Financial Agreement between Transport Scotland & City of Edinburgh Council

Preamble:

- This document is a formal joint agreement between Transport Scotland & City of Edinburgh Council on the financial (capital only) cost of the Edinburgh Tram project – it is a required component of the Draft Final Business Case scheduled for delivery to CEC and TS on 9th November 06. It must be visible to all stakeholders
- The agreement must be in place in principle prior to issue of Infraco tenders (as required by the draft grant offer letter for Apr to Dec 06), and for scrutiny as part of the OGC Gateway 2 Review scheduled for 26 – 28 September - prior to Infraco ITN on 3 October.
- This will outline the procedures to be established to cover both Mudfa, Tramco & Infraco contractual costs (the 3 main procurement contracts) including nature and timing of payments of the presently agreed funding package from TS and CEC
- The agreement will be required to cover potential eventualities around;
  - the value of contributions from TS and CEC
  - the timing of contributions from TS and CEC
  - headroom necessary to recommend moving forward with the scheme
  - measures to prevent scope creep and cost overruns
  - residual risk
  - procedures to govern the event of project cancellation due to political decisions
  - procedures in the event of failure of either party to meet periodic payments
- The agreement will need to be endorsed and committed to at the highest level (Ministerial / Council Chief Executive)

Funding –Value of Contributions

- TS has committed funding of £375m plus indexation to outturn prices, subject to the approval of the Final Business Case. This equates to approximately 91% of total funding.
- CEC has committed funding of £45m (outturn prices), subject to the approval of the Final Business Case. This equates to approximately 9% of overall funding.
- The funding from TS and CEC is for capital expenditure only
- The contributions are cash-limited. TS and CEC will advise politicians of the residual risk of costs increasing above the affordability limit (see sections on risk and headroom)

Funding – Timing of Contributions

- The timing of contributions will be linked to project cashflows as set out in the Final Business Case

- CEC and Transport Scotland have agreed to make their contributions at the same rate. This means that any stage in the project Transport Scotland will have contributed 91% of funding and CEC will have contributed 9% of funding, subject to the maximum amounts agreed above.
- It is recognised that the sources of CEC funding (S75 agreements and Capital Receipts) may be received **after** key milestone payments are required, which could cause CEC to suffer cashflow problems and additional interest payments. In these circumstances, TS will consider whether there is scope to relax the strict proportion in the early years, without reducing the binding commitment on CEC to achieve an overall contribution of 9%.
- any financial support TS might provide to CEC in respect of any determined CEC share or where any / either party is unable to make pre-arranged payments.

Headroom

- TS and CEC will continue work to analyse the headroom necessary to ensure the overall cost of the scheme remains within the funding available.
- The stage-gate points at which headroom would be reassessed will be
    - Draft Business Case Approval
    - Tender receipt and Evaluation
    - Financial Close

  Each re-evaluation would necessarily include an examination of whether there are any additional future sources of funding
- Both TS and CEC officials will recommend proceding with the scheme, if the costs of the scheme fall within necessary headroom.
- TS and CEC undertake to make clear to politicians that, even with the agreed headroom, there is residual risk of costs increasing above the affordability limit

Risks

- TS and CEC have delegated the responsibility of managing project risks to the Tram Project Board (set out in governance arrangements). These should be managed within contigencies and optimism bias included within project cost estimates produced by **tie** and its advisors.
- A number of non-project risks have been identified (see appended schedule) and assigned, where possible, to CEC or TS.
- TS and CEC undertake to manage the risks assigned to them in order to minimise the risk of cost overrun.
- It is recognised that non-project risks can be managed within optimism bias and headroom limits, but that there is still an element of residual risk.
- CEC, as promoter, undertakes to deliver the scheme efficiently, avoiding scope creep by applying a robust approach to change control and specification. CEC is further incentivised to take this approach, as it is the only way in which phase 1b is likely to be affordable.

Termination

- If either party, for political reasons, withdraws from the scheme, that party will be liable for the total cost of cancellation

- Cancellation comprise
    - Redundancies at tie
    - Compensation Payments to Contractors
    - Costs of disposing of any land acquired
    - Other associated costs of closing down the project
- In the event of termination, there will be no clawback of costs incurred in good faith prior to the decision to terminate the project

Disputes