a clause of this Agreement;
- 1.2.5 the recitals and Clause headings are inserted for ease of reference and shall not create legal rights or affect the interpretation or construction of this Agreement;
- 1.2.6 references to any statute or statutory provision include a reference to that statute or statutory provision as amended, modified, replaced, consolidated and/or re-enacted from time to time (whether before or after the date of this Agreement);
- 1.2.7 any references to any Scottish legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any legal concept or thing shall in respect of any jurisdiction other than Scotland be deemed to include what most nearly approximates in that jurisdiction to the Scottish legal term;
- 1.2.8 the Schedule forms part of this Agreement, however, if there is any inconsistency or conflict between the terms of the Clauses and the Schedule then the terms of the Clauses shall prevail;
- 1.2.9 other than as set out in Clause 1.2.6 and subject to any express provision to the contrary, a reference to any document shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.2.10 the *ejusdem generis* rule of construction does not apply to the terms of this Agreement and accordingly the meaning of general words is not to be restricted by any particular examples preceding or following those general words and the word **including** shall be construed as meaning "including without limitation";
- 1.2.11 any reference to books, records or other information means books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm;

- 1.2.12 except as otherwise expressly provided in this Agreement, all remedies available to TIE and FETA are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not exclude the exercise of any other remedy;
- 1.2.13 nothing in this Agreement creates joint, or joint and several liability;
- 1.2.14 a company or other entity shall be a "holding company" for the purposes of this Agreement if it falls within either the meaning attributed to that term, in Sections 736 and 736A of the Companies Act 1985 (as amended) or the meaning attributed to the term "parent undertaking" in Section 258 of such Act; and
- 1.2.15 a company or other entity shall be a "subsidiary" for the purposes of this Agreement if it falls within any of the meanings attributed to a "subsidiary" in Sections 736 and 736A of the Companies Act 1985 (as amended) or the meaning attributed to the term "subsidiary undertaking" in Section 258 of such Act.

## 2 THE TERM

This Agreement shall be deemed to commence on the Service Commencement Date, notwithstanding the date or dates hereof, and unless terminated earlier in accordance with its terms shall continue until terminated on not less than three months' written notice of termination by either Party to the other.

## 3 THE SERVICES

### 3.1 Appointment

FETA appoints TIE to provide, and TIE agrees to provide, the Services to the Service Standard from the Service Commencement Date until the termination of this Agreement upon and in accordance with the terms and conditions of this Agreement. During the Term of this Agreement FETA undertakes not to procure the provision of services the same as or substantially the same as the Services (or any part thereof) from any Third Party without the prior written consent of TIE.

### **3.2 Appointment of Third Party Service Providers**

In providing the Services, TIE shall manage on behalf of FETA in accordance with FETA's Standing Orders (as made available by FETA to tie) and Applicable Laws the procurement of external advisors to provide services in relation to the Project. Unless otherwise agreed by the FETA Contract Representative, FETA shall enter into agreements with Third Party Service Providers

### **3.3 Changes**

FETA may from time to time require TIE to implement a Change to the Services in accordance with the procedures set out in Schedule 4 (Change Control Procedures), provided that the Change to the Services, in so far as it involves additional Services, shall not involve the provision of services by TIE to FETA which are materially different to the existing Services identified in Schedule 1 (the Services) without TIE's prior written consent.

### **3.4 TIE Changes**

TIE may from time to time seek to implement a Change with the consent of FETA at FETA's absolute discretion.

### **3.5 Change Control Procedures**

Any Change shall be implemented in accordance with the Change Control Procedures.

### **3.6 Interim Period**

Until a Change has been implemented in accordance with the Change Control Procedures, TIE shall continue to operate this Agreement as if the requirement or request had not been made.

### **3.7 Variations to Schedule**

Once a Change has been implemented in accordance with the Change Control Procedures, the Schedule will be deemed to have been varied to reflect that Change.



## 4 CHARGES

### 4.1 FETA to Pay Charges

In consideration of the performance of the Services, FETA shall subject to clause 4.7 pay the Charges calculated in accordance with Schedule 2 (Charges) and TIE shall issue invoices to FETA in accordance with Schedule 3 (Invoicing).

### 4.2 Payment of Invoices

Payment of sums due under this Agreement shall subject to clause 4.7 be made within twenty eight days of FETA's receipt of a valid invoice (with the date of such receipt being calculated in accordance with Clause 18.2 (Method of Delivery)) in accordance with the provisions of Schedule 3 (Invoicing) from TIE by BACS transfer to the account nominated for such purpose from time to time in writing by TIE or, failing such nomination, by cheque.

### 4.3 VAT

All sums due under this Agreement are expressed exclusive of Value Added Tax. FETA shall pay the Value Added Tax thereon at the rate and in the manner prescribed by law, from time to time.

### 4.4 Invoicing in Euros

TIE shall submit invoices to FETA denominated in sterling. In the event that the United Kingdom joins the European Monetary Union (and provided always that the exchange rate for conversion between sterling and the euro has been fixed), FETA shall, at any time thereafter, upon giving six months notice to TIE, be entitled to require TIE at no additional charge to FETA to convert the Charges specified in this Agreement and other sums specified or payable under this Agreement from sterling into euros (in accordance with EC Regulation number 1103/97). TIE shall thereafter submit all invoices to FETA denominated in euros.

### 4.5 Interest

Interest at the rate of 2% per annum above the base rate from time to time of The Royal Bank of Scotland plc shall be due and payable on all outstanding sums due under the Agreement from the relevant due date until settlement in full. Where and to the extent that a debt properly due by one of the Parties to the other may be a "qualifying debt" under the Late Payment Act:

4.5.1 the interest provided for in the previous sentence of this Clause 4.5 is a contractual remedy and is not statutory interest, therefore, to the extent permissible by law, the provisions of the Late Payment Act relating to statutory interest shall not apply to this Agreement; and

4.5.2 any interest paid pursuant to this Clause 4.5 shall not form part of the Charges or other price of this Agreement and, as a remedy for late payment, shall not be subject to VAT.

#### 4.6 **Set Off**

If any sum of money shall be due from TIE to FETA pursuant to this Agreement then the same may be deducted from any sum then due or which at any time thereafter may become due to TIE under this Agreement.

#### 4.7 **Disputed Invoices**

Where a Party disputes that an amount is properly due under this Agreement, and that dispute has been escalated to the Chief Executive of TIE and the Chief Executives of Edinburgh and Fife Council pursuant to Clause 23.1 (Escalation), then:

(i) no interest on that payment shall be charged pursuant to Clause 4.5 (Interest) during the period when that dispute is subject to the provisions of Clause 23 (Dispute Resolution); and (ii) non payment of that disputed amount shall not be a breach of this Agreement during that period, provided always that the Party disputing that an amount is properly due shall pay any undisputed proportion of an invoiced amount or other payment in accordance with the remaining terms of this Agreement.

### 5 **CONTRACT REPRESENTATIVES**

#### 5.1 **Contract Representatives – Initial Appointment**

Each Party will appoint an individual who has authority, in accordance with the remaining terms of this Clause 5, to represent such Party in connection with this Agreement as Contract Representative. As at the date of this Agreement the TIE Contract Representative is Kenneth McLeod, and the FETA Contract Representative is Alastair Andrew.

#### 5.2 **Change of Contract Representative**

Either Party may change its Contract Representative by a minimum of thirty days written notice served on the other Party.

### 5.3 Proposed Replacement TIE Contract Representative

Before TIE appoints any individual other than the individual named as the TIE Contract Representative in Clause 5.1 (Contract Representatives – Initial Appointment) as its Contract Representative, it will:

- 5.3.1 introduce the individual to the FETA Contract Representative; and
- 5.3.2 consistent with TIE's personnel practices, provide the FETA Contract Representative with any information reasonably requested by FETA regarding the individual.

Without prejudice to the generality of the foregoing TIE may appoint any person as TIE Contract Representative on an interim basis pending appointment of a replacement in accordance with the procedures set out above.

### 5.4 The TIE Contract Representative shall:

- 5.4.1 act as the principal point of contact for FETA, and the FETA Contract Representative, in relation to all matters related to this Agreement;
- 5.4.2 have full authority to act on behalf of TIE for all purposes of this Agreement;
- 5.4.3 manage and co-ordinate the provision of the Services; and
- 5.4.4 liaise with the FETA Contract Representative in relation to matters arising in connection with this Agreement from time to time.

Except as previously notified in writing by TIE to FETA before such act or omission, FETA and the FETA Contract Representative shall be entitled to treat any act or omission of the TIE Contract Representative as being expressly authorised by TIE, and FETA and the FETA Contract Representative shall not be required to determine whether any express authority has in fact been given.

### 5.5 The FETA Contract Representative shall:

- 5.5.1 act as the principal point of contact for TIE, and the TIE Contract Representative, in relation to all matters related to this Agreement;
- 5.5.2 have full authority to act on behalf of FETA for all purposes of this Agreement;



5.5.3 be responsible for any day to day direction required from FETA in relation to the Services; and

5.5.4 liaise with the TIE Contract Representative in relation to matters arising in connection with this Agreement from time to time.

Except as previously notified in writing by FETA to TIE before such act or omission, TIE and the TIE Contract Representative shall be entitled to treat any act or omission of the FETA Contract Representative as being expressly authorised by FETA, and TIE and the TIE Contract Representative shall not be required to determine whether any express authority has in fact been given.

## 5.6 **Contract Representatives – Regular Meetings**

Each Party shall ensure that its Contract Representative shall meet with the other Party's Contract Representative in Edinburgh on dates and times to be agreed (such agreement not to be unreasonably withheld or delayed) to monitor and discuss the provision of the Services under this Agreement, work in progress, any problems or issues requiring decisions, anticipated work and any other relevant matter. Such meetings (**Review Meetings**) shall be held regularly and, unless agreed otherwise by the Contract Representatives, on a monthly basis. At each Review Meeting the Contract Representatives shall consider and, if thought fit, approve any changes to the Project Plan and/or the Project Budget. A written record of each Review Meeting shall be made by the TIE Contract Representative, and following approval of the same by the FETA Contract Representative (which approval shall not be unreasonably withheld or delayed), shall be accepted as a true representation of discussions and resolutions which have taken place, and a copy of such record shall be retained by both Parties. It is understood and agreed that in the event of any dispute such records may be presented as evidence in any formal or informal action.

## 5.7 **Contract Communication Channels**

Any request or approval expressed in this Agreement to be made or given by a Party may be made by that Party's Contract Representative. No communication or notice under or in relation to this Agreement shall be deemed to be valid or to bind a Party unless made in writing and executed by either:

5.7.1 the then current Contract Representative of that Party;

5.7.2 a nominee of such Contract Representative (such nominee being appointed in writing by way of written notice issued by the Contract Representative to the Contract Representative of the other Party);

5.7.3 in the case of TIE, by the then current Projects Director of TIE; or

5.7.4 in the case of FETA, by the then current General Manager and Depute General Manager of FETA.

## 6 **LIABILITY**

### 6.1 **Exceptions to Limitations**

Nothing in this Agreement excludes or limits the liability of one Party (the **Liable Party**) to the other Party for death or personal injury resulting from the negligence or willful misconduct (including, without limitation, intentional or reckless breach of an obligation hereunder) of the Liable Party, its employees, agents or Sub-Contractors.

### 6.2 **TIE Liability**

Save as provided for in Clause 6.1 (Exceptions to Limitations) and without prejudice to FETA's rights in respect of Clause 9 (Termination), the liability of TIE, TIE's officers, any TIE Consultant or any agent or Sub-Contractor of TIE in respect of this Agreement, including in respect of any Default, shall be limited to amount recoverable by FETA pursuant to the terms of the insurance maintained by TIE in accordance with Clause 6.5 (or, if TIE fails to maintain such insurance, the amount that would otherwise have been recoverable had such insurance been maintained). The limitation in this Clause 6.2 shall not apply in the event of fraud or misrepresentation on the part of TIE, TIE's employees or TIE's directors or officers.

### 6.3 **Consequential Loss Exclusion**

Subject always to Clause 6.1 (Exceptions to Limitations), in no event shall either Party be liable to the other for:

6.3.1 indirect or consequential loss or damage; and/or

6.3.2 loss of profit, loss of goodwill, loss of contracts or loss of anticipated savings.

#### 6.4 **Negotiation of Terms**

The Parties acknowledge that the terms of this Clause 6 (Liability) represent the negotiated and agreed position between FETA and TIE in respect of TIE's liability, or potential liability, in respect of the provision of, or failure to provide, the Services or in respect of the other terms of this Agreement. Both FETA and TIE acknowledge and agree that the terms of this Clause 6 constitute a fair and reasonable allocation of the Parties' respective liabilities pursuant to this Agreement.

#### 6.5 **Required Insurances**

TIE shall maintain professional indemnity insurance cover in respect of the Services with a limit of indemnity of not less than £5,000,000 in the aggregate. TIE agrees to maintain such insurance at all times during the Term of this Agreement and for a further five years following the termination of this Agreement provided such insurance is available on commercially reasonable terms in the marketplace to. If for any period such insurance is not available on commercially reasonable terms, TIE shall immediately inform FETA and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for TIE to obtain. If requested by FETA, TIE shall provide FETA with details of such insurance cover, including evidence that such cover has been maintained and, save as specified above where such insurance is not available on commercially reasonable terms, TIE shall seek the consent of FETA (such consent not to be unreasonably withheld or delayed) before making any material change to the terms of such insurance which would materially affect the cover applicable to the Services.

### 7 **INTELLECTUAL PROPERTY RIGHTS**

#### 7.1 **Licence**

TIE hereby grants to FETA a world-wide royalty-free licence to use for the purposes of carrying out the Project any IPR: (i) created by TIE in the performance of the Services; or (ii) comprised in or protecting any report or document delivered to FETA by or on behalf of TIE under or in relation to this Agreement.

#### 7.2 **No Transfer**

Nothing in this Agreement transfers, or creates an obligation to transfer any IPRs. Other than as expressly set out in Clause 7.1 (Licence), nothing in this Agreement creates a licence of any IPRs.



## 8 CONFIDENTIALITY

### 8.1 TIE Confidentiality

In this Clause 8.1, **Confidential Information** means any information of a confidential nature which FETA or a FETA Permitted Disclosee (as defined in Clause 8.2 (FETA Confidentiality)) discloses to TIE or a TIE Permitted Disclosee (as defined below) in relation to this Agreement whether before, during or after the period of this Agreement.

For the purposes of this Agreement, a **TIE Permitted Disclosee** means: (i) any employee of TIE; (ii) any TIE Consultant; (iii) each Sub-Contractor; and (iv) TIE's professional advisors (including external auditors).

Subject to Clause 8.3 (Confidentiality Exceptions) TIE shall, and shall ensure that each TIE Permitted Disclosee shall:

- 8.1.1 not disclose the Confidential Information to any Third Party other than a TIE Permitted Disclosee or a FETA Permitted Disclosee (as defined in Clause 8.2 (FETA Confidentiality));
- 8.1.2 use the Confidential Information solely for the purposes of performing its obligations or exercising its rights under this Agreement; and
- 8.1.3 use its best endeavours to avoid accidental disclosure and/or unauthorised access to the Confidential Information.

### 8.2 FETA Confidentiality

In this Clause 8.2, **Confidential Information** means information of a confidential nature which TIE or a TIE Permitted Disclosee (as defined in Clause 8.1 (TIE Confidentiality)) discloses to FETA or a FETA Permitted Disclosee (as defined below) whether before, during or after the period of this Agreement.

For the purposes of this Agreement, a **FETA Permitted Disclosee** means (i) each employee of FETA engaged by FETA in the Project; (ii) each sub-contractor appointed by a FETA to provide works, equipment or services relating to the Project; and (iii) FETA's professional advisors (including external auditors).

Subject to Clauses 8.3 (Confidentiality Exceptions) FETA shall, and shall ensure that each FETA Permitted Disclosee shall:

- 8.2.1 not disclose the Confidential Information to any Third Party other than a FETA Permitted Disclosee or a TIE Permitted Disclosee;
- 8.2.2 use the Confidential Information solely for the purpose of performing its obligations and/or exercising its rights under this Agreement; and
- 8.2.3 use its best endeavours to avoid accidental disclosure and/or unauthorised access to the Confidential Information.

### 8.3 Confidentiality Exceptions

The provisions of Clauses 8.1 and 8.2 shall not apply to any information which:

- 8.3.1 is or becomes public knowledge other than by breach of this Clause 8; or
- 8.3.2 is in the possession of the receiving Party without restriction in relation to disclosure before the date of its disclosure to the receiving Party by the disclosing Party; or
- 8.3.3 is received from a Third Party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- 8.3.4 is independently developed.

Without prejudice to the Parties' respective rights and obligations pursuant to Clauses 8.5 (FETA Freedom of Information Compliance) and 8.6 (TIE Freedom of Information Compliance), any disclosure of information in compliance with any legal obligation (other than contractual obligations) or the requirements of a Competent Authority shall not amount to a breach of Clauses 8.1 (TIE Confidentiality) and/or 8.2 (FETA Confidentiality). Where possible a Party will give the other Party reasonable notice of any disclosure that the first mentioned Party is required to make in compliance with a legal obligation or to a Competent Authority incumbent upon it. Where advance notice of such a disclosure is not reasonably practicable then the disclosing Party shall inform the other Party as soon as reasonably practicable after the relevant disclosure.

#### 8.4 Generic Techniques

Nothing in this Clause 8 shall prevent TIE from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that such use does not amount to a breach of Clause 8 (Confidentiality) or an infringement of any IPRs.

#### 8.5 FETA Freedom of Information Compliance

- 8.5.1 If FETA receives a valid request for the disclosure of this Agreement or any information relating to this Agreement or TIE pursuant to the Freedom of Information (Scotland) Act 2002 (**FOISA**) and/or the Environmental Information (Scotland) Regulations 2004 (**EISRs**), FETA shall forthwith advise TIE in writing and prior to making any such disclosure (provided FOISA timescales permit), shall liaise with TIE in regard to the extent and manner of the disclosure.
- 8.5.2 FETA shall promptly notify TIE in writing in respect of (i) the proposed specification of new classes for inclusion in FETA's FOISA Publication Scheme or (ii) the removal or revision of existing entries of classes of information in FETA's FOISA Publication Scheme concerning any information relating to this Agreement and/or FETA shall co-operate with TIE in regard to the extent and manner of such changes to FETA's FOISA Publication Scheme.
- 8.5.3 FETA's freedom of information compliance officer shall liaise with TIE's Contract Representative in respect of any consultation required pursuant to Clauses 8.5.1 and 8.5.2. The details of FETA's freedom of information officer at the date of this Agreement are set out below:

Gavin Macgregor

Forth Estuary Transport Authority  
Forth Road Bridge Administration Office,  
South Queensferry  
West Lothian  
EH30 9SF

Telephone: 013 [REDACTED]

Facsimile: 0131 319 1903



E-mail: gavin.macgregor@feta.gov.uk

## 8.6 TIE Freedom of Information Compliance

- 8.6.1 If TIE receives a valid request for the disclosure of this Agreement or any information relating to this Agreement or FETA pursuant to the FOISA and/or the EISRs, TIE shall forthwith advise FETA in writing and prior to making any such disclosure (provided FOISA timescales permit), shall liaise with FETA in regard to the extent and manner of the disclosure.
- 8.6.2 TIE shall promptly notify FETA in writing in respect of (i) the proposed specification of new classes for inclusion in TIE's FOISA Publication Scheme or (ii) the removal or revision of existing entries of classes of information in TIE's FOISA Publication Scheme concerning any information relating to this Agreement and/or TIE shall co-operate with FETA in regard to the extent and manner of such changes to TIE's FOISA Publication Scheme.
- 8.6.3 TIE's freedom of information compliance officer shall liaise with FETA's Contract Representative in respect of any consultation required pursuant to Clauses 8.6.1 and 8.6.2. The details of TIE's freedom of information officer at the date of this Agreement are set out below:

Heather Manson

tie Limited  
Verity House  
19 Haymarket Yards  
Edinburgh  
EH12 5BH

Telephone: 0131 [REDACTED]

Facsimile: 0131 6228300

e-mail: Heather.Manson@tie.ltd.uk

## 8.7 Commercially Sensitive Information

The Parties acknowledge that disclosure of the information contained or referred to in Schedule 5 (Commercially Sensitive Information) would substantially prejudice the commercial interests of TIE.

## 9 TERMINATION

### 9.1 FETA Right to Terminate

FETA may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:

- 9.1.1 an encumbrancer takes possession or a receiver or a judicial factor is appointed over any of the property or assets of TIE;
- 9.1.2 TIE becomes insolvent or apparently insolvent or makes any voluntary arrangement with its creditors generally;
- 9.1.3 an administrator is appointed, or a petition for such an order is presented under any current legislation or substitution, re-enactment or modification thereof or the procedure for the out-of-court appointment pursuant to the Enterprise Act 2002 is commenced in respect of TIE;
- 9.1.4 TIE goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom is solvent and effectively agrees to be bound by or assume the obligations imposed on TIE under this Agreement); and/or
- 9.1.5 TIE ceases to trade.

### 9.2 Termination on Breach

Either Party may at any time by notice in writing terminate this Agreement forthwith, if the other Party is in material breach of any obligation under this Agreement and:

- 9.2.1 the breach is capable of remedy but the Party in breach has not remedied it within twenty one (21) Business Days of written notice from the other Party specifying the breach and requiring its remedy; or
- 9.2.2 the breach is not capable of remedy.

### 9.3 Termination on Persistent Breach

Either Party may at any time by notice in writing terminate this Agreement forthwith, if the other Party is in persistent breach of this Agreement and, unless taken together, such persistent breaches have a material impact on the performance of that Party's obligations pursuant to this Agreement.

#### 9.4 **Termination on Force Majeure**

A Party may terminate this Agreement in accordance with the terms of Clause 15.4 (Force Majeure Termination).

#### 9.5 **Termination for Corrupt Gifts**

A Party may terminate this Agreement in accordance with the terms of Clause 13 (Corrupt Gifts) provided that Party is the Affected Party (as such term is defined in Clause 13.1 (No Corrupt Gifts)).

#### 9.6 **Abandonment of Project**

FETA may terminate this Agreement at any time by not less than three months' prior written notice where FETA and/or the Scottish Executive determines that FETA shall not proceed with the Project (or any similar road user charging project), such notice shall be communicated to TIE as soon as reasonably practicable following such determination.

### 10 **CONSEQUENCES OF TERMINATION**

#### 10.1 **Accrued Rights**

The termination or expiry of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued to a Party prior to such termination or expiry.

#### 10.2 **Survival of Terms**

Following the termination or expiry of this Agreement the provisions of Clauses 1 (Definitions and Interpretation), 4.2 (Payment of Invoices) and 4.3 (VAT), 4.5 (Interest), 4.6 (Set Off), 4.7 (Disputed Invoices), 6 (Liability), 8 (Confidentiality), 10 (Consequences of Termination), 12 (Publicity), 16 (Transfer and Sub-Contracting), 18 (Communications), 19 (Severability), 20 (Waiver), 21 (Access to Premises), 22 (Rights of Third Parties), 23 (Dispute Resolution), 25 (Law and Jurisdiction), 26 (Successors) and 27 (Entire Agreement) shall survive and shall continue to bind the Parties.



### 10.3 Return of Information

Each Party shall within ten Business Days of a written request from the other Party (if such request is made within three months of the termination or expiry of this Agreement):

10.3.1 deliver to the other all physical manifestations of the other Party's Confidential Information (as defined in Clause 8 (Confidentiality)) then in that Party's possession or control; and

10.3.2 delete all computer files containing/comprising the other Party's Confidential Information (as defined in Clause 8 (Confidentiality)) from any computer system in that Party's possession or control,

always provided that: (i) the Parties may retain a single copy of the other's Confidential Information to the extent necessary for audit and record keeping purposes; and (ii) nothing in this Clause 10.3 shall oblige FETA to deliver any item delivered by TIE in performing the Services other than in the event of termination by TIE under the provisions of Clause 9.2 (Termination on Breach) or Clause 9.3 (Termination on Persistent Breach).

### 10.4 Return of Property

Following the termination or expiry of this Agreement, each Party shall, on receipt of a written request from the other Party return any assets or property belonging to the other in reasonable condition, taking into account the condition of the asset or property when first provided and accepting fair wear and tear.

### 10.5 Committed Expenditure

Without prejudice to Clause 10.1, TIE shall be entitled to recover any expenditure incurred, or to be incurred, following the termination of this Agreement as a result of TIE entering with the consent of FETA into any binding obligations in respect of the Services or otherwise in respect of this Agreement with any Third Parties prior to the date of such termination, provided that TIE shall use its reasonable endeavours to mitigate the amount of such expenditure.

## 11 NO PARTNERSHIP

This agreement is not intended to and does not operate to create a partnership between the Parties. Subject to Clause 3.2 (Appointment of Third Party Service

Providers), this agreement does not authorise any Party to act as agent for the other Party, and no Party shall have authority to act in the name or on behalf of or otherwise to bind the other Party in any way (including by making any representation or warranty, assuming any obligation or liability and exercising any right or power).

## 12 PUBLICITY

12.1 Subject to Clause 12.2 (but subject always to each Party's respective responsibilities to enter into public consultation in respect of the Project), neither Party shall make or procure or permit the making of any announcement without using reasonable endeavours to consult with the other Party and having regard to the views of the other Party. Notwithstanding the generality of the foregoing neither Party shall make, or procure or permit the making of, any announcement which will be prejudicial to the commercial or professional reputation of the other Party.

12.2 Notwithstanding the provisions of Clause 12.1, either Party may make an announcement concerning this Agreement if required by Applicable Laws, any Competent Authority or the publicity protocol adopted by FETA (and made available to TIE) except that, to the extent practicable, such announcement shall only be made after prior consultation with the other Party.

## 13 CORRUPT GIFTS

### 13.1 No Corrupt Gifts

Neither Party shall:

13.1.1 offer or give or agree to give any person employed by the other Party (the **Affected Party**) or acting on behalf of the Affected Party any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with the Affected Party or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; nor

13.1.2 enter into this Agreement if in connection with it commission has been paid or agreed to be paid to any person employed by the Affected Party or acting on behalf of the Affected Party, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any



agreement for the payment thereof have been disclosed in writing to the Affected Party.

### 13.2 **Termination on Corrupt Gifts**

In the event of any breach of Clause 13.1 (No Corrupt Gifts) by either Party (the **Defaulting Party**) or by anyone employed by the Defaulting Party or acting on the Defaulting Party's behalf (whether with or without the knowledge of the Defaulting Party) or the commission of any offence by the Defaulting Party or by anyone employed by the Defaulting Party or acting on behalf of the Defaulting Party under the Prevention of Corruption Acts 1889 to 1916 in relation to this Agreement, the Affected Party may summarily terminate this Agreement by notice in writing to the Defaulting Party referencing this Clause 13.2 (termination being effective from the date of service of such notice). Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Affected Party.

## 14 **DISCRIMINATION**

Each Party shall at all times comply with, and shall ensure compliance by all its employees and Sub-Contractors with, all United Kingdom laws relating to discrimination including: the Sex Discrimination Act 1975; the Race Relations Act 1976; the Disability Discrimination Act 1995; and/or any statutory modifications or re-enactments thereof relating to discrimination in employment.

## 15 **FORCE MAJEURE**

### 15.1 **Definition of Force Majeure**

For the purposes of this Agreement the expression **Force Majeure** shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including fire, flood or any disaster or an industrial dispute affecting a Third Party for which a substitute Third Party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the willful act, neglect or failure to take reasonable precautions of the affected Party, its agents or employees. For the avoidance of doubt, both Parties agree that any acts, events, omissions, happenings or non-happenings resulting from the adoption of the euro by the United Kingdom government shall not be considered to constitute Force Majeure under this Agreement. It is expressly agreed that any



failure by TIE to perform or any delay by TIE in performing its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any Sub-Contractor shall be regarded as a failure or delay due to Force Majeure only in the event that such Sub-Contractor shall itself be prevented from or delayed in complying with its obligations under the relevant Sub-Contract as a result of circumstances of Force Majeure.

#### **15.2 Force Majeure Relief**

Provided it complies with its obligations under this Clause 15 a Party shall not in any circumstances be liable to the other Party for any loss of any kind whatsoever whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure.

#### **15.3 Force Majeure Obligations**

If a Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to failure or delay in the performance of its obligations hereunder it shall:

15.3.1 forthwith notify the other Party by the most expeditious method then available informing the other of the period which it is estimated that such failure or delay shall continue; and

15.3.2 shall use all reasonable endeavours to continue to perform, or resume performance of, its obligations hereunder for the duration of such Force Majeure event.

#### **15.4 Force Majeure Termination**

If Force Majeure has prevented a Party from performing all or substantially all of its obligations under this Agreement for greater than ninety days then the other Party may terminate this Agreement by giving a minimum of thirty days' written notice.

### **16 TRANSFER AND SUB-CONTRACTING**

#### **16.1 General Prohibition on Assignment**

Subject to the terms of Clause 16.2, this Agreement is personal to FETA and TIE. Neither Party shall assign, novate, Sub-Contract or otherwise dispose of this

Agreement or any part thereof without the prior written consent of the other Party, provided that TIE may assign, novate or transfer this Agreement to any other entity established directly or indirectly by the City of Edinburgh Council, or its successor, to perform some or all of the functions currently performed by TIE.

## 16.2 **Sub-Contracting**

TIE shall not be entitled to Sub-Contract any element of the Services to a Third Party without the prior consent of FETA. Notwithstanding any Sub-Contracting permitted pursuant to this Clause 16.2, TIE shall remain responsible for complying with its obligations under this Agreement. Notwithstanding the foregoing, TIE may at its sole discretion offer the services of its own service providers to provide services in respect of the Project and, if FETA consents to the provision of services from those service providers, TIE shall recover the relevant fees and costs from FETA as Pass Through Costs (as such term is used in Schedule Part 2) in respect of the services provided.

## 17 **AMENDMENTS TO THIS AGREEMENT**

Except as expressly stated herein, this Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of TIE on behalf of TIE and by a duly authorised representative of FETA on behalf of FETA. The Parties shall comply with the provisions of Schedule 4 (Change Control Procedures) and any variation to this Agreement made pursuant to the provisions of Schedule 4 (Change Control Procedures) shall constitute a valid amendment to this Agreement.

## 18 **COMMUNICATIONS**

### 18.1 **Written Communication**

Except as otherwise expressly provided in this Agreement no communication from one Party to the other shall have any validity under this Agreement unless made in writing in English by or on behalf of TIE or as the case may be by or on behalf of FETA.

### 18.2 **Method of Delivery**

Any notice which either Party is required or authorised by this Agreement to give or make to the other shall be given or made either by letter, delivered by hand or by post, or by facsimile or e-mail transmission (in each case confirmed by post),

addressed to the other Party in the manner referred to in Clause 18.3 below and if that letter is not returned as being undelivered, that notice or communication shall be deemed for the purposes of this Agreement to have been given or made upon delivery to the addressee, for a letter delivered by hand, after two Business Days for a letter delivered by post or four hours for a facsimile or e-mail transmission. In proving service by e-mail transmission it shall be sufficient to prove that (i) the e-mail was transmitted to the e-mail address of the relevant Party set out in Clause 18.3 (or as otherwise notified by that Party) and (ii) the sender received a delivery receipt for the e-mail. For the purposes of calculating the date of service of a notice under this Clause 18.2 no account shall be taken of periods of time other than between 0900-1700 on any Business Day.

Without prejudice to the foregoing, the Parties acknowledge that day-to-day communications in respect of the Services other than notices expressly required or authorised by this Agreement may be made by e-mail without the requirement for postal confirmation.

### 18.3 Address for Notices

For the purposes of Clause 18.2 (Method of Delivery) the address of each Party shall be:

#### 18.3.1 For TIE:

tie Limited  
Verity House  
19 Haymarket Yards  
Edinburgh  
EH12 5BH

Facsimile: 0131 622 8301

For the attention of: Alex Macaulay

E-mail: Alex.Macauley@tie.ltd.uk

#### 18.3.2 For FETA:

The Forth Estuary Transport Authority  
Forth Road Bridge Admin Offices  
South Queensferry  
West Lothian  
EH30 9SF



Facsimile: 0131 319 1699

For the attention of: Alastair Andrew

E-mail:

Either Party may change its address for service by way of a written notice issued in accordance with this Clause 18.

19 **SEVERABILITY**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

20 **WAIVER**

No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 18 (Communications). The failure of a Party to insist upon strict performance of any provision of this Agreement, or the failure of a Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement. A waiver of any Default shall not constitute a waiver of any subsequent Default.

21 **ACCESS TO PREMISES**

Any land or premises made available to TIE by FETA in connection with this Agreement shall be used by TIE solely for the purpose of performing this Agreement. TIE shall have the use of such land or premises as licensee and shall vacate the same upon the termination or expiry of this Agreement.

22 **RIGHTS OF THIRD PARTIES**

This Agreement shall not create any rights that shall be enforceable by anyone other than the Parties.

## 23 DISPUTE RESOLUTION

### 23.1 Escalation

All disputes between the Parties arising out of or relating to this Agreement may be referred, by either Party, to the Chief Executive of TIE and the Chief Executives of Edinburgh and Fife Councils for resolution.

### 23.2 Third Party Escalation

If the dispute cannot be resolved by the parties' representatives nominated under Clause 23.1 (Escalation) within a maximum of ten Business Days after it has been referred under Clause 23.1 then:

23.2.1 if the dispute is a question of fact (as opposed to a question of law) of a technical nature, or is expressed by this Agreement to be subject to expert determination then it shall be referred for final determination to an expert (**the Expert**) who shall be deemed to act as expert and not as arbiter; otherwise

23.2.2 it shall be determined pursuant to Clause 25 (Law and Jurisdiction).

### 23.3 Choice of Expert

The Expert shall be selected by mutual agreement of the Parties or, failing such agreement, within ten Business Days after a request by one Party to the other, shall be chosen at the request of either Party by the Chairman for the time being of the Chartered Institute of Arbitrators - Scottish Branch who shall choose a suitably qualified, neutral and experienced expert for the dispute in question.

### 23.4 Initial Reports to Expert

Fifteen Business Days after the Expert has accepted the appointment each Party shall submit a written report on the dispute to the Expert and to the other Party. No later than five Business Days after its receipt of the other Party's written report a Party may submit any written replies they wish to make to the Expert and to the other Party.

### 23.5 Assistance to Expert

Each Party will afford the Expert all necessary assistance which the Expert requires to consider the dispute including but not limited to full access to the Project and any

documentation or correspondence relating to the Project. The Expert shall have the same powers to require any Party to produce any documents or information to him and the other Party as an arbiter and each Party shall in any event supply to him such information which it has and is material to the matter to be resolved.

### **23.6 Expert Decision**

The Expert shall be instructed to deliver his determination to the Parties within twenty Business Days after the submission of the written reports pursuant to Clause 23.4 (Initial Reports to Expert). Save in the case of manifest error, decisions of the Expert shall be final and binding and not subject to appeal.

### **23.7 Expert's Fees**

The fees of the Expert shall be borne by the Parties in the proportion as shall be determined by the Expert having regard (amongst other things) to the conduct of the Parties.

## **24 CONFLICTS OF INTEREST**

### **24.1 Notification**

Each Party undertakes to notify the other if it has reason to believe that TIE, or any Sub-contractor of TIE has a conflict of interest which may inhibit or otherwise prevent TIE or such Sub-contractor providing the Services (or, in the case of the Sub-Contractor, from providing other services in respect of the Project).

### **24.2 Conflict Issues - Resolution**

Where a Party has notified the other Party in accordance with Clause 24.1, the matter shall be first referred to the Parties' Contract Representatives for resolution and the Parties shall act reasonably in establishing the exact nature of any conflict of interest and any appropriate measures to minimise the effect of conflict of interest on the delivery of the Services.

### **24.3 Escalation**

Where the matter giving rise to the conflict of interest cannot be resolved to the reasonable satisfaction of the Parties' Contract Representatives within ten Business Days after it has been referred under Clause 24.2, the matter shall be referred by



either Party, to the Chief Executive of TIE and the Chief Executives of Edinburgh and Fife Councils for resolution.

#### 24.4 **Relief from Service Performance**

Where the Parties are unable to agree a method of managing or minimising the effect of a conflict of interest affecting the provision of the Services under this Agreement (and from such time as the matter is notified in accordance with Clause 24.1) TIE shall be excused performance of the Services or part of the Services so affected.

#### 25 **LAW AND JURISDICTION**

This Agreement shall be considered as a contract made in Scotland and according to Scots Law and, subject to Clause 23, shall be subject to the exclusive jurisdiction of the Scottish Courts to which both Parties hereby submit.

#### 26 **SUCCESSORS**

This Agreement is binding upon TIE and TIE's successors and permitted assignees and FETA and FETA's successors and permitted assignees.

#### 27 **ENTIRE AGREEMENT**

##### 27.1 **Pre-Contractual Statement**

For the purposes of this Clause 27, **Pre-Contractual Statement** means a draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of this Agreement made or given by any person at any time prior to the date of this Agreement.

##### 27.2 **Whole and Only Agreement**

This Agreement and any other documents entered into pursuant to this Agreement together constitute the whole and only agreement between the parties relating to the subject matter of this Agreement.

**27.3 Extinction of Pre-Contractual Statements**

Except to the extent repeated in this Agreement, this Agreement supersedes and extinguishes any Pre-Contractual Statement.

**27.4 No Reliance on Pre-Contractual Statements**

Without prejudice to the Parties' respective obligations under this Agreement with effect from the Service Commencement Date, each Party acknowledges that in entering into this Agreement it is not relying upon any Pre-Contractual Statement which is not set out in this Agreement.

27.5 Exclusion of other rights of action

No Party shall have any right of action (except in the case of fraud) against any other Party to this Agreement arising out of or in connection with any Pre-Contractual Statement except to the extent that such Pre-Contractual Statement is repeated in this Agreement.

IN WITNESS WHEREOF this Agreement comprising this page and the thirty preceding pages together with the Schedule and Appendix A is executed by the Parties as follows:

SUBSCRIBED for and on behalf of  
FORTH ESTUARY TRANSPORT AUTHORITY  
at  
on the            day of            2005  
in the presence of:

..... Witness	..... Authorised Signatory
..... Full Name	..... Full Name
..... Address	

\*\*\*\*\*  
\*\*\*\*\*

SUBSCRIBED for and on behalf of  
TIE LIMITED  
at  
on the            day of            2005  
in the presence of:

..... Witness	..... Authorised Signatory
..... Full Name	..... Full Name
..... Address	

\*\*\*\*\*  
\*\*\*\*\*



**This is the Schedule in five parts referred to in the foregoing Project Management Agreement between Forth Estuary Transport Authority and TIE Limited**

## **SCHEDULE - PART 1**

### **THE SERVICES**

#### **General Services Description**

TIE shall provide development, management and implementation services relating to FETA's project to introduce road user charging to replace its existing tolling regime.

FETA acknowledges that the delivery of a charging order is dependent upon input from FETA and Third Parties, including the Scottish Executive, and that TIE shall not be in breach of this Agreement to the extent that any failure to deliver the Services or a failure to deliver the Services within an agreed timescale arises from the acts or omissions of FETA or a Third Party provided that TIE has taken reasonable steps wherever practicable (i) to ensure that FETA or the Third Party (as the case may be) is aware of the required timescale and, (ii) where pursuant to the Services TIE is managing the input of a Third Party into the Project, to instruct and manage the input of the Third Party in a manner which would could reasonably be expected to enable the Third Party to provide that input to the required standard and in the required timescale.

#### **Project objectives**

The objectives of FETA and TIE during the Term of this Agreement shall be to deliver a Road User Charging Scheme in accordance with the timescales provided by TIE and agreed by FETA within the Project Budget .

Without limitation to the foregoing general description of the Services:

1. TIE shall input on behalf of FETA as necessary into each stage of the consultation and approval processes for both the in-principle and detailed scheme submissions and also required statutory processes including, if appropriate, a public inquiry. The outline process contained in the guidance reproduced in Appendix A will be followed unless FETA issues instructions to the contrary and TIE will liaise with the Scottish Executive with the aim of ensuring that procedures and material to be presented to Scottish Ministers by FETA in respect of the Project are sufficiently developed.

- 2 TIE will ensure the Services are provided by suitably experienced and resourced consultants and will use reasonable endeavours to deliver the proposed road user charging scheme in accordance with the Project Objectives.
- 3 Where requested by FETA, TIE shall manage on behalf of FETA the provision of works or services performed by Third Party Service Providers in relation to the Project. TIE will assist FETA staff, including the Treasurer, by preparing briefs, assisting with procurement and contract documents as appropriate for the external services and advice from Third Parties. Unless otherwise agreed with FETA external consultants will be engaged by FETA directly and where requested by FETA, TIE will project manage and approve payments in accordance with the contracts entered into with Third Party Service Providers. Such invoices shall be payable directly by FETA to the Third Party and shall not be included in invoices issued by TIE as Pass Through Costs (as such term is defined in Schedule 2).
4. Where it is reasonably practicable, TIE may also offer to use its own internal resources and consultants where specialised services are required and where insufficient time is available to procure the services of Third Party Service Providers.
5. TIE shall assist FETA in the creation of:
  - 5.1 a Project Plan outlining the key stages of the Project and the deliverables required at each stage; and
  - 5.2 a Project Budget detailing the project costs to be incurred by FETA pursuant to the Project,

and TIE shall monitor and develop both the Project Plan and the Project Budget on an on-going basis. TIE shall provide any updates to the Project Plan and the Project Budget with a brief update summary of the status of the Project on a monthly basis, to be considered by the Parties' Contract Representatives at the meetings held in accordance with Clause 5.6.

**SCHEDULE - PART 2****CHARGES****Section One – The Charges**

The Charges in any Calendar Month shall be calculated by reference to the Emergent Costs (as calculated in accordance with paragraph 1 below).

The Charges shall be invoiced by TIE in accordance with Schedule 3 (Invoicing).

1. Emergent Costs

The Emergent Costs equal the sum of:

- the **Time Costs**; and
- the **Pass Through Costs**,

each as calculated in accordance with the following sub-paragraphs.

1.1 Time Costs

1.1.1 As at the Service Commencement Date, the Time Cost is zero. In respect of each hour spent by a TIE Consultant, the Time Costs shall be increased by the relevant Hourly Rate for the individual.

1.1.2 The Hourly Rates to be used in calculating the Time Costs are set out in Section Two (Hourly Rates) of this Schedule 2.

1.1.3 In addition to the amount determined pursuant to paragraph 1.1.1 above, TIE shall be entitled to include as Time Costs any reasonable travel, subsistence or other expenses properly incurred by TIE Consultants.

1.2 Pass Through Costs

As at the Service Commencement Date the Pass Through Cost is zero. Subject to paragraph 3 of Schedule 1 where TIE incurs invoiced costs in respect of:



1.2.1 any Sub-Contract entered into with the prior approval of FETA in connection with this Agreement; and/or

1.2.2 any item, material or service which TIE obtains from a Third Party with the prior consent of FETA in respect of the implementation or performance of this Agreement or provision of the Services,

the Pass Through Costs shall be increased by the amount of such costs (without any additional premium and exclusive of any VAT, which VAT will be charged in addition to the Pass Through Costs where applicable in TIE's monthly invoice issued in accordance with Schedule 3).

## 2. Amendments to Hourly Rates

2.1 The Parties acknowledge that, in setting the Hourly Rates, TIE is seeking to recover an amount equivalent to its actual staff costs and overheads incurred in providing the Services or otherwise incurred in the performance of this Agreement.

2.2 In the first week of each December during the Term, TIE shall notify FETA in writing of any proposed changes to the Hourly Rates required to ensure that TIE recovers the full amount of its actual staff costs and overheads to take effect from the beginning of the next Calendar Month in the event that FETA approve such proposed changes.

2.3 TIE shall, if requested, provide FETA with such information and access to records as FETA, or its professional advisers, may reasonably require to assess whether an amount is properly due under this Agreement, any changes to Hourly Rates referred to in paragraph 2.2 or to enable the conduct of any audit in respect of the Project.

**Section Two - Hourly Rates**

<b>Name</b>	<b>Hourly Rate</b>	<b>Position</b>
Alex Macaulay	£ [REDACTED]	Project Director
Ken McLeod	£ [REDACTED]	Project Co-ordinator
David Burns	£ [REDACTED]	Procurement
Pat Diamond	£ [REDACTED]	Corporate Finance Manager
Suzanne Waugh	£ [REDACTED]	External Relations Manager

The TIE Contract Representative may from time to time provide the FETA Contract Representative with Hourly Rates to apply to other individuals providing the Services under this Agreement which additional Hourly Rates shall require to be approved by the FETA Contract Representative prior to any liabilities being incurred by FETA. Hourly Rates provided by TIE after the date of this Agreement shall reflect the levels of skill and/or experience of the relevant individual and be referable to the Hourly Rates of similarly skilled or experienced individuals, in so far as they are listed, in the above table.

**SCHEDULE - PART 3****INVOICING**

1. In this Agreement, **Calendar Month** means:
  - 1.1 in respect of the first Calendar Month, the period beginning on the Service Commencement Date and ending on the last day of the calendar month during which the Service Commencement Date falls;
  - 1.2 in respect of subsequent Calendar Months (other than the final Calendar Month) each period of one calendar month commencing on the day following the last day of the previous Calendar Month; and
  - 1.3 in respect of the final Calendar Month, the period following the last day of the previous Calendar Month and ending on the date of termination or expiry of this Agreement.
2. No later than ten Business Days after the end of each Calendar Month TIE shall deliver to FETA Contract Representative a valid VAT invoice showing the total Emergent Costs incurred by TIE in that Calendar Month together with a breakdown of such total Emergent Costs as follows:
  - 2.1 the Time Costs broken down by activity and by individual providing the Service; and
  - 2.2 the Pass Through Costs, if any, broken down and on an itemised basis.
3. TIE shall not issue more than one invoice in respect of any Calendar Month (after the Calendar Month during which the Agreement Date falls) without FETA's prior written agreement.



**SCHEDULE - PART 4****CHANGE CONTROL PROCEDURES****1. Principles**

- 1.1 Until such time as a CCN (as hereinafter defined) has been signed by both parties, TIE shall, unless otherwise expressly agreed in writing in accordance with the provisions of Clause 17 (Amendments to this Agreement), continue to perform its obligations under and in accordance with this Agreement.
- 1.2 Any discussions, negotiations or other communications which may take place between TIE and FETA in connection with any proposed change to this Agreement, including but not limited to the submission of any written communications, prior to the signing by both parties of the relevant CCN, shall be without prejudice to the rights of either Party under this Agreement
- 1.3 The Change Control Procedures are subject to the terms of Clauses 3.3 (Changes) to 3.7 (Variations to Schedule) inclusive.

**2. Procedure**

- 2.1 If FETA wishes to amend this Agreement pursuant to the provisions of this Schedule then FETA shall submit a brief written paper (the **proposed change paper**) to the TIE addressing, as a minimum, the following points:
  - 2.1.1 the title of the proposed change;
  - 2.1.2 the reason for the proposed change; and
  - 2.1.3 details of the proposed change.
- 2.2 Within fifteen Business Days of the submission of a proposed change paper (or such other period as may be agreed between the parties) TIE shall prepare and deliver to FETA two copies of a written and signed response to the proposed change paper (each a **CCN**) setting out in as much detail as possible:
  - 2.2.1 the title of the proposed change;
  - 2.2.2 technical details of how to implement the change;
  - 2.2.3 full details of the necessary amendments to Schedule 1 (The Services);

- 2.2.4 a timetable for implementation of the change;
  - 2.2.5 any tasks required to be completed by FETA in order to allow the TIE to deliver the change;
  - 2.2.6 any variation to the Charges that would result from the delivery of the change together with reasonable evidence of how that figure would be calculated; and
  - 2.2.7 associated revisions to be made to this Agreement.
- 2.3 TIE may unilaterally issue CCN's to FETA.
  - 2.4 FETA may either accept or reject a CCN. To accept a CCN, FETA must sign and return the CCN to TIE no later than ten (10) Business Days following its receipt of the CCN (or such other period as may be agreed between the parties).
  - 2.5 Following acceptance of a CCN this Agreement shall be deemed to be revised as set out in the CCN.
  - 2.6 Any dispute as to whether the variation to Charges proposed by TIE in a CCN shall be subject to expert determination in terms of Clause 23 (Dispute Resolution).

**SCHEDULE - PART 5****COMMERCIALLY SENSITIVE INFORMATION**

1. The Hourly Rates (either as contained in Section 2 of Schedule 2 (Charges) or as amended, updated or otherwise provided by TIE to FETA from time to time.



APPENDIX A

OUTLINE PROCESS GUIDANCE



Agenda Item 6

## **Communications**

### **a) Communications Progress Report \***

**\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)**







**Board Update  
Communications Progress Report  
18 October 2005**

**Communication management:**

- Resource
- Trams
- EARL
- FETA
- SAK
- Communication strategies and partners

**Resource**

Lynsey McClymont joined the team on 12 September as Communications Assistant. With a varied background in events, marketing, media and HR Lynsey is already proving to be a valuable addition to the team.

**Trams**

Tram Replica Event

The tram and exhibition were erected during 6-7 September and were open to the public from 8 September – 23 September. It was removed on 25 September.

Three evening events for Community Groups, Stakeholders and Parliamentarians took place on 12, 14 and 15 September. All were successful events.

Over 24,000 people attended the replica with 86% of written comments and 95% of verbal comments positive. A covering press release was issued.

Naming the tram network

A holding paper was taken to the Transport Edinburgh Steering Group on 26 September. This idea along with branding will be discussed at the next TEL meeting and an update will be provided following that meeting.

Transport Co-ordinators Lunch

Following the lunch on 12 August direct contact with each attendee has been made to distribute staff information through their newsletters and links through their intranets etc. A further print of 2,000 travel times has been requested to provide to staff in Edinburgh businesses.

Newsletter

The next travel time newsletter is due in January. Planning is currently underway.

Press Release/statement

There have been three negative stories and letters that were not printed. These articles would have led to a good deal of negative press and public opinion. They were not printed as the relationship we now have with the media meant that they approached us for our side of the story. We provided them with facts and supporting

G:\09 Business Admin\09 TIE\Board Meetings\Board Meetings 2005\Board Papers - 24th October 2005\Item 6 - Comms Board Update October.doc



documentation that did not tally with the stories they had been given. The stories never got any further.

Intense coverage has been received of the impact of inflation and optimism bias on the base cost of trams along with the possible impact on each route. A meeting was held with the Evening News to provide facts and answer questions prior to printing.

Business thoughts on trams have recently been covered, resulting in a meeting with the Chamber of Commerce on 18 October 2005. Further meetings will follow and a Stakeholder Management Plan to cover the period from now to Royal Assent will be documented in the coming fortnight. Post Royal Assent will be documented in the Communication Strategy. Key **tie**, TEL and tram personnel will be involved in all Stakeholder Management meetings.

The Freedom of Information act has been used by the Evening News to uncover information on costs to date for the tram project. A press statement has been made regarding the Tram costs to date.

#### Letters to press

Coverage has been intense following recent stories. A balance of both positive and negative letters remains. The 48 hour response to factually incorrect letters remains in place.

#### Exhibition

The tram exhibition continues to work its way around Edinburgh and is currently in the City of Edinburgh Council offices.

#### Outlook

Planning is underway for the content of the November edition of Outlook.

#### Strategy

Work on the strategy for communications post Royal Assent (or otherwise) starts on 19<sup>th</sup> October. This draft strategy will include the detailed communications needed for the Public Utility work, Stakeholder Management and construction.

#### SDS & JRC Contracts

A press release was issued once SDS and JRC were signed. A start up day with SDS was held on 12 October.

#### **EARL**

##### Meetings planned

17/10/05	Councillor Eddie Malcolm	Local Councillor	
25/10/05	Ron Hewitt	Edinburgh Chamber of Commerce (BAA Breakfast Meeting)	Chief Executive
31/10/05	David McDonald	Cockburn Society	Director
01/11/05	Nicola Sturgeon	MSP	Depute Leader, SNP

Following concern from David Cullum, head of the PBU at the Scottish Parliament, regarding meetings with MSPs being held by **tie** in the lead up to the submission of the EARL bill a response was sent to David from Susan Clark the same day. The letter explained that Susan was to hold informative meetings with MSPs and that the

G:\09 Business Admin\09 TIE\Board Meetings\Board Meetings 2005\Board Papers - 24th October 2005\Item 6 - Comms Board Update October.doc



members of the Tram Line bill committees would not be approached following the concerns.

#### Bill Submission

A covering statement on the submission of the EARL bill has been agreed with the Scottish Parliament.

#### Press interest

We expect some press interest on the following topics over the coming weeks.

#### Ground Investigation:

It is expected the GI contractor will be announced this week. GI works are likely to start end October through to March 06.

#### Technical Support Design Services (TSDS):

Invitation to tender will be going out week beginning 24 October. Jan 2006 contract award expected

#### Geotechnical Consultant:

Invitation to tender will be going out week beginning 24 October. Jan 2006 contract award expected

#### Conferences

As reported last month, work on the Civils Conference on 22-24 November is also underway.

#### **FETA**

FETA is currently working to outsource the PR, Media and Communications work through a procurement process. In addition the part time Communications Manager role, employed directly by FETA, is being advertised. Both processes are being managed centrally by the City of Edinburgh Council. **tie** will be involved in the selection and evaluation committee and the recruitment board.

**tie** has been asked to provide interim PR and Communications support and has worked with FETA on the production, issue and press release and coverage for the Local Transport Strategy. This document is due to be issued by 21 October.

As requested by FETA **tie** will work with Weber Shandwick to pull together an interim communications strategy for FETA. This contract will end at the placement of the PR, Media and Communications Company some time in February 2006. **tie** will manage Weber Shandwick through this interim period, working with FETA and reporting to Alastair Andrew.

#### **SAK**

**tie** is now working with the BIG Partnership to manage and deliver communications for SAK. A clear working partnership already exists between all interested parties therefore we will be working to add value and co-ordinate the approach to communications where we can.

The sod turning ceremony on 17 October went well with a covering press release issued.

Monthly communications meetings will be held with all partners. We will now with through press and media enquiries with the BIG Partnership involving the Project manager Richard Hudson at all times necessary.

G:\09 Business Admin\09 TIE\Board Meetings\Board Meetings 2005\Board Papers - 24th October 2005\Item 6 - Comms Board Update October.doc

The communications budget for SAK is tight and this is a challenge we will manage closely.

**Communication strategy and partners**

Due to the increase of staff and workload regular cross projects communication meetings are taking place within tie communications.

tie and our communication partners continue to work well together ensuring a partnership approach on all projects, where relevant.

Following a request from Council Leader Donald Anderson a presentation was made to Cllrs Anderson, Davies and Burns on the overall transport communication approach, including an update on activity and achievement. tie attended the presentation and will be involved in the ongoing work in communicating the City Values and messages relating to our projects. We also provided full information, with background, on the achievements of both the tram and EARL communications strategies.

The Board is asked to note the position.

Suzanne Waugh







## Heavy Rail

- a) EARL – Project Progress Report \*
- b) EARL – Earl Project Board feedback \*
- c) EARL – SE/tie Operating Agreement \*
- d) SAK - Project Progress Report \*

\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)



Agenda Item 7

## **Heavy Rail**

### **a) EARL – Project Progress Report \***

**\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)**



**tie Limited**  
**Project Progress Report**

**EARL**

**1 – 30th September 2005**

Prepared by: Kevin Murray, Senior Project Manager

\_\_\_\_\_  
(Signature)

Approved by: Susan Clark, Project Director

\_\_\_\_\_  
(Signature)



**Project Name: EARL**

**Progress Report No. 4: 1 – 30th September 2005**

## **1. Executive Summary**

### 1.1 Cost Status

Actual cost in September: 15% under budget.

Actual year to date: 20% under budget.

Annual cost forecast: 9% under budget.

No change requests were submitted in September and none are forecast for October.

### 1.2 Programme

On instruction of the Scottish Executive the EARL bill introduction date has been deferred from 30<sup>th</sup> October until the end of November. The Bill and its supporting documentation, including the Design Development Appraisal were completed to programme and issued to the Scottish Executive on 30<sup>th</sup> September.

The project plan has been updated to assume a Bill introduction date of 24<sup>th</sup> November with issue of confirmation schedules to affected parties on 17<sup>th</sup> October. However, SE have recently advised this is not likely to be achievable.

The tender period for the Ground Investigation contract works concluded on 12<sup>th</sup> September, with four compliant tenders received. The tender review process has been completed and Fugro Engineering Services identified as the preferred supplier. The anticipated contract value of circa £1.2m is within budget.

Due to the Scottish Executive linking award of the 2005/06 and 2006/07 EARL project budget to approval of the Design Development Appraisal, submissions have been made for early release of funding to permit award of the GI contract works and South East Pier implementation works without impact on the overall programme. The Scottish Executive has responded positively to the funding proposals and receipt of grant award letters for these packages is anticipated during w/c 3<sup>rd</sup> October.

The PQQ process for the Technical Support & Design Services and Geotechnical Consultant contracts continues with 44 expressions of interest received to date. Closing date for submissions are 7<sup>th</sup> and 14<sup>th</sup> October for the TSDS and GC respectively. A shortlisting process will then take place and invitations to tender are programmed for issue on 24<sup>th</sup> October and 7<sup>th</sup> November.

The inaugural meeting of the EARL Project Board will take place on 11<sup>th</sup> October.

### 1.3 Issues that have/will affect Cost or Progress

The Design Development Appraisal was completed to programme and issued to the Scottish Executive on 30<sup>th</sup> September. The Scottish Executive have linked confirmation of the 2005/06 & 2006/07 budget to approval of this document. Some further modelling work and changes to the presentation format has been requested after the SE's initial review of the document. The updates will be issued to the Scottish Executive by 14<sup>th</sup> October.

Specific requests for funding have been submitted to the Scottish Executive for £1.4m to permit contract award to the Ground Investigation contractor and £1m for the EARL contribution to the transfer structure being installed within the BAA South East Pier. These requests are for release of existing budgetary provision which is tied up awaiting approval of the DDA and not for additional funds. The Scottish Executive has provided a positive response to both requests and grant award letters are anticipated w/c 3<sup>rd</sup> October.

#### 1.4 Decisions required of Governance Team

None

## **2. Parliamentary Progress**

Forty four responses have been received on the draft Bill consultation process along with eleven letters of support. Feedback is still being pro-actively sought from affected parties who have not submitted a response.

Eleven letters of support have also been received by the project during this round of consultation.

Update on key responses / anticipated objectors:

- Historic Scotland – potential objection will be removed as Bill has been updated to incorporate archaeological excavations at Catstane – SE supportive of approach although Minister yet to endorse approach.
- SNH – Meeting with SNH planned 19<sup>th</sup> October.
- SEPA – Positive meetings have taken place regarding an EARL contribution to a SEPA led full diversion of the Gogar Burn. Explanatory paper being prepared for discussion with SEPA.
- BAA – No objections raised to Bill. Protective provisions under consideration. Master Agreement comments being addressed and redraft agreement to be issued. Technical discussions ongoing regarding – reprovision of infrastructure & utilities; fire & ventilation assessment close-out actions; settlement presentation scheduled for 03rd November; GI access being finalised; Catstane area to be cleared shortly.
- PPG – Discussions held with ETL2, Ingliston P&R, and CEC regarding existing commitments to PPG. Meeting being sought with PPG for w/c 17<sup>th</sup> October.
- Ratho Community Council – Discussions ongoing regarding road diversions, rail alignment. Unable to reach agreement with Ratho CC on the proposed Roddinglaw Road closure survey.
- Carlowrie - Legal team drafting an agreement on Mr Marshall's spoil disposal proposal.
- Public Utilities – A workshop has been scheduled with all PU's affected by the EARL project on 12<sup>th</sup> October to present a co-ordinated tie approach. EARL is proposing to share the approach to engage with each body using a similar Heads of Terms agreement to the Tram project and propose delivery of physical works using a single contractor through a Multi Utility Delivery Framework Agreement.



The EARL Bill and accompanying documentation was updated during September to incorporate comments received from the Scottish Executive, PBU and responses from the draft Bill consultation process. The following documentation was supplied to the Scottish Executive on 30<sup>th</sup> September:

- EARL Bill – Confidential Draft
- Promoter's Memorandum – Confidential Draft
- Promoter's Statement
- Explanatory Notes – Confidential Draft
- Estimate of Expense & Funding – Confidential Draft
- Design Development Appraisal Final Report and Appendices
- Environmental Statement Volumes 1, 2 and Non Technical Summary (Final v.2)
- Maps, Plans & Sections
- Affected Persons List
- Draft Book of Reference
- Demand Modelling Sensitivity Tests

On 12<sup>th</sup> September, the Scottish Executive advised the EARL Bill introduction date should be deferred from 30<sup>th</sup> October until the end of November. The project plan has been updated to assume a Bill introduction date of 24<sup>th</sup> November with issue of confirmation schedules to affected parties on 17<sup>th</sup> October, although this date is now at risk.

Network Rail have reviewed the draft Protective Provisions and verbally advised they only have minor comments and expect a prompt execution of this document. Works have commenced in replacing the existing Basic Services Agreement with the new format Development Framework Agreement. This will permit access to Network Rail Infrastructure for the Ground Investigation works.

Discussions with BAA on funding ongoing through SE. Master Agreement comments being addressed and redraft agreement to be issued.

The objection management process established by the project team continues and will utilise the additional month gained due to the slippage in the Bill introduction to continue to head off as many potential objections as possible prior to commencement of the parliamentary process.

### **3. Public Relations & Media**

Planned PR activity increased significantly during September to coincide with the planned Bill submission date.

The project was represented at the Infrarail trade fair with both a stall and presentation given by the Project Director. Positive feedback was received on both.

A presentation was given at the SNP Annual conference resulting in the project being publicly praised by the party leader, Alex Salmond MP.



#### 4. Project Spend: Actual Versus Budget & Anticipated Cost to Year End

Cumulative Budget to Month End:	<b>£2,429,524</b>
Cumulative Actual Spend to Month End:	<b>£1,944,354</b>
Difference from current to Budget:	<b>-£485,170</b>

Budget to Year End:	<b>£5,557,074</b>
Last Months Forecast to Year End:	<b>£5,217,074</b>
This Months Forecast to Year End:	<b>£5,072,074</b>
Difference from current to budget:	<b>-£485,000</b>

Note:

- Month-end difference: There is a substantial under-spend against progress to date, primarily due to the slippage in the Bill submission date from May until November. However progress is also being achieved at less cost than the original estimate.
- Annual Difference: The EARL forecast expenditure for the year has been down-turned to reflect the under-spend to date. This is at risk of further down-turn until a definitive Bill introduction has been advised by the Scottish Executive and the 2005/06 and 2006/07 budget is formally authorised.

Appendix 1 shows a graphical representation of actual spend against the forecast.

## 5. Programme

### 5.1 Planned versus Actual

Key Activities / Deliverables	Original Completion Date	Projected Completion Date	Status
Publication of draft Bill	30 <sup>th</sup> Jun 2005	30 <sup>th</sup> Jun 2005	Delivered
OJEU for GI & Technical Advice	15 <sup>th</sup> Jul 2005	11th Aug 2005	Delivered
Funding approved	31 <sup>st</sup> July	mid to end October 2005	Scottish Executive have linked full grant award for 2005/06 and 2006/07 financial years to approval of the Design Development Appraisal. This was submitted for their review on 30 <sup>th</sup> Sep as programmed.
Appointment of GI works contractor	September 2005	14th October 2005	Tender period closed on 12 <sup>th</sup> September and reviews complete. A preferred supplier has been identified. Contract award will take place upon receipt of grant award from Scottish Executive.
Bill Introduction	31 <sup>st</sup> October 2005	24 <sup>th</sup> November 2005	All works completed for Bill Introduction on target date but submission deferred by Scottish Executive instruction. At risk of further slippage.
Appointment of Geotechnical Consultant	December 2005	December 2005	On target
Appointment of Technical Support & Design Services Advisor	December 2005	December 2005	On target
Achievement of Royal Assent	31 <sup>st</sup> December 2006	31 <sup>st</sup> December 2006	At considerable risk due to second enforced slippage in Bill introduction date.

### 5.2 Programme Summary

The parliamentary programme has been updated to reflect a revised Bill introduction date of 24<sup>th</sup> November. The objection management process will continue and utilise the "additional" time to minimise the number of objections submitted against the Bill.

All documentation required for the Bill was completed to programme. The Scottish Executive has requested some further modelling to support the DDA is undertaken. This additional information will be issued to the Scottish Executive by 14<sup>th</sup> October.

Key activities for October are:

- Obtain approval of the Design Development Appraisal from the Scottish Executive.
- Receive comments on the Bill and supporting documentation from the Scottish Executive and undertaken updates if required.
- Obtain Grant Award confirmation from Scottish Executive for Ground Investigation and South East Pier works.
- Award Ground Investigation works contract package.
- Conclude PQQ process for Technical Support and Design Services and Geotechnical Consultant.
- Issue ITT for TSDS advisor.
- Continue delivery of objection management process.
- Issue of confirmation schedules to affected parties on 17<sup>th</sup> October, although recent advice from the Scottish Executive indicates this will be deferred.

**6. Change Control**

6.1 Approved Changes this Month

None	
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6.2 Anticipated Key Changes – Not Approved

None.	
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6.3 Disputes, Claims and Early Warnings

Nil.

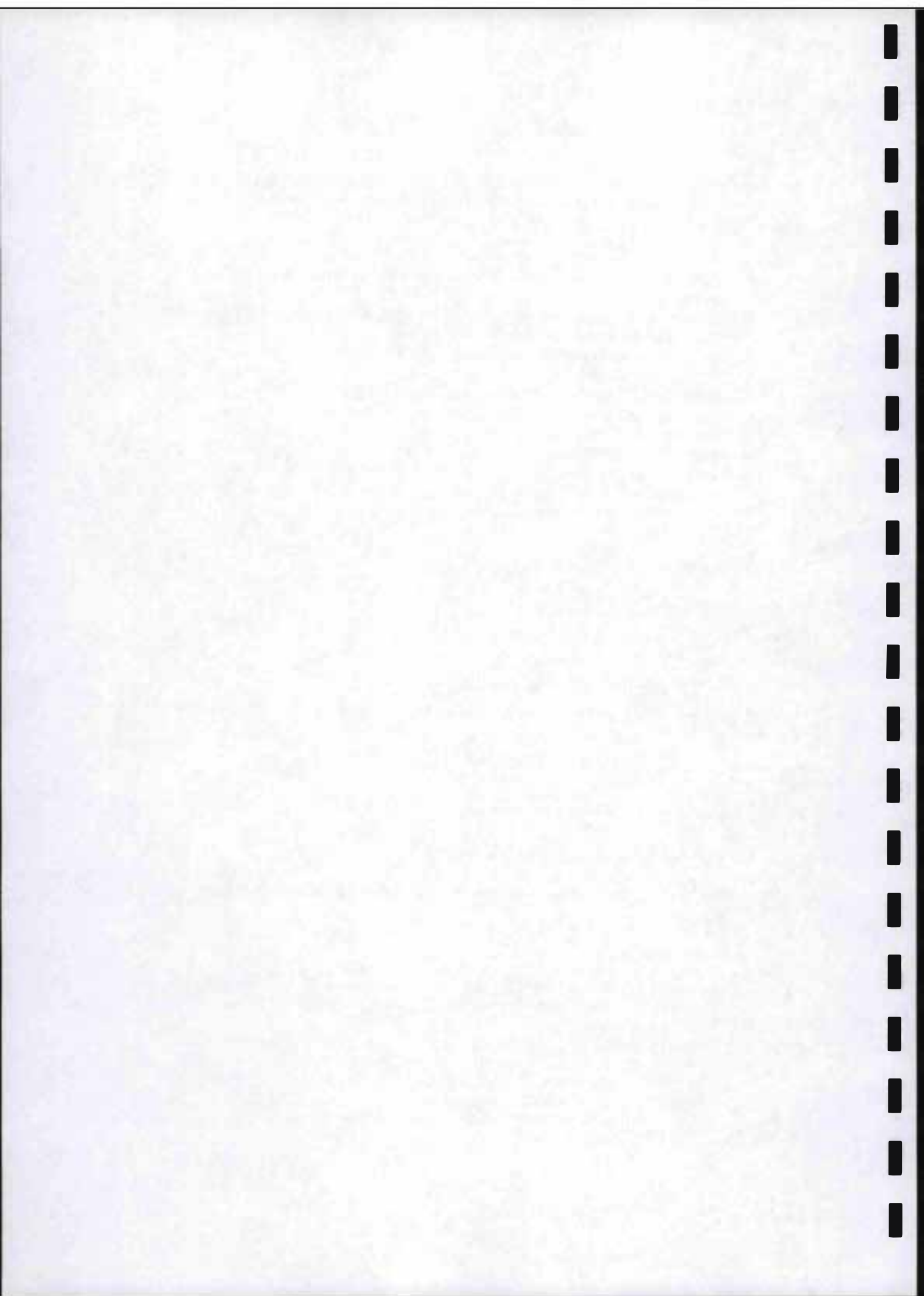
**7 Risk Management**

The following key activities have been carried out on risk and insurance matters in the past month.

7.1 Completed Activities

- Review of risk management systems and identification of requirements for modifications for project including reporting and risk remits for TSDS and Geotechnical Consultant;
- Review of options for securing adequate 3<sup>rd</sup> Party insurance coverage for Network Rail requirements including tie placement of cover for GI Contract;
- Preparation of evaluation programme and protocols for TSDS Prequalification submissions to ensure Regulation compliance;
- Preliminary assessments of form of contract for D&B elements; and





- Inclusion of option for Earl utility diversion in OJEU Notice through MUDFA Agreement developed for Tram.

## 7.2 Planned Activities

We are currently pursuing the following key activities in order to mitigate project risks.

- Evolution of scope of services including actions to develop current risk management plan pre-TSDS/GC Appointment;
- Independent technical audit of risk register including assessment of risk transfer and insurability issues and tie review of risk services being provided by Halcrow;
- Review of key risk transfer matters in D&B Contract leading to development of risk allocation matrix;
- Ongoing analysis to demonstrate the case for both EARL and Tram Line 2;
- Ongoing discussions with SE/PBU regarding the timing of Bill introduction; liaison with SE Working Group in relation to rolling stock procurement; dialogue with key stakeholders (SE, PBU, BAA and NR) in relation to funding and planned procurements;
- Ongoing review of implications with BAA for optimisation of transport hub;
- Development of agreement with SEPA in relation to Gogar Burn for appropriate project contribution for larger scale diversion;
- Tracking an update to scheme 'base' costs in relation to minor scheme refinements to remove potential objections; and

Review of influence on operational system on existing Franchise Agreement.

## **8. Safety Management**

No issues.

## **9. Decisions Required**

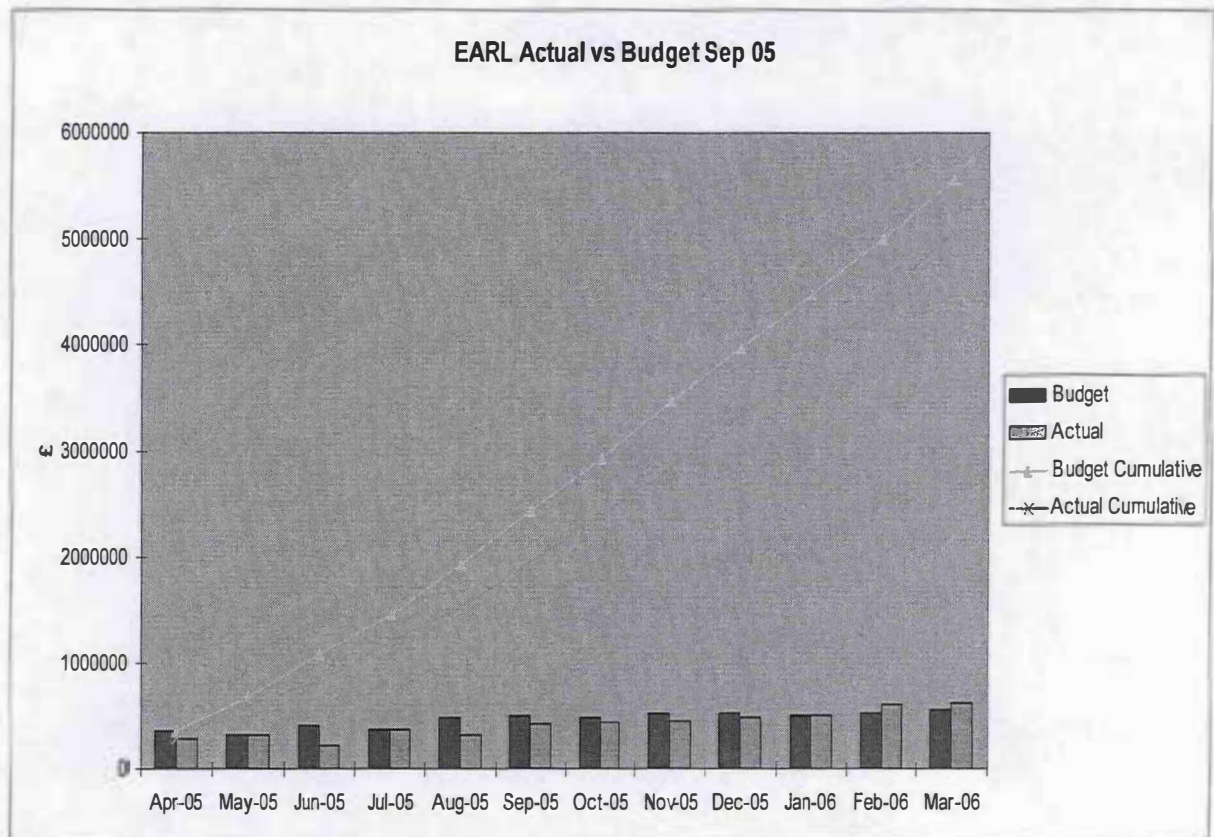
- Authority to continue until the next tranche of funding is formally confirmed from the Scottish Executive. This is now expected mid to end of October.

Prepared By: Kevin Murray, Senior Project Manager  
 Approved By: Susan Clark, Projects Director  
 Date: 10<sup>th</sup> October 2005





## APPENDIX 1





Agenda Item 7

## **Heavy Rail**

### **b) EARL – Earl Project Board feedback \***

\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)



<b>Paper to :</b>	<b>tie Board</b> <b>24<sup>th</sup> October 2005</b> <b>Commercial in Confidence</b>
<b>Subject :</b>	<b>EARL Project Board</b>
<b>From :</b>	<b>Susan Clark</b>
<b>Date :</b>	<b>17<sup>th</sup> October 2005</b>

### **First Meeting**

The first meeting of the EARL Project Board took place on 11<sup>th</sup> October with the following attendees:

Jim Brown	<b>tie</b>
Michael Howell	<b>tie</b>
Graeme Bissett	<b>tie</b>
Susan Clark	<b>tie</b>
Damian Sharp	SE
Mary Dickson	First ScotRail
Ron McAulay	Network Rail
Richard Jeffrey	BAA
James Papps	PUK
Paul Haggerty	PwC (facilitator)

As this was the first time some of the members had met, the session focused on relationship building, the remit of the Project Board and risk identification. The view of the group was that this was a successful first meeting. Performance measures will be developed to measure our ongoing success.

### **Remit**

There was almost universal acceptance of the remit, however some concerns were raised about the possibility of the Project Board perhaps making decisions that may conflict with the commercial interests of one or other of the participants. ...

It was agreed to review the wording of the remit to reflect that **tie** is ultimately responsible for the delivery of EARL and participation in the Earl Project Board will not compromise the separate interests represented. These revisions will be submitted to the next meeting.

All attendees committed to providing thoughts on a vision to be incorporated into the remit and again, this should be completed before the next meeting.



## **Risks**

The EPB were asked to take part in a short risk identification session. This was aimed at identifying risk they felt were important to them and their respective organisations and that should be reviewed at each EPB meeting. A total of 63 risks were identified in a short space of time with the highest risk being that of Rolling Stock delivery. The Scottish Executive was asked to present a paper to the next meeting on Rolling stock.

The risks are currently being reviewed against the existing risk register and incorporated where necessary.

## **Forward Programme**

A number of actions were agreed at the meeting and circulated within 24 hrs – these are attached for information. In addition, a proposed forward programme was presented to the group. This is also attached and will be developed over time.

**Susan Clark**

Project Director - EARL

## EARL Project Board – Action Notes

11<sup>th</sup> October 2005

PwC offices, 68-73 Queen Street

**Present :** Susan Clark, Michael Howell, Jim Brown, Graeme Bissett (tie)  
Paul Haggerty (PwC)  
Mary Dickson (ScotRail)  
Ron McAulay (Network Rail)  
Richard Jeffrey (BAA)  
James Papps (PUK)  
Damian Sharp (Scottish Executive)

	What	Who	When	Status
1	<b>Remit</b>			
	Ron to give remit proposal changes to Susan	Ron	20/10	
	Susan to put statement up front re tie authority and responsibility.	Susan	24/10	
2	Programme to be circulated	Susan	04/11	
3	Critical milestones and linkages to be shared	Susan	04/11	
4	Process for OBC and Exec summary of DDA to be shared	Susan	04/11	
5	Vision Statement ideas to Susan	All	Before next meeting (21/11)	
6	Risks consolidated into overall risk register and matrix developed for EPB	Susan	Before next meeting (21/11)	
7	Paper on Rolling Stock to be produced for next meeting	Damian	04/11	
8	Team performance measures for EPB – thoughts to Susan ahead of next meeting	All	Before next meeting (21/11)	
9	Circulate contents of OBC	Graeme	Before next meeting (21/11)	
10	Develop standard agenda and future programme	Susan	22/11	

## EARL Project Board

### Proposed Programme

Date	Subjects
October 2005	<ul style="list-style-type: none"><li>• Remit</li><li>• Proposed programme for EPB</li></ul>
November 2005	<ul style="list-style-type: none"><li>• Budget &amp; programme</li></ul>
December 2005	<ul style="list-style-type: none"><li>• Procurement Strategy/PIN</li><li>• Appointment of GI &amp; Technical Advisors</li></ul>
January 2006	<ul style="list-style-type: none"><li>• </li></ul>
February 2006	<ul style="list-style-type: none"><li>• </li></ul>
March 2006	<ul style="list-style-type: none"><li>• Outline Business Case Approval</li></ul>
April 2006	<ul style="list-style-type: none"><li>• </li></ul>
May 2006	<ul style="list-style-type: none"><li>• </li></ul>
June 2006	<ul style="list-style-type: none"><li>• </li></ul>
July 2006	<ul style="list-style-type: none"><li>• ITT for main contract approval</li></ul>
August 2006	
September 2006	
October 2006	
November 2006	
December 2006	
January 2007	
February 2007	
March 2007	





Agenda Item 7

## **Heavy Rail**

### **c) EARL – SE/tie Operating Agreement \***

\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)



<b>Paper to :</b>	<b>tie Board 24<sup>th</sup> October 2005 Commercial in Confidence</b>
<b>Subject :</b>	<b>EARL tie/SE Operating Agreement &amp; EARL Bill Introduction</b>
<b>From :</b>	<b>Susan Clark</b>
<b>Date :</b>	<b>17<sup>th</sup> October 2005</b>

#### **tie/SE operating Agreement**

It is the intention of tie Ltd to act as Promoter for the EARL Bill and operating agreements are required with both CEC and SE to achieve this. The Operating Agreement with CEC has been agreed and signed off by both parties. Se were sent a draft of a proposed Operating Agreement in May and tie is advised that we will receive feedback on this in the next 2 – 3 weeks to allow it to be presented to the tie Board for approval.

#### **EARL Bill Introduction**

A proposal has been submitted to the Scottish Parliament in respect of Private Bills with the aim of streamlining the consideration phase of the process. This proposal, if agreed, will see a SE Reporter hearing the detailed objections and making a report to the committee as opposed to the committee hearing all the evidence. As a result of this, tie has been advised to plan on the basis of an introduction date of late January.

tie Board needs to formally approve both tie acting as Promoter and the Bill before submission to the Scottish Parliament. It is therefore proposed that the December tie Board be used to formally present both the tie/SE Operating Agreement and EARL Bill for approval. It is proposed that the following documents are circulated in advance or made available for review prior to this date as follows:

<b>Sent in Advance</b>	<b>Available for Review</b>
tie/SE Operating Agreement	Environmental Statement
Bill	Maps, plans & sections
Explanatory notes	Draft book of Reference
Promoter's Memorandum	
Promoter's Statement	
Estimate of Expense & Funding	
Non-technical statement	

tie Board are requested to approve this process.

**Susan Clark**  
Project Director - EARL



Agenda Item 7

## **Heavy Rail**

### **d)SAK - Project Progress Report \***

**\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)**





**Paper to:** tie Board  
24<sup>th</sup> October 2005  
**Commercial & in Confidence**

**Subject:** Heavy Rail Update

**From:** Paul Prescott

**Date:** 18<sup>th</sup> October 2005

### **Stirling-Alloa-Kincardine (Project Manager - Richard Hudson)**

#### **Asset Protection Agreement**

The Asset Protection Agreement has been signed by both parties allowing full access to Network Rail land and also to their engineering approval process.

#### **Programme**

Following on from Ministerial Approval and full Council approval on the 18<sup>th</sup> August 2005, the contractor's programme was re-submitted and has now been agreed which shows practical completion of the infrastructure by 1<sup>st</sup> June 2007 which should allow the commencement of services in June 2007.

#### **Project Cost**

The project cost has been authorised at £62m and the funding from the Scottish Executive to the Council is now in place.

Following the announcement of funding and the agreement of the project programme, the contractor's Target Cost has been reviewed and re-submitted. Between the original compilation of the Target Cost in March 2005 and the approval of funding in August 2005 there have been some non-productive management costs for the extended period and inflationary effects which are currently being assessed.

#### **Project Governance**

The proposals for Project Governance have been agreed within tie and informally with the Executive. The report was submitted to the Operating Group on the 27<sup>th</sup> September 2005. However, responses and approval of the contents is still awaited.

#### **Land Acquisition**

The notices to landowners was issued by Clackmannanshire Council on the 19<sup>th</sup> August 2005, allowing access to all third party land by the 26<sup>th</sup> September 2005. Access to all Network Rail owned land has been available following signature of the APA.

#### **Engineering Progress**

The design phase is well advanced in accordance with the programme and most of the structures A Forms have been signed off by Network Rail. The signalling design

is well progressed and the Operational Requirements Specification (ORS) has been agreed.

Construction work on the Alloa Eastern Link Road has commenced as has the work to construct site access, compounds and fencing. Existing track is being removed starting in Alloa and working out eastwards and westwards.

#### **PR and Communications**

A "sod cutting" was conducted by the Transport Minister on the 17<sup>th</sup> October 2005 which coincided with the formal transfer of funding for the railways in Scotland to the Scottish Executive. This generated considerable positive media interest.

A weekly clinic has been started by the contractor each Friday morning where members of the public can come into the site offices and ask any questions of the project team. This is generating some good positive interest amongst the local community and has also been well received by the local media.

R Hudson



Agenda Item 8

## Tram

- a) Progress Report \*
- b) TEL and service integration matters \*

\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)





Agenda Item 8

## **Tram**

### **a) Progress Report \***

**\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)**



**tie Limited**  
**Project Progress Report**

**Edinburgh Tram Project**

**1 – 30 September 2005**

Prepared by: Chris Reid, Project Controls Manager

(Signature)

Approved by: Stewart McGarrity, Project Finance Director

(Signature)

Approved by: Barry Cross, Deputy Tram Project Director

(Signature)

Approved by: Ian Kendall, Tram Project Director

(Signature)

## **Project Name: Edinburgh Tram**

### **Progress Report No. 5: 1 – 30 September 2005**

#### **1. Executive Summary**

##### 1.1 Costs and Funding

A detailed tabulation of costs to date, commitments not yet spent and the forecast outturn for 05/06 is included at Appendix i.

##### Implementation

As reported in September, Specified Costs on Tram Implementation activities during the year to March 2006 have been re-estimated at £15m (previously £17.85m), the reduction being primarily due to advance utility diversions which tie no longer anticipate will take place during the current financial year. Total Funded Costs including the Scope / Programme Contingency remains at £17.85m.

##### Parliamentary

As previously reported, change request nos 61 and 62 have been submitted totalling £511k (£286k on TL1 and £225k on TL2) promoting the amendments to the Bills in respect of the realignments at Haymarket and Gyle. The funding of these costs now needs to be agreed as a matter of urgency

Again as previously reported, the forecast expenditure and funding for TL1 and TL2 Development are predicated on Royal Assent being granted by 31<sup>st</sup> December 2005. The cost of continuing development activities up to the end of March 2006 could be in the order of £1.1m combined for TL1 and TL2.

##### 1.2 Programme

The parliamentary programme is continuing, generally, as planned, parliament is due for the half time recess with a return due Monday 24<sup>th</sup> October.

The JRC surveys were postponed due to striking by First Bus drivers. The signing of the SDS contract was completed 19<sup>th</sup> September following the receipt of a parent company guarantee in the form required by tie.

The MUDFA OJEU was published in the OJEU (Journal) on 30th October with interested parties currently contacting tie. The Memorandum of Information shall be issued on 4th November with prequalification submissions to be received by 2nd December, 2005. An information presentation shall take place on 16th November, 2005.

The Infraco and Tramco PIN will appear on Electronic Tenders Daily (TED) on 6th October.

Confidentiality agreements have been concluded with all PU companies and progress continuing on Heads of Terms with intention of completing all HOT agreements by end of October 2005.

##### 1.3 Issues that have/will affect Cost or Progress

In early September SE approved the funding which allowed tie to award of the SDS and JRC contracts. Sections 4.3 and 5.1 below highlight the consequential impact on forecast expenditure for the current year of the delayed award of these contracts.



#### 1.4 Decisions required re Governance

On 22<sup>nd</sup> August the **tie** board approved Delegated Authority Rules (DARs) for the Tram project and the composition and remit of the Tram Project Board. The DARs deal with authority delegated from the **tie** Board to the Tram Project Board and from the Tram Project Board to the Tram Project Director.

Following review and comment by the stakeholders and DLA, an amended version of the remit for the Tram Project Board will be presented to both the **tie** Board and Tram Project Board on 24<sup>th</sup> October.

Significant progress has been made with regard to the design of the processes for dialogue and agreement for the Tram project (between CEC and **tie**) which will precede presentation of matters to the Tram Project Board. It is now critical with the commencement of SDS that these processes are completed.

There is a backlog of Change Requests which require to be reviewed and approved. A tabulation of the most critical change requests requiring the attention of the Tram Project Board is included at Appendix iii.

## **2. Parliamentary Progress**

- Supplementary Bills lodged with Scottish Parliament, and objections received, as follows:
  1. Tram Line One: Transco plc, Verity Trustees Limited, Haymarket Yards, ICAS, and Kenmore Capital Edinburgh Limited
  2. Tram Line Two: Transco plc, Verity Trustees Limited, O2 (UK) Limited, Hutchison 3G (UK) Limited, Safeway/Morrisons, USS, Haymarket Yards, and ICAS
- **tie** has prioritised objections based on likelihood of success and the timetable for appearing at the Parliamentary Bills Unit. The prioritisation is as follows:
  - P1 – by 6th September 2005.
  - P2 – by 30th September 2005.
  - P3 – by 31st October 2005.
  - P4 – will not remove objections

A tabulation of the current status of objections under each of the above categories is included at Appendix iv.

- Negotiations are continuing with a number of other significant objectors to secure removal of objections on a prioritised basis.
  1. Objections removed in September include: BAA, Stakis & Transco.
  2. Objections nearing completion, with the target of removing objections in October, include: BAe Systems, RBSI, Trustees of Hanover Property Trust, NEL, EPML, First Scotrail etc.
- The primary goal is to remove objections by reaching agreement. Where agreement cannot be fully achieved, a Position Statement will be issued jointly to the objector and the PBU. The objective of the Position Statement is to set-out the original objection, confirm the progress to date, and re-state the points on which partial agreement has been reached. This will demonstrate progress and **tie**'s efforts to achieve resolution, and

focus the Committee on the outstanding issues. Beyond that, efforts will continue to achieve full resolution, if this is regarded to still be an option.

- Advance purchases: The recommended agreement for the advance purchase of the Caledonian Ale House (CAH), as produced by the Office of the District Valuer, and verified by Colliers CRE, has been amended. tie, CEC and CAH have all reach agreement on the purchase price. The final legal documents will have been prepared and issued to CEC by mid October, for onward communication to SE to provision of funds. The target date for signing is 27th October, prior to this objector appearing at the parliamentary committee on 1st November 2005.

The Parliamentary process continues, although we are now in another interregnum with the mid-term Parliamentary recess.

Tram Line 1 Committee is in the process of hearing evidence in respect of the three key areas of contention;

- Roseburn Corridor,
- Lower Granton Road and
- Starbank.

The objector groups are, in general, presenting their arguments in a persuasive manner and the Promoter's team are involved in significant work presenting the case for the Bill proposals.

Tram Line 2 Committee heard evidence on the equally contentious Baird Drive section.

Tram Line 1 Committee will be having meetings to hear evidence on Roseburn into December. It is currently envisaged that Tram Line 2 Committee will conclude its hearing of evidence in late November.

### **3. Public Relations & Media**

#### **Trams Positive**

##### Events

Withdrawals from NHS, SNH and BAA provided us with positive press, fairly reported, as did the Landscape and Habitat Management Plan.

The arrival of Tom Coffey, Chief Executive of the Dublin City Business Association, received positive press with supportive statements made from Edinburgh Retailers.

The plans for WGH received good press but received negative letters following the article. These letters were all from residents in the Craighleith area.

The tram replica provided us with much needed positive press and positive headlines. Press coverage from its arrival on 6 September to 13 September was positive with proactive positive letters being printed.

Launch of the four visuals to co-inside with the replica worked well and are now regularly being used by the press.





Contract signings with TSS, SDS and JRC were fairly covered, mainly in the business sections and trade papers.

The September edition of Outlook featured a full page spread on trams.

#### Newsletter

The tramtime newsletter has been issued to 20,000 houses in Edinburgh. The newsletter was also available at the replica tram exhibition. An additional print run has been requested to ensure that staff at businesses in Edinburgh can receive copies at their office locations.

#### **Trams Negative**

Vast coverage was received on the Tram v's Buses debate and the £714m costs and less on scheduled opening date moving to 1<sup>st</sup> July 2010. Both articles were covered in a negative manner. Many telephone conversations were initiated and a meeting with the Evening News was held to attempt to achieve balance in the articles.

The headlines covering project costs were consistently negative and have had an unquantified impact on perception of the project. The Parliamentary Process was also impacted. Interestingly the screaming headlines died within a day.

#### Unprinted articles

There have been negative stories and letters that were not printed, mainly resulting from evidence during the parliamentary process and initiated by objectors. They were not printed as the relationship we have with the media meant that they approached us for our side of the story. We provided them with facts and supporting documentation that did not tally with the stories they had been given. An example is that the tram would halt the Edinburgh Marathon.

#### Letters

Coverage has been good and shows a balance of both positive and negative letters. The 48 hour response to factually incorrect letters remains in place.

#### Strategy

Work on the strategy for communications post Royal Assent (or otherwise) will start on 19 October. This draft strategy will include the detailed communications needed for the Public Utility work and construction.

#### **4. Project Spend: Actual Versus Budget & Anticipated Cost to Year End**

*Note: September month end costs, where applicable, are based on estimates and these will be confirmed upon receipt of invoices.*

A tabulation of the costs, commitments and forecasts for both Implementation and Parliamentary activities is included at Appendix i.

##### 4.1 Line 1 Parliamentary

- The forecast outturn for the year remains at £2,251k, unchanged from last month and still £464k above the original budget.
- Of the total adverse variance of £464k, £286k represents the cost of promoting the Haymarket realignment. A Change Request has been submitted for this amount and the funding for the additional costs is being addressed with SE.
- The remaining adverse variance of £178k is attributable to a much higher level of technical support for each of the Parliamentary hearings than was originally anticipated and will be funded by transferring the predicted underspend on Line 2 as explained below.

Appendix ii shows a graphical representation of actual spend against the forecast. The spend forecast on the chart includes the projected spend of £286,000 on a change of scope.

##### 4.2 Line 2 Parliamentary

- The forecast outturn for the year remains at £1,639k, unchanged from last month and still £61k above the original budget.
- The forecast outturn includes £226k in respect of the cost of promoting the Gyle realignment. As with Line 1, a Change Request has been submitted for this amount and the funding for the additional costs is being addressed with SE.
- The resulting net underspend of C£165k will be transferred to Line 1.

Appendix ii has a graphical representation of actual spend against the forecast.

##### 4.3 Tram Implementation

- As previously reported, a bottom up review of the forecast outturn for the year to March 2006 was carried out prior to award of JRC and SDS. This exercise resulted in a repackaging of estimates e.g. for activities previously budgeted separately but now included in the scope of the SDS and TSS contracts. The result is that the forecast Specified Cost of £17.85m prepared in June has been reduced to £15m, the reduction being substantially due to the removal of the £2.7m estimate for advance utility diversions. The reduction has been transferred into contingency.
- Costs to end September amount to £3.3m compared to the forecast costs to September in the original budget of £8.0m, due to delayed award of SDS and JRC (planned for end of May when the budget was prepared) together with the consequential rephrasing of related activities.

Appendix ii has a graphical representation of actual spend against the forecast.

## 5. Programme

### 5.1 Planned versus Actual

Key Activities / Deliverables	Original Completion Date	Projected completion Date	Status
Appointment of TSS	27 <sup>th</sup> June 2005	18 <sup>th</sup> July 2005	Slippage due to delayed funding.
Appointment of SDS	27 <sup>th</sup> June 2005	19 <sup>th</sup> September 2005	Slippage due to delayed funding and SDS signatories.
Appointment of JRC	27 <sup>th</sup> June 2005	6 <sup>th</sup> September 2005	Slippage due to delayed funding.
TL1: Achievement of Royal Assent	31 <sup>st</sup> December 2005	31 <sup>st</sup> December 2005	Anticipated to be completed end of Feb '06
TL2: Achievement of Royal Assent	31 <sup>st</sup> December 2005	31 <sup>st</sup> December 2005	On target
Design requirement Definition	31 <sup>st</sup> December 2005	16 <sup>th</sup> December 2005	Accelerated within SDS contract
Submission of Outline Business Case	28 <sup>th</sup> February 2006	28 <sup>th</sup> February 2006	On target
Completion of preliminary design (critical sections)	31 <sup>st</sup> December 2005	31 <sup>st</sup> March 2006 (Revised to 31 <sup>st</sup> July 2006)	Delay in award of SDS contract.
Completion of Detailed Design (crucial sections)	31 <sup>st</sup> March 2006	30 <sup>th</sup> June 2006 (part 1) 30 <sup>th</sup> October 2006	Change in strategy with Infraco award
MUDFA Award	31 <sup>st</sup> December 2005	1 <sup>st</sup> April 2006	Delay in funding for C4 scopes places pressure on this date.
INFRACo Award	29 <sup>th</sup> June 2007	29 <sup>th</sup> June 2007	On target
TRAMCo Award	29 <sup>th</sup> June 2007	29 <sup>th</sup> June 2007	On target

### 5.2 Programme Summary

The parliamentary programme is continuing as planned.

The implementation programme has been re-phased to account for the delay in the approval of the project budget.

OJEU for MUDFA has been released.

The next key milestones relate to:

- Agreeing the decision making processes for the project.
- Additional funding submission for TL1 and TL2 Development.
- ITT for MUDFA

Primavera P3e is now implemented as the planning tool for the entire project. The overall programme is now baselined and progress is being monitored using P3e.



The Master Summary Programme is unchanged from last month and is attached – the scheduled opening date remains at 1<sup>st</sup> July 2010.

## **6. Change Control**

### 6.1 Approved Changes this Month

tie's internal change process is continuing. There is a backlog of changes which require consideration and decision – a tabulation is included at Appendix iii. These should have been removed prior to the commencement of SDS.

There is no increase in capital cost to report subject to changes not having being approved by the Tram Project Board.

### 6.3 Disputes, Claims and Early Warnings

Nil.

## **7. Risk Management**

### 7.1 Completed Activities

The following key activities have been carried out on risk matters in the past month.

- Briefing to team on scope of services and change control within SDS Contract to ensure removal of ambiguity;
- Inclusion of option for Earl utility diversion within MUDFA contract to bring cost savings
- Managing PR & Media matters arising out of reported scheme costs;
- Modelling assessments to verify the sustainability and consistency of both Tram Line 2 and Earl schemes;
- Ongoing independent review of Capex Project Baseline & Contingencies through Turner & Townsend including comment on 'draft' report; and
- Scheduling of workstreams for procurement of Owner Controlled Project Insurances and workshop to agree rationale to take place at end of month.

### 7.2 Planned Activities

We are currently developing implementing activities to address the following key aspects.

- Advising SE in their development of phasing strategy; joint brief for OGC review; detailed programme of consents to be developed by SDS; and improvement on political risk assessments;
- Introduction of Safety Management System;
- Managing development of procurement strategy through formal market sounding PIN;
- Ongoing support to TEL for development of their Business Plan and CEC for their discussions to secure certainty on long term funding with SE;
- Preparation of risk management activities including Plan, Registers, Software Review and Risk Workshop within one month of appointment of SDS;
- Resolution of funding for ongoing Parliamentary Committee commitments in 2006 and consequences to date of Royal Assent, commencement of utility

- diversions and issue of ITT documentation for vehicles, infrastructure contractor and insurances; and
- Review of protocol for dealing with Fol(S)A requests and improvements on controls of Confidential Information and securing Confidentiality Agreements from individual team members.

## 8. Safety Management

No issues. Planning Supervisor is appointed through the appointment of TSS. A 4-week work-stream has commenced to prepare the project safety strategy and plans, as appropriate for the detailed design stage of the project.

A review of tie corporate and project safety management has been completed for the Tram project.

## 9. Decisions Required

- Endorsement of Governance structure and processes for dialog on issues with CEC
- Outstanding change requests

## 10. Business Case and Finance

### 10.1 Funding

Previous reports have flagged up the issue we have with funding for the Parliamentary process whereby we have and will incur costs estimated at £511k in total (£286k on TL1 and £225k on TL2) promoting the amendments to the Bills in respect of the realignments at Haymarket and Gyle which were not anticipated in the original funding requests. These additional costs were the subject of Change Request nos 61 and 62 presented to the July meeting of the then Tram Project Steering Group.

**Our cash flow forecasts indicate that the original funding of £3.4m approved for the Parliamentary process could run out during the month of November and so the approval of funding for the additional £512k now needs to be addressed as a matter of some urgency.**

In addition to issue of the Bill amendments above, the level of funding requested for the Parliamentary processes in 05/06 was predicated on Royal Assent being achieved on or before 31 December 2005. In the event Royal Assent is not granted by that date we estimate that the additional costs would amount to approximately £230k per month on TL1 and £150k per month on TL2 – based upon current activity levels (ie approximately £1.1m in additional costs if Royal Assent on both Bills were given at the end of March 2006). These estimates may change if and when the reasons for the extension to the timetable and the additional work required become clearer.

### 10.2 Business Case Documents

The milestones for Business Case delivery remain:

- Outline Business Case (OBC) – To be submitted in February 2006. The approval of the OBC will constitute approval to issue tenders for the Infraco





and Vehicle contracts and award MUDFA which are programmed for April 2006. The OBC will be presented with a confirmed request (of circa £80M) for funding for implementation activities covering the period from 1 April 2006 until the programmed award date for Infraco at the end of June 2007. This funding request will include significant sums in respect of key utilities diversions and land acquisitions.

- Final Business Case (FBC) - To be submitted firstly in November 2006 to reflect the initial tender prices received for Infraco/Vehicles and the output from the Integrated Transport model being delivered under the JRC contract. The FBC will be reissued following final negotiation with tenderers in June 2007.

The near term activities in respect of the OBC which will be presented to the Tram Project Board are:

- Outline of OBC document – Presented to the Tram Project Board for information but forming the basis of understanding between tie, CEC and SE regarding the format and content of the OBC. It is tie's intention to deliver the sections of the OBC to CEC and SE for review and endorsement progressively over the next three months.
- PPP/PFI Feasibility Study – This has been prepared in accordance with the requirements of the Financial Partnerships Unit of SE. The paper concludes as to whether it is desirable to procure all or part of the Infraco/Vehicles via PFI. A report on progress with this paper will be given at the October Tram Project Board.
- Development Income Position Paper – Which will examine the assumptions made in the IOBC with regard to potential income from property development both in respect of specific sites (with EDI) and in respect of the application of CEC's non-statutory policy re development contributions. A report on progress with this paper will be given at the October Tram Project Board.
- Project Control Budget - tie's current cost estimates in respect of the Tram project are those prepared by our Technical Consultants in 2003. An exercise is now underway to prepare a Project Control Budget based upon our adopted procurement strategy and informed by bottom up capital cost estimates being prepared in parallel by the SDS and TSS contractors. The output is expected during October and will, inter-alia, inform the assessment of funding requirements for the period from OBC approval (1 April 2006) to award of Infraco (June 2007).

### 10.3 Inception of JRC

With the signing of the JRC contract at the beginning of September we are now required to provide parameters and scenarios to the contractors with regard to the future shape of the Tram in the context of an integrated public transport in Edinburgh. This requires us to define a base set of assumptions and one or more alternative scenarios for the scope of the Tram network, the way it will operate (frequencies, timetable) how it will interact with the bus network (and therefore the way the bus network will respond to the introduction of trams) and fare assumptions.

These assumptions are critical to the development of a Final Business case in the summer of 2006 which will be owned by all the stakeholders in the project including

CEC, SE and TEL. The Tram Project Board will be kept fully informed of progress on a monthly basis.

#### 10.4 Progress Report to CEC / SE / Parliament

On 27 September, following a request from the PBU, a Progress Report on the project was provided to the TL1 and TL2 Committees. A copy of that report is attached as appendix iv.

The content of the report was reviewed and endorsed by CEC (A.Holmes) and SE (D.Sharp) prior to release. The report deals specifically with cost estimates both with and without inflation and considers the impact of optimism bias. The report also summarises the position with regard to funding and the process we are working through by which CEC and SE will agree the final scope of the project and the scale and nature of the commensurate funding package in the autumn of 2006 following receipt of initial tenders for Infracore.

**END**



Agenda Item 8

## **Tram**

### **b)TEL and service integration matters \***

**\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)**





Agenda Item 9

## **Other Projects**

### **a) Other Project Progress Report \***

**\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)**



Agenda Item 9

## **Other Projects**

### **a) Feta Road User Charging \***

**\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)**



## Project Management Service for FETA Road User Charging

Report for tie Board – 24<sup>th</sup> October (Commercially Confidential)

### Introduction

tie started to provide a PM service to FETA in December 2004. A formal Agreement between tie and FETA has yet to be signed, although it is anticipated that this should happen during October. The final version of the agreement is with FETA for signature. To date the service has been provided in the spirit of the current version of draft Agreement and invoices have also been submitted to FETA and paid based on the terms and conditions in the Agreement.

### The Project Management Service

A Project Management Service is being provided in the following areas:-

- Road user charging on the bridge:-
  - The 2005 FETA Local Transport Strategy has been printed and we are assisting with the press launch of the document. An application for Approval in Principle for FETA's ITI has been prepared and is due to be presented to the FETA board at their next meeting on 25 November. This will then be submitted to Scottish ministers for approval. We have also prepared a scoping report on a communications strategy to FETA and are providing assistance with the recruitment of a Media Manager and the procurement of a Communications Consultant for FETA. A series of meetings have been held with the Scottish Executive on the revised guidance for FETA in bringing forward a Charging Order but publication of the consultative draft is not expected until well into the autumn. This is likely to coincide with the publication of the second phase of the tolled bridges review by the Executive
- Review of contract documents for installation of electronic tolling system:-
  - This work is substantially complete and is likely to result in a request from FETA to assist with the establishment of the necessary back office systems to be able to cope with the new tolling system and in the longer term with the proposed road user charging system.
- Preliminary assistance with issues relating to the proposed new bridge
  - Advice has been provided on the scope of work required to develop the feasibility studies for a new bridge. The FETA General Manager is keen to use tie as project manager for this project but we face resistance from CEC and the legal issues need to be resolved.



### **Financial Position**

FETA is invoiced for all staff time spent on their work at the rates agreed at the outset. These rates cover fixed and variable costs. In August we invoiced £5,640 and the September invoice is in preparation.

Alex Macaulay

18th October 2005



Agenda Item 9

## **Other Projects**

### **a) Fife Council Ferry Project \***

**\* = paper enclosed (available under FOISA but subject to review under Section 5b of tie's publication scheme and exceptions in The Act)**



## Project Management Service for Fife Council Ferry Project

Report for tie Board – 24<sup>th</sup> October (Commercially Confidential)

### Introduction

tie started to provide a PM service to Fife in August 2005. A formal Agreement between tie and Fife has yet to be signed, although it is anticipated that this should happen during October. To date the service has been provided in the spirit of the current version of draft Agreement and invoices will be submitted to Fife based on the terms and conditions in the Agreement.

### The Project Management Service

A Project Management Service is being provided in the following areas:-

- Marine consultancy commission
  - Expressions of interest have been evaluated and a short list of tenderers drawn up.
  - Project scope and brief prepared
  - Tender documents including instructions to tender and evaluation framework prepared
  - High level procurement review and risk analysis done

### Financial Position

Fife is invoiced for all staff time spent on their work at the rates agreed at the outset. These rates cover fixed and variable costs. August and September invoices are in preparation.

Alex Macaulay

18th October 2005





Agenda Item 9

## **Other Projects**

### **a) Stirling Council – Waste Management Project \***

**\* = paper enclosed (available under FOISA but subject to review under  
Section 5b of tie's publication scheme and exceptions in The Act)**



## Project Management Service for Stirling Council, Waste Management Projects

Report for tie Board – 24<sup>th</sup> October (Commercially Confidential)

### Introduction

tie started to provide a Project Management service to Stirling Council on 19<sup>th</sup> August 2005. To date the service has been provided by David Burns with some support from Alex Macaulay. It is anticipated at this stage that the service will be required until at least Spring 2006.

A formal Agreement between tie and Stirling Council has yet to be signed, although it is anticipated that this should happen during October. To date the service has been provided in the spirit of the current version of the draft Agreement and invoices have also been submitted to Stirling Council based on the terms and conditions in the draft.

### The Service

On a four days a week basis, (average), a Project Management service is being provided for a portfolio of Waste Management projects. Those projects are generally being developed and implemented through Stirling Council's Framework Agreement with Atkins, through which they provide transportation, construction, planning, economic development and waste management advisory services.

The key projects in this portfolio include:-

- a) The Provision of a Civic Amenity Facility
- b) Lower Polmaise Landfill Site - Phase 3 & 4 Restoration Works
- c) Soiling of Restored areas of Lower Polmaise Landfill Site
- d) Leachate and Gas Management Works at Lower Polmaise
- e) Waste Transfer Station Re-enabling Works (following recent fire)
- f) Programme and Budget Monitoring for the above projects.

For all of the above projects and some other minor related work David Burns is currently providing the Council with a Project Management service, facilitating any interfaces between Atkins, contractors, the Council, etc, ensuring that the projects are delivered to programme and budget, monitoring and reporting as necessary, etc.

### Financial Report

Invoices have been issued to Stirling Copuncil for the service provided during August and September. The September invoice is in the order of £9,000 and based on current expectations it is likely that future invoices will also be of a similar value.

David Burns – Project Manager

12<sup>th</sup> October 2005



Agenda Item 10

**AOB –**